

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF REVENUE**

In the Matter of)	
)	
K. J.)	OAH No. 23-0683-PFD
)	
<u>2023 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

Mr. K. J. appeals the denial of his 2023 Alaska Permanent Fund Dividend (PFD) application. Mr. J. timely applied for his 2023 PFD; however, his application was denied by the Permanent Fund Dividend Division (Division) because Mr. J. was incarcerated in 2022 for a felony conviction.¹ Following an unsuccessful informal appeal,² Mr. J. requested a formal hearing by correspondence. The record for appeal closed December 18, 2023. Peter F. Scott, a PFD Specialist I, filed a position statement and Exhibits 1-6 on behalf of the Division. Mr. J. did not submit any additional evidence. All the documents were admitted and carefully considered. Because Mr. J. had a disqualifying incarceration during the qualifying year, the Division's denial of his application for the 2023 PFD is affirmed.

II. Facts

Mr. J. is a 59-year-old longtime Alaskan, who timely applied for a 2023 PFD. Apart from his confinement during the preceding year there are no issues regarding his eligibility. Mr. J. was convicted of second-degree murder and kidnapping, with a sentencing date of February 3, 2012.³ The Alaska Department of Corrections records confirm his incarceration began in 2010, and he remains incarcerated as a result of this conviction, with a proposed release date of February 25, 2080.⁴

III. Discussion

The Alaska legislature has directed that "an individual is not eligible for a permanent fund dividend for a dividend year when . . . during all or part of the qualifying year, the

¹ Ex. 2.
² Ex. 5.
³ Ex. 4.
⁴ Ex. 4.

individual was incarcerated as a result of the conviction in this state of a . . . felony.”⁵ The qualifying year for a 2023 PFD was 2022.⁶

As the individual challenging the Division’s decision, it is Mr. J.’s burden to establish that it is more likely than not that he is eligible for a 2023 PFD. So, to receive the 2023 PFD, Mr. J. must demonstrate he was not incarcerated for a felony during any part of 2022. As discussed further below, Mr. J. fails to meet this burden.

The content and style of Mr. J.'s claims and arguments in this case are consistent with the expressed belief system of a group that has come to be known as "sovereign citizens". For example, Mr. J. attached an “Identification Declaration/Disclaimer” signed it as "J.: K. TM ©" and he asserts that he is "a sui juris and Sovereign."⁷ The Alaska Court of Appeals has held that, “[c]ourts across the country have universally rejected these types of claims, dismissing them as 'misguided,' 'completely without merit,' and having 'no conceivable validity in American law.'”⁸ Here, Mr. J.'s argument is premised on the misguided notion that Alaska's laws do not apply to him unless he provides personal consent to be governed by our laws.⁹ As other courts have already held, “[t]his argument is nonsense and antithetical to our form of constitutional democracy.”¹⁰

In his request for a formal hearing Mr. J. appears to be challenging the constitutionality of the Division’s denial, when he states without argument or factual support, that the denial “[v]iolates Common Law, 5th & 8th Amendments – due process, discrimination.”¹¹ Contrary to Mr. J.’s claims, the Alaska Supreme Court has already addressed these claims and held, in *State v. Anthony*, that the mere fact that AS 43.23.005(d) alters a convicted felon's circumstances to his disadvantage, does not invalidate the statute.¹² In *Anthony* the Court held that AS 43.23.005(d) is not a punitive statute and it did not violate ex post facto clause of the state or federal constitution.¹³ The Court also held that 43.23.005(d) does not violate the equal protection

⁵ AS 43.23.005(d).

⁶ AS 43.23.095(6).

⁷ Ex. 6.

⁸ *Bourdon v. State*, 370 P.3d 1116, 1117 (Alaska App. 2016) (footnotes omitted).

⁹ “As a declared sui juris American National Sovereign my laws are secured by the Constitution of the United States and Common Law, not ADMINISTRATIVE/MARITIME LAW.” Ex. 6, p. 2. *See also* “I don’t consent to Denial.” Ex 3, p. 2.

¹⁰ *J. v. State* No. S-00000 (Alaska Nov. 17, 2023).

¹¹ Ex. 6, p. 2.

¹² *State v. Anthony*, 816 P.2d 1377 (Alaska 1991).

¹³ *State v. Anthony*, 816 P.2d 1377 (Alaska 1991).

clause.¹⁴ In *Hertz v. Storer*, the Supreme Court extended the reasoning of *Anthony* and found AS 43.23.005(d) did not violate double jeopardy clause.¹⁵ Thus, the denial of Mr. J.’s PFD would not constitute a violation of the 5th amendment, 8th amendment, or equal protection clauses of the state or federal constitution.

Mr. J. also alleges a violation of his right to due process but has not cited any particular facts that would support a due process violation. Due process has two elements, substantive and procedural. Procedural due process requires, “...that adequate and fair procedures be employed when state action threatens protected life, liberty, or property interests.”¹⁶ As Mr. J. has received adequate notice, he has had a full opportunity to be heard, and his case has been heard a neutral decision-maker, Mr. J.’s procedural due process rights have not been violated.

Substantive due process may bar state action that infringes on life, liberty, or property interests in the absence of a sufficient government reason.¹⁷ “The standard for establishing a substantive due process violation is rigorous.”¹⁸ To succeed on a substantive due process claim, the state’s actions must be “so irrational or arbitrary or so lacking in fairness as to shock the universal sense of justice.”¹⁹ The Alaska Supreme Court, however, has held that “dividend eligibility requirements do not reach the level of unfairness necessary to support a due process violation,”²⁰ and has upheld various eligibility requirements despite noting they may be “unfair” to certain classes of applicants.²¹ Therefore, Mr. J.’s substantive due process rights were not violated.

In his request for a formal hearing, despite two pages of legal argument, Mr. J. does not contest any of the relevant facts in this case.²² Most importantly, Mr. J. did not dispute the Division’s factual finding that he was incarcerated for a felony in 2022. Therefore, Mr. J. has not demonstrated the Division was incorrect in denying his 2023 PFD.

IV. Conclusion

¹⁴ *State v. Anthony*, 810 P. 2d 155 (Alaska 1997).

¹⁵ *Hertz v. Storer*, 943 P. 2d 725 (Alaska 1997).

¹⁶ *Doe v. Dept. of Public Safety*, 444 P. 3d 116, 124-125 (Alaska 2019).

¹⁷ *Doe v. Dept. of Public Safety*, 444 P. 3d 116, 124 (Alaska 2019).

¹⁸ *Church v. State*, 973 P.2d at 1130 (Alaska 1999).

¹⁹ *Church v. State*, 973 P.2d at 1130 (Alaska 1999). (quoting *Application of Obermeyer*, 717 P.2d 382, 386-87 (Alaska 1986)).

²⁰ *Church v. State*, 973 P.2d at 1130 (Alaska 1999).

²¹ See, e.g., *Cousins*, 2001 WL 34818200; *Church*, 973 P.2d 1125

²² Ex. 6, p. 2.

Mr. J. arguments in this case are not persuasive. The Alaska Supreme Court has already determined that probation expressed in 43.23.005(d) is constitutional.

Because Mr. J. was incarcerated in 2022 for a felony, Mr. J. is not eligible to receive the 2023 PFD. The Division's decision is upheld.

Dated: December 21, 2023

By: Signed
Signature
Eric M. Salinger
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 16th day of January, 2024.

By: Signed
Signature
Cheryl Mandala
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

