

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Milton G. Kimpson

ALC Case No. 18-ALJ-04-0100-AP
Appellate Case No. 2019-001277

JAMES ANTHONY PRIMUS, # 252315,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY UPHELD THE DEPARTMENT OF CORRECTIONS' ENTRY OF APPELLANT'S ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE SENTENCE WHERE APPELLANT FAILED TO ESTABLISH THE DEPARTMENT COMMITTED ANY ERRORS WITH RESPECT TO THIS SENTENCE ENTRY.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of James Anthony Primus, an inmate in the custody of the South Carolina Department of Corrections. On September 27, 2017, Appellant submitted a Step 1 Grievance complaining that the Department of Corrections was not properly interpreting his assault and battery of a high and aggravated nature conviction. After this grievance was investigated and denied, Appellant submitted a Step 2 Grievance on November 29, 2017. The Step 2 was also investigated and was denied on February 2, 2018. Appellant filed a notice of appeal in the Administrative Law Court on March 13, 2018. After briefs were filed by both parties, Administrative Law Judge Milton G. Kimpson filed an order dismissing Appellant's appeal on July 24, 2019. The order concluded that Appellant failed to establish that the Department of Corrections committed any errors with respect to the entry of Appellant's assault and battery of a high and aggravated nature sentence. This appeal follows.

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 (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 UPHELD THE DEPARTMENT OF CORRECTIONS' ENTRY OF APPELLANT'S ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE SENTENCE WHERE APPELLANT FAILED TO ESTABLISH THE DEPARTMENT COMMITTED ANY ERRORS WITH RESPECT TO THIS SENTENCE ENTRY.

On September 1, 1998, Appellant was convicted of kidnapping and assault and battery of a high and aggravated nature (ABHAN) and sentenced to consecutive terms of thirty years for kidnapping and ten years for ABHAN. (See Appellant's Sentence Sheets). Although Appellant was initially indicted for criminal sexual conduct in the first degree (CSC 1st degree), the jury found him guilty of ABHAN.¹ (See Verdict Form).

Appellant claims on appeal that the Department of Corrections "contends that assault and battery of a high and aggravated nature is the same as CSC 1st degree" and argues that this is incorrect because ABHAN is not a lesser included offense of CSC 1st degree. (See Brief of Appellant, p. 3). Appellant's argument in this regard is wholly without merit because there is no evidence in the record that the Department of Corrections has incorrectly entered Appellant's sentence for ABHAN.

As properly found by the Administrative Law Court, there is nothing showing that the Department is treating Appellant's ABHAN conviction as a conviction for criminal sexual conduct in the first degree under S.C. Code 16-3-652. The Department's conviction summary clearly illustrates that the Department lists this conviction as ABHAN (CDR code

¹ Note that Appellant filed a previous appeal asserting that the Department incorrectly listed his ABHAN sentence as a guilty plea rather than a conviction after trial. (See 15-ALJ-04-0257-AP). The trial court judge corrected Appellant's sentence sheet from "plea" to "trial" on June 11, 2014, and the Department updated its records accordingly. (See Amended Sentence Sheet for Indictment # 1997-GS-18-1045).

0013) and that this offense is listed as non-violent.² (See Conviction Summary). This is entirely consistent with what is written on Appellant's sentence sheet. (See Sentence Sheet for Indictment # 1997-GS-18-1045). Therefore, Appellant's appeal is without merit and should be dismissed.

CONCLUSION

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 

CHRISTINA CATOE BIGELOW

Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

December 20, 2019

² Appellant was convicted of ABHAN in 1998, well before the law changed to make this offense a violent and "no parole" offense in 2010. See S.C. Code 16-3-600(B) & S.C. Code 16-1-60. ABHAN was a non-violent common-law offense carrying up to ten years prior to this change in the law.

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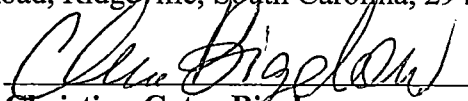
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: James Anthony Primus, # 252315, MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, South Carolina, 29472.


Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

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The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: James A. Primus, # 252315, v. South Carolina Department of Corrections
Appellate Case No. 2019-001277

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections
S.C. Bar No. 73562

cc: James A. Primus, # 252315
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville, South Carolina 29472