

The South Carolina Court of Appeals

IN THE SOUTH CAROLINA COURT OF APPEALS

James Anthony Primus 252315 Appellate

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Respondent

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OCT 24 2019

SC Court of Appeals

Appellate Case No 2019-001277

While Pro Se Complaints are held to a less stringent standard than those drafted by attorney's the fact remains that prisoners are still laymen in the science of law Appellant Nice lies in the inability to clearly express himself concerning Respondents. This is complicated

October 21 2019

B4

James Anthony Primus 252315 Pro Se
MacDougall Correctional Institution
Borchardt c 13 B
1516 old Gilliard Road
Ridgeville S.C. 29472

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Administrative Law Court

THE Honorable Milton G. Kimpson

Administrative Judge

Initial Brief

James Anthony Primus 252315

James Anthony Primus Pro Se
MacDougall Correctional Inst.
1516 Old Billiard Road
Ridgeville S.C. 29472

October 21 2014

STATEMENT

Appellate James Anthony Primus 252318 is incarcerated in the South Carolina Department of Correction at the MacDougall Correctional Institution in Ridgeville S.C.

In September of 1997 Appellate was indicted for Criminal Sexual Conduct (CSC) in the First degree kidnapping possession of crack cocaine and burglary in the Second degree on September 1 1998 Dorchester County South Carolina Appellate was found guilty of kidnapping assault and battery of a high and aggravated nature and possession of crack cocaine Appellate receive aggregate sentence of 30 years for kidnapping aggregate 10 years for assault and battery of a high and aggravated nature to run consecutive and 1 year for possession of crack cocaine to run concurrent Appellate sentence sheet incorrectly indicated that Appellate pled guilty to ABHAW charge

Indictment 97-GS-18-1045 warrant no. E091998 originally criminal sexual conduct (CSC 1st Degree)

This error was corrected by the Dorchester County clerk of court Mrs Cheryl Graham on June 11 2014

The South Carolina Department of Correction updated Appellate Record on January 14 2015 by changing the plea of guilty to a plea of not guilty in SCDC systems Inmate records 1

Factual Back Ground

This case arose from classification case worker at the MacDougal Correctional Institution MR. Tucker and now also Mrs Nichole Chapman classification case worker that assault and Battery of and high and aggravated nature are now being interpreted by the Trial Indictment statute 16-3-652 CSC 1st degree where Appellate was acquitted on at trial and all lesser included offenses and was convicted of ABHAW Appellate filed and Grievance step one on 9-27-17 This step one Grievance was investigated and denied Appellate filed and Step 2 Grievance was also investigated and denied Appellate filed Notice of Appeal with the Administrative Law Court The Honorable Milton G. Kimpson also Denied Appellate Appealing now to South Carolina Court of Appeals Slezak v. SCDC 361 S.C. 327 605 SE2d 506 2004 Tant v. SCDC 408 S.C. 334 759 SE2d 398 State v. Green 491 SE2d 263 State v Primus 564 SE2d 103-109

ARGUMENT

The S. C. Administrative Law Court reached and
In correct conclusion as to every facet of the legal
Issue presented in this case

SCOC contends that assault and battery of a high
and aggravated nature is the same as CSC 1st degree
However because all the elements of the lesser offense
are not also elements of the purported greater offense
it is in fact not a lesser included offense. The

Test for determining if a crime is a lesser included
offense is whether the greater offense includes all the
elements of the lesser offense. See State v. Bland 318

S.C. 315 317 457 S.E.2d 611 612 (1995) State v. Prince

316 S.C. 57 66 447 S.E.2d 177 182 (1993) In

John Green v State 491 S.E.2d 263 Criminal

Sexual Conduct in the First degree is defined

by statute. A person is guilty of that offense
if he engages in sexual battery with the victim
and if any one or more of the following circumstances
are proven

A The actor uses aggravated force to accomplish
Sexual Battery

STATE V. PRINCE Supreme Court ABHON was not and
lesser include offense of CSC 1st degree SB4 SE2d 123-129

B The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement kidnapping robbery extortion burglary housebreaking or any other similar act

C The actor causes the victim without the victim's consent to become mentally incapacitated or physically helpless by administering distributing dispensing delivering or causing to be administered distributed dispensed or delivered a controlled substance a controlled substance analogue or any intoxicating substance s.e. Code Ann 16-3-652 (1) Supp 2001 Subsection (c) was added in 1998 after the date of the incident in this case and amended in 2000 The code further defines the term sexual battery to mean, sexual intercourse cunnilingus fellatio anal intercourse or any intrusion however slight of any part of a person's body or of any object into the genital or anal openings or another person's body except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes

S.C. Code Ann. 16-3-651 (h) The key component of sexual battery under this definition is a sexual act or an intrusion into the genital or anal opening of another person's body ~~except when~~ A sexual battery requires a touching of the victim. See State v. Mims 286 S.C. 553, 554, 335 S.E.2d 237 (1985).

An assault, on the other hand, requires no touching. Mims 286 S.C. at 554, 335 S.E.2d at 237-38. Rather, it requires only a show of violence or offer to do some forceful act together with the ability to complete the offer. Mims 286 S.C. at 554, 335 S.E.2d at 237.

