

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

REPLY TO Initial Brief of Respondent

January 2 2020

James Anthony Primus pro se
Appellate

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SC Court of Appeals

James Anthony Primus 252315
MacDougal Correctional Institution
Birch Unit 2 C 13 B
1516 Old Gilliard Road
Ridgeville South Carolina 29472

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Cases

STATE v. Hernandez 428 S.C. 257, 834 SE2d 462
cf. APP 2019

Statutes

S.C. Code 16-3-600

STATEMENT OF ISSUE ON
APPEAL

The Administrative Law Court
Improperly upheld The South Carolina
Department of Correction Entry of
Appellant Assault and Battery of A
High and Aggravated Nature Sentence
Interpretation By the Statute and
CDR Code Absent arrest warrant and
Indictment where Appellant Establish
The South Carolina Department of
Corrections Has Committed Error with
Respect to this Sentence Interpretation

STATEMENT OF THE CASE

This matter comes before the Court a Reply to the South Carolina Department of Correction Initial Brief Dated December 20 2019 and received by Appellant James Anthony Primus 252315 December 27 2019 through South Carolina Department of Correction Departmental mail at The MacDougal Correctional Institution Pursuant to the Appeal of James Anthony Primus 252315 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 South Carolina Department of Correction 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 Appellate failed to establish that the South Carolina Department of Corrections committed any errors with respect to the entry of Appellant assault and battery of a high and aggravated nature. This Appeal follows:

Standard of Review

S.C. Code Ann. 16-3-600

Now the legislature has codified all degrees of assault and battery crimes and has particularly set forth which offenses are lesser included offenses. We no longer see the need to ignore the element test we now hold. Assault and battery of and high and aggravated nature is not a lesser included offense of Criminal Sexual Conduct 1st Degree.

ARGUMENT

The Administrative Law Court Improperly upheld the South Carolina Department of Corrections Entry of Appellant assault and battery of and High and aggravated Nature Sentence where Appellant establish the South Carolina Department of Corrections committed errors with respect to this Sentence entry by Statute 16-3-652 and CDR Code 13 statute 16-3-600

On September 1 1998 Appellant was convicted of Kidnapping and assault and Battery of a high and aggravated Nature (ABHAW) And Sentence to consecutive terms of thirty years for Kidnapping and Ten years for assault and Battery of and High and aggravated Nature (See Appellate Sentence sheet although Appellant was initially indicted for Criminal Sexual Conduct in the first degree CSC 1st degree the Jury found him guilty of assault and Battery of and High and aggravated Nature See Verdict Form

Appellant claims on Appeal that the South Carolina Department of Correction improperly Interpret Appellant James Anthony Primus 252375 assault and battery of and high and aggravated nature by statute 16-3-652 and CDR Code do not support ABHAW Absent Written Indictment Does not support a crime See Appellant Step one Grievance and response MacDougall CI 0146-17 Grievance number Appellant argument has merit by the South Carolina Supreme Court statute 16-3-600 Appellant Conviction for ABHAW do not support a crime no arrest Warrant no Indictment

note South Carolina Department of Correction on more than one occasion find ways to defraud Appellant in correctly listed his ABHAW sentence as a Guilty Plea rather than a conviction after Trial see 15-AHJ-04-0257AP The Trial Judge Meeked (AHC) corrected Appellate Sentence Sheet From Plea to Trial on June 11 2014 and the South Carolina Department of Correction finally updated its Record after years of Denials not to update Records

The South Carolina Department of Corrections
Conviction Summary clearly illustrates that the
South Carolina Department of Correction list this
Conviction as ABHAW Statute 16-3-652 C & R
Code 0013 Lesser included offense of CSC 1st degree
Therefore Appellant Appeal has merit and should be
granted

Conclusion

For the foregoing reason the Court should
Vacate assault and Battery of and high and aggravated
Nature does not support a crime, no arrest warrant,
no Indictment

Respectfully Submitted

January 2 2020

by James Anthony Primus pro se
James Anthony Primus 252315
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Ridgeville S.C. 29472

² Appellant was convicted of ABHAW in 1998 and ABHAW
did not pass the element test. But kept an Uniform Approach
for CSC 1st Degree

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From the Administrative Law Court

Administrative Law Judge Milton

ALC case no 18-ALJ-04-0100 AP

Appellate Case No 2019-001277

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SC Court of Appeals

James Anthony Primus 252315

Appellant

v.

