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SC Court of Appeals

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Administrative Law Judge Ralph K. Anderson, III

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ALC Case No. 19-ALJ-04-0492-AP  
Appellate Case No. 2020-000521

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James Millholland #367569 . . . . . Appellant

South Carolina Department of <sup>v.</sup> Corrections . . . . . Respondent

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REPLY BRIEF

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James Millholland # 367569  
Allendale C.I. / Colleton A-50  
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## Cases

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## Statement Of Issues On Appeal

1. Did The Administrative Law Court properly dismiss Appellants Appeal where no state created Liberty or property Interest was implicated in the claims raised by Appellant?
2. Did the Department of Corrections Err in failing to confirm with the Law Enforcement Division whether Appellant had previously paid a DNA processing fee?

## STATEMENT OF THE CASE

The Appellant is an inmate in the South Carolina Department of Corrections (S.C.D.C.) and housed at Allendale Correctional Institution in Fairfax, South Carolina. On June 25, 2019, Appellant submitted a Step 1 grievance appealing being charged two times for a one time DNA processing fee of \$250<sup>00</sup>. Following denial of his step 1 grievance, Appellant submitted a step 2 grievance on July 25, 2019, arguing that his 5<sup>th</sup> Amendment right had been violated. Step 2 was denied on September 9, 2019. Appellant then filed a notice of appeal in the Administrative Law Court on October 24, 2019. This appeal was denied on March 4, 2020. Appellant timely filed a notice of appeal and motion to proceed in forma pauperis to this Court. The motion to proceed in forma pauperis was granted on May 1, 2020.

## STANDARD OF REVIEW

S.C. Code 1-23-610(b) Provides the Applicable Standard of Review:

The review of the Administrative Law Judges order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may be reversed or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion

S.C. Code Ann § 1-23-380(5)

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence, S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendly v. State Budget & Control Bd., 325 S.C. 413, 481 S.E. 2d 159 (S.C. Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.*

## Argument

Did the Administrative Law Court Properly Dismiss Appellants Appeal Where Appellants Claim Did not Implicate A State Created Liberty Or Property Interest?

The Respondent are incorrect in their assertion that no property interest was asserted! The ALJ did have jurisdiction. When the \$250<sup>00</sup> processing fee established by S.C. Code 23-3-620 is a state created property interest. When the state requires one to submit his property to pay a processing fee, See Wicker v. S.C.D.C. 360 S.C. 421, 602 S.E. 2d 56. ALC Jurisdiction extends to this case when the Appellant is denied his right to only pay this processing fee once. See S.C. Code Ann. § 23-3-620 (d) "unless a sample has already been provided". The Respondents are sidestepping this very simple claim, they have attempted to change the issue, but they have never addressed the facts in this claim.

Did the S.C. Dept. of Corrections err in failing to confirm with the law enforcement division whether appellant had previously paid a DNA processing fee?

The only answer to this question is yes, they failed. There must be some system between agencies to verify these kind of matter with so many repeat offenders!

Appellant is not challenging S.C. Code Ann § 23-3-620! It has not been disputed that appellant should not have to pay the processing fee 2 times. Nor is it disputed that he did. As stated above S.C. Code 23-3-620(D) the statute is clear and unambiguous and the intent of the General Assembly is Clear!

To imply that DNA was never taken is without merit. In fact this is the root of the claim, for S.C.D.C. to verify that DNA was taken and the processing fee paid. S.C. Code 23-3-620 (b) is clear. "unless a sample has already been provided pursuant to the provisions of subsection (A) The Respondent dont want the Court to consider the meaning of this very important part of this statute.

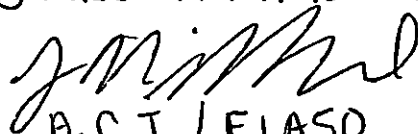
## Conclusion

For the foregoing reasons, the Court should overturn the ALC's decision. Make S.C.D.C. refund the \$250<sup>00</sup> they over charged Appellant. And make S.C.D.C. create a system with S.L.E.D. so they can verify who and who has not already provided a sample of D.N.A. for the database and who has or has not already paid the processing fee.

Wherefore, Appellant prays this Court grant him the relief requested and all other relief this Court seems just and proper.

Respectfully Submitted,

James Millholland 367569



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South Carolina Dept. of Corrections . . . . . Respondent

Certificate of Service

This is to certify that a copy of Appellants Reply Brief was  
mailed to the following on this 18<sup>th</sup> day of August, 2020

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SC Court of Appeals

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RE: James Millholland 367569 v. S.C.D.C.  
Appellate Case No. 2020-000521

Dear Ms Kitchings,

Please accept my reply brief enclosed for the above mentioned matter. Thank You.

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