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SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM THE ADMINISTRATIVE LAW COURT OF APPEALS

Ralph K. Anderson III, Administrative Law Judge

ALC Docket Case No. 19-ALJ-04-0492-AP

Appellate Case No. 2020-000521

James Millholland 367569 Appellant

South Carolina Department of ^{v.} Corrections Respondent

FINAL REPLY BRIEF OF APPELLANT

James Millholland 367569
Pro-se, Appellant

A.C.I. / Colleton A-50
PO Box 1151
Fairfax, SC 29827

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	2
Standard of Review	3-4
Argument	5-6
Conclusion	7
Certificate of Compliance	8

TABLE OF AUTHORITY

Cases

Hendly v. State Budget and Control Bd
325 S.C. 413, 481 S.E. 2d 159 (S.C. Ct. App. 1996) 4

Wicker v. S.C.D.C.
360 S.C. 421, 602 S.E. 2d 56 5

Statutes

S.C. Code Ann. § 1-23-380(e) 4

S.C. Code Ann. § 1-23-610(b) 3

S.C. Code Ann. § 23-3-620(d) 5-6

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 S.C. Department of Corrections err in failing to confirm with the S.C. 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 Correction (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 \$250.00 (R.p. 9-10) Following of his Step 1 Grievance, Appellant submitted a Step 2 Grievance on July 25, 2019 arguing that his 5th Amendment right had been violated (R.p. 11). Step 2 was denied on September 9, 2019. Appellant then filed a Notice of Appeal in the Administrative Law Court on October 24, 2019. (R.p. 12) This appeal was denied on March 4, 2020. (R.p. 4-7) Appellant timely filed a Notice of Appeal and Motion to proceed in forma pauperis to this Court. The Motion to Proceed Informa 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 reverse 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 authority 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 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 from 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(5)

"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. Hendley v. S.C.

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 finding 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

ARGUMENT

Did the Administrative Law Court properly dismiss Appellant's appeal where no state created liberty or property interest was implicated in the claim raised by Appellant?

The Respondent are incorrect in their assertion that no property interest was asserted! (R.p. 42-43) The ALC did have jurisdiction. When the \$250.00 processing fee established by S.C. Code Ann. § 23-3-620 is a state created property interest. When the state requires one to submit his property to pay a processing fee. see Wicher 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" (R.p. 28-29). The Respondents are side stepping 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 S.C. Law Enforcement Division whether Appellant had previously paid a D.N.A. 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 two times. Nor is it disputed that he did. As stated above S.C. Code Ann. § 23-3-620 (D) the statute is clear and unambiguous and the intent of the General Assembly is clear.

To imply that D.N.A. was never taken is without merit. In fact this is the root of the claim, for S.C.D.C. to verify that the DNA was taken and the processing fee paid. S.C. Code Ann. § 23-3-620(D) is clear. "unless a sample has already been provided pursuant to the provisions of subsection (A)" (R.p. 28-29) The Respondent don't 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 \$250⁰⁰ they overcharged 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
A.C.I./FIASO
PO Box 1151
Fairfax, SC 29827

October 16, 2020
Fairfax, SC.

CERTIFICATE OF COMPLIANCE

I hereby certify that this Final Reply Brief of Appellant complies with Rule 211(b) SCACR.

Respectfully Submitted,

James Millholland 367569
A.C.J. FIASO
PO Box 1151
Fairfax, SC 29827

October 14, 2020
Fairfax, SC

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