South Carolina Department of Corrections

Respondent

Reply To Initial Brief of Respondent

Affidavit in Support

Now Comes Appellant James Anthony Primus 252315 Pro Se

Hereby Certify under Penalty of Perjury that the
information given in this Reply to initial Brief of
Respondent Appellant affidavit is true and correct
submit as follow

1 I proceed in this case in good Faith with profound
belief that the issues are meritorious and that I am
entitled to Relief

2 I respectfully submit that if this Honorable Court
should deny this motion that such would defeat the fair
administration of Justice

January 2 2020

Respectfully Submitted
James Anthony Primus Pro Se
James Anthony Primus 252315
1516 Old Billiard Road
Bridgeville S.C. 29612

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

Reply To Initial Brief of Respondent

1 Appellant who is currently incarcerated at the MacDougal Correctional Institution South Carolina Department of Corrections respectfully Reply to Initial Brief of Respondent

2 Appellant respectfully request of this court to clarify what crime ABHAW support, absent arrest warrant and Indictment

3 While Pro se Complaints are held to less stringent standards than those drafted by attorneys the fact remains that the majority of prisoners are laymen not versed in the science of law Appellant Vice lies in his inability to express himself clearly indescribing Respondent action.

4 This is further complicated by:

- A The affects of Appellant in carceration
- B Inaccessibility to Central Records
- C Non-disclosure by Inmate Records and Inmate Classification Personnel of discrepancies contain there in

5 The omission of the above-mentioned complications allows Appellant to give a meticulous detailed explanation in order to prevent misconstrual. This is the only way Appellant can try to explain.

Conclusion

For all the foregoing reason the Appellant Reply to Initial Brief of Respondent and seeks the relief Appellant requested ABHAW be vacated and Remand for Resentencing

January 2, 2020

Respectfully Submitted

James Anthony Primus 252915

James Anthony Primus Pro Se
Mac Dougall Correctional Institution
Birch Unit 2 C 13 B
1516 Old Billiard Road
Ridgeville S.C. 29472

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

Certificate of Service

Undersigned Appellant hereby certifies that on today
date I mailed a copy of the Reply to Initial
Brief of Respondent to Respondent addressed as follows
January 2 2020

Christina Catce Bigelow S.C. Administrative Law Court
Deputy General Counsel 1205 Pendleton St. Suite 224
Office of General Counsel Columbia S.C. 29201

S.C. Department of Corrections
Post office Box 21787
Columbia S.C. 29221

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JAN 08 2020

Jenny A. Kitching clerk SC Court of Appeals
S.C. Court of Appeals
P.O. Box 11629
Columbia S.C. 29211

By James Anthony Primus Pro Se
James Anthony Primus 252315
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JAN 08 2020

SC Court of Appeals

James Anthony Primus 252315

MacDougal Correctional Inst.

Birch 2 C 13 B

1516 Old Gilliard Road

Ridgeville S.C. 29472

January 3 2020

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

RE: James Anthony Primus 252315 v. South Carolina
Department of Corrections

Appellate Case No. 2019 - 001277

Dear Mrs Kitchings:

Enclosed please find Appellate James Anthony Primus 252315
Reply to Respondent Christina Catoe Bigelow
Deputy General Counsel South Carolina Department
of Corrections in the above captioned Appeal along
with proof of service to be filed in your office

I would like to thank you in advanced

Affidavit included

Sincerely

James Anthony Primus Prose

James Anthony Primus 252315

MacDougal Correctional Institute

1516 Old Gilliard Road

Ridgeville S.C. 29472

FROM
James Anthony Primus 252315
MacDougal Correctional Institution
Biron Unit 2 C-13-B
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Ridgely S.C. 29972



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SC Court of Appeals

TO
The Honorable Jewery A. Kitchens Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia S.C. 29211

MacDougal Correctional Inst
Mailroom
JAN 03 2020
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