

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

Final Brief of Appellate

RECEIVED

JAN 21 2020

SC Court of Appeals

By

James Anthony Primus Pro Se

James Anthony Primus 252315

MacDougall Correctional Institution

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Date

January 17 2020

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Cases

Slezak v. S.C.D.C. 361 S.C. 327 685 SE2d 806 (2004)

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State v. Green 491 SE2d 263

State v. Primus 564 SE2d 103-109

Statutes

S.C. Code 16-3-600

STATEMENT OF ISSUE ON APPEAL.

Error in Reinterpretation Appellate ABHAN
Conviction For Reentry in the SCDC System

~~Factual Back Ground~~ statement of the case

This case arose from classification case worker at
The MacDougal Correctional Institution MR Tucker and now also
Mrs Nicole Chapman classification case worker that assault
and Battery of and high and aggravated nature are now being
interpreted by the Trial Statute 16-3-652 CSC 1st degree
where as Appellate was acquitted on a trial and all
lesser included offenses and was convicted of ABHAW (Court
Charge) Appellate Filed and Step one Grievance on 9-27-17
This step one grievance was investigated and denied Appellate
Filed and step two Grievance was also Investigated and denied
Appellate Filed Notice of Appeal with the S.C. Administrative
Law Court The Honorable Milton G. Kimpson also denied
Appealing now to South Carolina Court of Appeals
Slezak v. SCDC 361 S.C. 327 605 SE 2d 866 (2004)
Tant v. SCDC ⁴⁰⁸~~361~~ S.C. 334 759 SE 2d 398
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STATEMENT OF FACTS

Appellate James Anthony Primus 252315 is incarcerated in The South Carolina Department of Corrections at the MacDougall Correctional Institution in Ridgeville S.C. In September 1997 Appellate was indicted for Kidnapping, Criminal Sexual Conduct First degree and Burglary in the Second degree on September 1 1998 Dorchester County Jury. Appellate was Found Guilty of Kidnapping by and Jury at Trial and assault and Battery of and High and Aggravated Nature as and lesser included offense of CSC 1st Degree. Appellate receive Thirtyn years For Kidnapping and a Consecutive Ten year sentence For ABHAN as and lesser included offense of CSC 1st degree. Appellate Sentence sheet incorrectly indicated Appellate pled Guilty to ABHAN on CSC 1st degree Indictment 97-65-18-1045 warrant No E091998. This error was corrected by the Dorchester County Clerk of Court Mrs. Cheryl Graham on June 11 2014. The South Carolina Department of Corrections updated Appellate Record on January 14 2015 by changing the Plea of Guilty to a Plea of Not Guilty in South Carolina Department of Corrections Systems Inmate Records.

ARGUMENT

The S.C. Administrative Law Court reached an incorrect conclusion as to every facet of the legal issue presented in this case. South Carolina Department of Correction contends that assault and battery of a high and aggravated nature is the same as Criminal Sexual Conduct First 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 offenses. 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 engaged 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.
- 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 offense.

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 control substance, a control substance analogue, or any intoxicating substance. S.C. Code Ann. 16-3-652 (1) Supp. 2001. Subsection (c) was added in 1998 after the date of the incident in this case. 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 opening of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes. S.C. Code Ann. 16-3-651 (b). The key component of sexual battery under this definition is a sexual act or intrusion into the genital or anal opening of another person's body. A sexual battery requires a touching of the victim. See *State v. Min*, 286 S.C. 553, 554, 335 S.E.2d 237 (1985). An assault, on the other hand, requires no touching. *Min*, 286 S.C. 553, 554, 335 S.E.2d 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 (b). Moreover, as is shown by the alternative circumstances that elevate a sexual battery to first degree level, under the current version of the statute is implicit in the crime

See Code Ann. 16-3-652 (1) (C) on the other hand the offense of assault and battery of and high aggravated nature is an unlawful act of violent injury accompanied by circumstances of aggravation see State v. Fennell 340 S.C. 266 274 531 SE 2d 512 546 2000 State v. Frazier 302 S.C. 500 502 397 SE 2d 93 94 1990 State v. Coleman 342 S.C. 172 176 536 SE 2d 387 389 Ct. App (2000) The S.C. Court of Appeals has recognized the dual requirement of both assault and 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 SE 2d 263 High and aggravated assault 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. 519 523-34 523 SE 2d 817 826 Ct. App 1999 assault and battery of and high and aggravated nature is not a lesser included offense of assault with intent to commit second degree 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 and high and aggravated nature is not a lesser included

offense of first degree Criminal Sexual Conduct Battery
Because the elements requiring accompanying 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~~
use of a deadly weapon the infliction of serious
bodily injury the intent to commit a Felony Great
disparity between the ages or physical condition 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 516-517 state v.
Patterson 337 S.C. 215 231 522 S.E.2d 845 854 Ct 1999

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 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 element of first
degree Criminal Sexual Conduct if the aggravating
circumstance were disparity in age or physical
characteristics

Indeed the Court of Appeals has recognize 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 SE 2d 263 264-65 Ct APP 1997 as the Court in Green if Criminal Sexual Conduct in the First degree could be establish 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 SE 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 Circumstance that elevate a sexual to the First degree level The aggravating Circumstance 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 this form of assault and Battery of a high and aggravated Nature is not a lesser included offense -
CSC 1st degree

CONCLUSION

FOR THE REASON Set Forth S.C.D.C
Interpretation of Assault and Battery of and
High and Aggravated Nature Cannot be
Interpreted by the Statute Judge Luke W.
Brown Jr. Intended CDR Code 13 and it
is no longer accepted by the Court.
Appellate Request ABHAN assault and Battery
of and High and Aggravated Nature vacated
And Remand For Resentencing

Date
January 17 2028

Respectfully Submitted

James Anthony Primus 252315

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