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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph K. Anderson, III

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

JAMES MILLHOLLAND, # 367569,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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I. **DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISS APPELLANT'S APPEAL WHERE NO STATE CREATED LIBERTY OR PROPERTY INTERST WAS IMPLICATED IN THE CLAIMS RAISED BY APPELLANT?**

II. **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

This matter comes before the Court pursuant to the appeal of James Millholland, an inmate incarcerated with the Department of Corrections. On June 25, 2019, Appellant filed a Step 1 grievance disputing deductions taken by SCDC for payment of a DNA processing fee. Appellant alleged this occurred in violation of policy because he had paid $250.00 to the State Law Enforcement Division ("SLED") prior to these deductions, and he believed this should have been a one-time fee charged to him. Appellant's Step One Grievance was timely reviewed by the Warden and denied based on SCDC Policy OP 21.09: "Inmate Records Plan," whereby "the DNA database is administered under the direction of [SLED] . . . [and] any person incarcerated in SCDC who has been convicted of . . . any of the offenses identified in the DNA Statute will be required to provide a blood sample for inclusion into the State DNA Database" and be required to pay the associated $250.00 fee. Appellant then filed a Step 2 Grievance in response to the Warden's decision on July 25, 2019 on the same basis. This grievance was denied by the reviewing Responsible Official on September 9, 2019. They informed Appellant that, although he believes the fee is a one-time fee, "[r]ecords indicate [Appellant was] admitted into SCDC as a New Admission on 03/26/16 . . . [and that n]ew admissions will be assessed the fee as required by SLED." R. p. 11.

Appellant filed a Notice of Appeal in the Administrative Law Court on September 25, 2019. The Department of Corrections filed a Motion to Dismiss on February 11, 2020. Appellant filed a Reply Brief on February 24, 2020. Thereafter, on March 4, 2020, the Honorable Ralph K. Anderson, III issued an order granting the Department's Motion to Dismiss, dismissing Appellant's appeal with prejudice. Appellant filed Notice of this appeal on March 15, 2020.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

> The review of the administrative law judge's 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 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. *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 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

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL WHERE APPELLANT'S CLAIM DID NOT IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTERST.

The ALC's jurisdiction to hear appeals from final agency decisions of the South Carolina Department of Corrections is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the South Carolina Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (*1*) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (*2*) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (*3*) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (*2*) and (*3*), *supra*, the South Carolina Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is *state-created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state-created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v.*

S.C. Dep't of Corr., 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added). Further, this Court has interpreted *Slezak* to mean that where a state-created liberty interest is not implicated in a prisoner appeal, a judge of the ALC "should" dismiss the appeal. *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (S.C. Ct. App. 2006).

This appeal concerns Appellant's challenge of a second DNA processing fee that was levied against deposits made into his E.H. Cooper account. *See* Appellant's Initial Brief, p. 4. SCDC takes DNA samples from inmates and provides those samples to SLED for inclusion in the State DNA Database in accordance with S.C. Code Ann. § 23-3-620. That statute states, in relevant part, that DNA samples will be required,

> (A) Following a lawful custodial arrest, the service of a courtesy summons, or a direct indictment for: (1) a felony offense or an offense that is punishable by a sentence of five years or more . . . This sample must be taken at a jail, sheriff's office that serves a courtesy summons, courthouse where a direct presentment indictment is served, or detention facility at the time the person is booked and processed into the jail or detention facility following the custodial arrest, or other location when the taking of fingerprints is required prior to a conviction. The sample must be submitted to SLED as directed by SLED. . . .