In *Re McGee*, 278 S.C. 506, 507, 299 S.E.2d 334, 334 (1983), no element of assault is included in the statutory definition of sexual battery. See Code Ann. 16-3-651 (h). Moreover, as is shown by the alternative circumstances that elevate a sexual battery to the first-degree level under the current version of the statute, it is implicit in the crime. See S.C. Code Ann. 16-3-652 (1)(c). On the other hand, the offense of assault and battery of a high and aggravated nature contains both an assault element and a battery element. Assault and battery of a high and aggravated nature is an unlawful act of

Violent injury accompanied by circumstances of
aggravation See State v Fearrell 340 S.C. 266
274 531 SE 2d 512, 542 (2000) State v. Frazier
302 S.C. 500 502 397 SE 2d 93 94 1990 State
v. Coleman 342 S.C. 172 176 536 S.E. 2d 387, 389
Ct. App 2000] The S.C. Court of Appeals has
recognized the dual requirements of both
assault and a battery as separate and distinct
elements of that offense thereby precluding its
being a lesser included offense of crimes which have
an assault element but no battery component
See John Green v. State 491 S.E. 2d 263 high
and aggravated nature assault and battery is not
lesser included - offense of assault with intent to
commit third-degree criminal sexual conduct December
14 1999 State v. Clarkson 337 S.C. 518 523-34
523 SE 2d 817 820 (Ct App 1999) assault, and
Battery of a high and aggravated nature is not
lesser included offense of assault with intent
to commit second criminal sexual conduct with
a minor Similarly this Court should recognize
that this offense is also not a lesser included
offense of first-degree criminal sexual conduct

which has no assault component In addition to the existence of the assault element in one offense and the lack of that Element in the greater offense assault and Battery of a high and Aggravated Nature is not a lesser included offense of First degree Criminal Sexual Battery because the elements required to accompany circumstances are not identical to establish such an assault and Battery the State may prove that it was accompanied by an aggravating circumstance such as the use of a deadly weapon the infliction of serious bodily injury the intent to commit a felony great disparity between the ages or physical conditions of the parties differences in the sexes of the parties purposeful infliction of shame and disgrace taking indecent liberties with a female and resistance to lawful Authority See Fennell 340 S.C. 273 531 S.E.2d at 516-17 State v. Patterson 337 S.C. 215 231 522 S.E.2d 845 854 et APP 1929

These specific elements which raise a simple assault and battery to one of a high and aggravated nature are not also elements of first degree criminal sexual conduct the aggravating circumstances of which are defined by statute see S.C. Code Ann. 16-3-652 (1) For example an offense which qualifies as an assault and battery of a high and aggravated nature would lack the statutory elements of first degree criminal sexual conduct if the aggravating circumstance were disparity in age or physical characteristics Indeed the Court of Appeals has recognized this difference in the nature of the aggravating circumstances of these two offenses finding that the aggravating circumstances that support a conviction for assault and battery of a high and aggravated nature do not necessarily establish first-degree criminal sexual conduct See State v. Green 327 S.C. 581, 585-86 491 S.E. 2d 263, 264-65 Ct. App. 1997 as the Court in Green if criminal sexual conduct in the first degree could be established by any form of

Aggravation accepted for Assault and Battery of a high and aggravated nature every sexual Battery committed by a member of the opposite sex would amount to first degree criminal sexual conduct see Green 327 S.C. at 586, 491 S.E.2d 265. The State acknowledges that certain circumstances of aggravation that establish assault and battery of a high and aggravated nature are outside the limited statutory circumstances that elevate a criminal sexual conduct to the first degree level. The aggravating circumstances for assault and battery of a high and aggravated nature are different from those that establish first degree criminal sexual conduct. This form of assault and battery cannot be a lesser-included offense of criminal sexual conduct in the first degree. Finally, a third element prevents a conclusion that assault and battery of a high and aggravated nature is a lesser included offense of first degree criminal sexual conduct. Battery is an element of assault and battery of a high and aggravated nature. Court should hold that this form of assault and battery is not a lesser included offense CSC 1st degree.

Conclusion

For the reasons set forth S.C.D.C.
Interpretation of ABHAN cannot
be interpreted by the statute
Judge Luke W. Brown Jr. intended
CAR Code for interpretation
This Court should grant this
motion Declaratory Judgment

Respectfully Submitted

October-21-2019

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THE SOUTH CAROLINA COURT OF APPEALS

IN THE COURT OF APPEALS

James Anthony Primus Appellate

v.

South Carolina Department of Corrections

RESPONDENT

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SC Court of Appeals

Appellate Case NO. 2019- 001297

Initial Brief

Certificate of Service

The undersigned hereby certifies that a true copy of Appellate Initial Brief was served upon the following individuals by mailing a copy of same properly addressed UIA First Class Mail with sufficient postage affixed this day 21 day of October 2019

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The South Carolina Court of Appeals

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SC Court of Appeals

RE: James Anthony Primus 252315 v. S.C.
Department of Corrections
Case No 2019 - 001297

Dear Honorable Clerk

Enclosed for service on you please find Appellate
initial Brief and motion for appointment of Counsel
and Certificate of Service

With kindest regards

Sincerely

James Anthony Primus
pro se

FROM
James Anthony Pinnas, 252315
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