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

In the Matter of	)	
E. B.	)	OAH No. 23-0702-PFD
2023 Permanent Fund Dividend	)	

#### **DECISION**

#### I. Introduction

The Department of Revenue Permanent Fund Division ("Division") denied E. B. a 2023 Permanent Fund Dividend ("PFD") because he was incarcerated during 2022 on a felony conviction. Mr. B. focused on when he was convicted of a felony, but PFD eligibility hinges on when a person is incarcerated and whether the incarceration is the result of a felony. Because Mr. B. was incarcerated in 2022 on a felony conviction, he is ineligible for a 2023 PFD. The Division's decision is affirmed.

### II. Background

A person who is incarcerated during any part of the qualifying year "as a result of the conviction in this state of a felony" is not eligible for a PFD.<sup>1</sup> E. B. was convicted of a felony in case 4BE-16-00000CR on April 30, 2019.<sup>2</sup> The Department of Corrections indicated that Mr. B. has been incarcerated since December 27, 2018 and is scheduled to be incarcerated until December 12, 2025 on a 2019 felony conviction.<sup>3</sup>

Mr. B. applied for a 2023 PFD, listing a state correctional facility for his mailing and physical address.<sup>4</sup> The Division confirmed with the Department of Corrections that Mr. B. was incarcerated during 2022 — the qualifying year for a 2023 PFD — and that his incarceration resulted from a felony conviction. The Division therefore denied his application.<sup>5</sup>

Mr. B. requested an informal appeal, stating that he "was convicted in 2019 and since then I received a misdemeanor in 2020 [but] its been 3 years since I received any charges and

AS 43.23.005(d)(2)(A).

<sup>&</sup>lt;sup>2</sup> Courtview docket for 4BE-16-00000CR, of which administrative notice is taken.

Ex. 4.

<sup>&</sup>lt;sup>4</sup> Ex. 1 at 1.

<sup>&</sup>lt;sup>5</sup> Ex. 2.

over 4 years since I got a felony."<sup>6</sup> He further asserted that "[t]here was a law that was supposed to be passed Gunlick v. State that allowed inmates to get PFD and that includes felons."<sup>7</sup>

For the informal appeal, the Department of Corrections confirmed that Mr. B. was incarcerated during 2022 as a result of a felony conviction for case number 4BE-16-00000CR. The Division thus affirmed its denial. 9

#### Mr. B. appealed, asserting that:

I saw on the Alaska channel 2 news and was told by family that I can now receive a PFD if I am incarcerated[.] [T]here was a recent law passed all over news stating this and the inmate law library has not been updated for me to provide more detail. Also when convicted I was told to file every year so that my court fees will get paid for and any other restitution I owe the state and what's left would go to me <sup>10</sup>

Mr. B. requested a hearing by written correspondence. The Division provided a position statement and exhibits. Mr. B. did not submit additional evidence or briefing.

#### III. Discussion

A person who was incarcerated in 2022 "as a result of the conviction in this state of a felony" is not eligible for a 2023 PFD.<sup>11</sup>

The Division provided evidence Mr. B. was incarcerated throughout 2022 on a 2019 felony conviction in case 4BE-16-00000CR. Mr. B. has not contradicted this evidence or denied that he was incarcerated in 2022 related to this felony conviction. Instead, Mr. B. argues that incarcerated felons are eligible under a new law to which he does not have access. There is a reason Mr. B. has been unable to find a law granting incarcerated felons PFD eligibility — no such law exists. The PFD statutes and regulations do not provide for incarcerated felons to receive PFDs. To the contrary, state statute expressly states that a person incarcerated during the qualifying year as a result of a felony is *not* eligible for a PFD. To the extent Mr. B. is thinking of court-made law, there does not appear to be any case holding that an incarcerated felon can be eligible for a PFD. Mr. B.'s informal appeal referred to "Gunlick v. State." There are no Court of Appeals or Supreme Court cases by that name. There are two unpublished Court of Appeal

<sup>&</sup>lt;sup>6</sup> Ex. 3 at 3.

<sup>&</sup>lt;sup>7</sup> *Id.* 

<sup>&</sup>lt;sup>8</sup> Ex. 4.

Ex. 5.

Ex. 6 at 2.

<sup>11</sup> AS 43.23.005(d)(2)(A).

"Gunlik v. State" decisions, but neither address Permanent Fund Dividends. <sup>12</sup> It is unclear what Mr. B. may have seen a news story about, but there is no law that would allow him to receive a PFD when he was incarcerated on a felony in the qualifying year.

The evidence shows Mr. B. was incarcerated in 2022 as a result of a felony conviction, and the law states that he is therefore ineligible for a 2023 PFD.

#### IV. Conclusion

Because Mr. B. was incarcerated in 2022, and his incarceration was a result of an earlier felony conviction, he is ineligible for a 2023 PFD. The Division's decision is affirmed.

Dated: January 3, 2024

By: Signed
Signature
Rebecca Kruse
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.]

OAH No. 23-0702-PFD 3 Decision

See Gunlik v. State, No. A-13110, 2020 WL 9217966 (Alaska Ct. App. Nov. 12, 2020); <u>Gunlik v. State</u>, No. A-850, 1985 WL 1077926 (Alaska Ct. App. May 22, 1985).

## 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 30th day of January, 2024.

By:	Signed	_
-	Signature	
	Rebecca Kruse	
	Name	-
	Administrative Law Judge	
	Title	