Appellant was admitted to SCDC custody on March 29, 2016 as a New Admission after previously serving a sentence in SCDC custody. *See* R. p. 64. Per S.C. Code Ann. §23-3-620(A), Appellant was properly assessed an additional $250.00 following a lawful custodial arrest. Appellant contends that because he paid the DNA processing fee during his previous term of incarceration he should not have had to pay the fee again when he was admitted to SCDC in 2016. *See* R. p. 30. Appellant's sole issue on appeal to the ALC and here is: "Did the South Carolina Dept. of Corrections [err] when they failed to confirm with SLED that

Appellant was already entered into the DNA Database, and that the $250.00 fee was already paid?" *See* R. p. 16; R. p. 28. In support of his argument that SCDC's actions were in error, Appellant puts forth that "Someone has to know that I was already entered into the Database . . .", "I should not have to pay twice for the same DNA Database fee", and "SCDC should have never charged Appellant in 2016, an additional $250.00." *See* R. p. 17; *See* R. p. 30. Appellant also asks the Court to "take notice that [he] is not challenging the constitutionality of the DNA law in any form." *See* R. p. 20; R. p. 30. Appellant's only argument is the fact that he was charged the DNA processing fee twice, which constitutes a facial challenge to the statute. Because Appellant did not present any arguments challenging the constitutionality of the actual method by which SCDC deducted amounts to which they are entitled under §23-3-620(A), the ALC did not have subject matter to hear his Appeal. *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 109 705 S.E.2d 28, 38-39 (2011) (where the Court held that the ALC can rule on as-applied challenges to statutes or regulations but not facial challenges to the constitutionality thereof). *See* R. pp. 5-6.

Because no state created liberty or property interest is implicated in this case, Administrative Law Judge Anderson's March 4, 2020 Order dismissing the appeal on this basis was proper and should be upheld.

THE DEPARTMENT'S DEDUCTION OF THE DNA PROCESSING FEE FROM APPELLANT'S E.H. COOPER ACCOUNT IS IN ACCORDANCE WITH STATE LAW AND THUS PROPER.

Even if the ALC had jurisdiction over Appellant's appeal, Appellant's argument is without merit. S.C. Code Ann. § 23-3-670 requires that Appellant pay a $250.00 fee for the processing of his DNA sample. That statute says in relevant part, "A person who is required to provide a sample pursuant to this article, upon conviction, pleading guilty or nolo contendere, or forfeiting bond, **must** pay a two hundred fifty-dollar processing fee which **may not be waived** by the court." S.C. Code Ann. § 23-3-670(A) (emphasis added); *See Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) ("Under the rules of statutory interpretation, use of words such as "shall" or "must" indicates the legislature's intent to enact a mandatory requirement.").

Appellant's argument that SCDC erred in accessing the DNA processing fee a second time relies on S.C. Code Ann. § 23-3-620(D). *See* R. p. 29. That section provides that

> [u]nless a sample has already been provided pursuant to the provisions of subsection (A), before a person is released from confinement or released from the agency's jurisdiction, a suitable sample from which DNA may be obtained for inclusion in the State DNA Database must be provided as a condition of probation or parole.

Appellant incorrectly interprets § 23-3-620(D) as establishing a state-created liberty or property interest in having DNA and the associated fee collected only once. A statute "must be read as a whole and sections [that] are part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Therefore, the Court should avoid concentrating on "isolated phrases within the statute." *Id.* Instead, the Court must "read the statute as a whole and in a manner consonant and in harmony with its purpose." *Id.* Finally, "when the

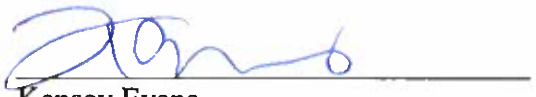
terms of a statute are clear and unambiguous, the court must apply them according to their literal meaning . . . without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E. 2d 660, 662 (1991). Nowhere in the unambiguous language of § 23-3-620 does the General Assembly provide that the collection of DNA samples, and the corresponding assessment of the collection fee under § 23-3-670, is to be a one-time occurrence. Rather, when § 23-3-620 is read as a whole it is clear that the legislature's intent behind subsection (D) was to provide that in situations where an incarcerated individual's DNA had not been collected upon lawful arrest for an offense enumerated in subsection (A), then the DNA sample must be obtained as a condition of probation or parole. Thus, to interpret § 23-3-620(D) as Appellant suggests would force the statute to operate in a manner contrary to the General Assembly's intention.

Thus, SCDC's charge for and deductions towards the $250.00 DNA processing fee were proper as these actions were carried out in accordance with state law.

CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS



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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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