

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW  
COURT

Administrative Law Judge Milton G. Kimpson

ALC 18-ALJ-04-0100 AP

Appellate Case No 2019-001277

**RECEIVED**

James Anthony Primus 252315

Appellant  
FEB 06 2020  
SC Court of Appeals

U.

South Carolina Department of Corrections

Respondent

RECORD ON APPEAL

James Anthony Primus 252315  
Pro Se

MacDougal Correctional Institution  
1516 Old Gilliard Road  
Ridgeville S.C. 29472

Christina Cator Bigelow  
OFFICE OF General Counsel  
S.C. Department of Corrections  
P.O. Box 21787 / 4444 Broadriver Rd  
Columbia S.C. 29221-1787

State of South Carolina  
Administrative Law Court  
Edgar A Brown Building  
1205 Pendleton Street Suite 224  
Columbia South Carolina 29201

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

ADMINISTRATIVE LAW JUDGE MILTON G. KIMPSON

ALC Case No. 2019-04-0100 AP

Appellate Case No. 2019-001277

James Anthony Primus 252315

Appellant

v

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Respondent

RECORD Consisting of Appellant Inmate Grievance  
MACD 146-17 July 24 2019

10-7-17  
10

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

MACDOUGALL CI  
# 0146-17

STEP 1

INMATE NAME: <u>James Anthony Primus</u>	OFFICE USE ONLY
SCDC NUMBER: <u>252315</u>	Grievance No. <u>MACD-0146-17</u>
INSTITUTION: <u>Mac Dougall</u>	Code: General _____
HOUSING UNIT: <u>Magnolia Unit 2 DSA</u>	Policy _____
WORK ASSIGNMENT: <u>CHAPEL</u>	Disc. Hear. _____
	Class. <input checked="" type="checkbox"/> _____
	PREA _____
	Date Received <u>10/2/17</u>
	IGC Initials <u>JAP</u>

**STATEMENT OF GRIEVANCE** (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) 9-27-2017

Challenge to S.C.D.C. Policy GA-01-13 Duty to warn Kiosk # - 17-679421

I spoke to MR Tucker in classification on 9-13-17 I was informed by MR Tucker that my H.B.H.W. Conviction is being interpreted by the Judge CDR Code and He explain this was being done by S.C.D.C. since 1997 and now I see my H.B.H.W. sentence is being interpreted by the statute I disagree with this analogy due to the fact H.B.H.W. is and lesser included offense of CSC 1 in which I cannot be found and a jury acquitted me of CSC 1 statute charged in this offense 16-3-652 and all other greater offenses. I believe that this interpretation must be made by a judicial officer and not by an executive Agency.

James Anthony Primus  
Grievant Signature Date 9-27-17

**ACTION REQUESTED:** S.C.D.C. to bring a Declaratory action in the Circuit Court of General Session S.C. Code Ann. 15-53-20 (2005)

**ACTION TAKEN BY IGC:**  PROCESSED  UNPROCESSED  OTHER

James John 10/2/17  
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

**WARDEN'S DECISION AND REASON:**

Inmate James Primus 252315:

This is in response to MacD-0146-17 your concern has been reviewed. You state that your ABHAN conviction is being interpreted by the Judge CDR code and he explained this was being done by SCDC since 1997 and now you see your ABHAN sentence is being interpreted by the statute. You disagree with this analogy due to the fact ABHAN is a lesser included offense of CSCI in which you went to trial and, jury acquitted you of CSCI statute charged in this offense. You further believe that this interpretation must be made by a judicial officer and not by an executive agency. You are requesting SCDC to bring a declaratory action in the circuit court of general session SC code Ann. 15-53-20 (2005.) I have contacted Mr. Tucker Classification Case Worker. He stated that the statutes are the law. The statute represents the code of laws of the state of SC and law as developed by the courts and the only governing authorities in criminal law. The CDR code is designed for the use by court officials and staff in processing case files for criminal defendants in summary and circuit courts. This is how state statutes and CDR codes are used. Based on this information your grievance is **denied**.

*David T. Taylor* 11-24-17  
Date

Based on this information, I consider this matter denied. If not satisfied with my response, see Step 5 below.

I accept the Warden's decision and consider the matter closed.

I do not accept the Warden's decision and wish to appeal.

*James C. Primus* 11-29-17  
Grievant Signature Date

*Frances Johnson* 11/27/17  
IGC Signature Date

**INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM**

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

Due 2/28/17

RECEIVED

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 2

RECEIVED  
NOV 30 2017

Office Use Only  
Grievance No. MO05-0146-17  
Code General  
Policy \_\_\_\_\_  
Disc. Hear. \_\_\_\_\_  
Class. ✓  
Received 11/30/17  
IGC Initials A-C

INMATE NAME: James Anthony Primus  
BY: SCDC NUMBER: 252315  
INSTITUTION: Max Douglas  
HOUSING UNIT: Magnolia Unit 2 OSA  
WORK ASSIGNMENT: CHARC1

RECEIVED

DEC 04 2017

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

In Tant vs state SCDC that if and Inmate is  
dissatisfied with the re interpretation SCDC must  
Bring and Declaratory Judgment in the Circuit  
Court and Furthermore this is not the Inmate  
Responsibility This Responsibility is on SCDC

So please bring and Declaratory Judgment James A. Primus 11-29-17  
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that you disagree with the manner in which your ABHAN conviction is being interpreted by SCDC. You would like SCDC to bring a Declaratory Judgment in Circuit Court, General Session based on SC Code of Laws 15-53-20 (2005). The Warden responded to your concern on SCDC Step 1 Inmate Grievance Form 10-5 dated 11/24/17. SCDC will not petition the court in the form of a Declaratory Judgment. Any legal action that you wish to pursue must be done on your own and not by SCDC. SCDC cannot change, modify or interpret laws that are inconsistent with the letter and/or spirit of the laws. You were convicted of violating SC Code of Laws 44-53-375 (A) and sentenced on 9/1/1998, offense Cocaine Possession; for violating SC Code of Laws 1317, Assault and Battery - High and Aggravated Nature, and for violating SC Code of Laws 1000, Kidnapping. You were sentenced to 1, 10 and 30 years. Your last offense was classified as violent and no parole eligible. Your projected release date is 4/20/2028. If you still do not understand your incarcerated sentence, you are advised to speak to your local Classification Case worker.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

[Signature] 2/2/18  
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature \_\_\_\_\_ Date \_\_\_\_\_ IGC Signature \_\_\_\_\_ Date \_\_\_\_\_

(SEE REVERSE SIDE FOR INSTRUCTIONS)



Offender Management System

File Home Non-Admin Settings Tools Reports Help

Name	PRINCE, JAMES A	Release	Location	Room #	232315
DOB	03/06/0000	Adm	Block	CID #	
Sex	M	SSN	Block	Big Date	03/02/2013
Race	B	SCDC#	Cell	Cell	
			Bed		

RTSMs

Request Type:  Reference: 17 019421 Number

Date Requested: 02/25/2017 15:34

Requested By: Kiosk

Request Details: Is the interpretation of my conviction for a life sentence being interpreted by the statute or is it being interpreted by the judge. I read in the law library that in 2007 the actual of appeals stated that the interpretation of and sentence is by the statute and not the judge. I do not know which one do my sentence is under for interpretation.

Review Level:

Disposition:

Disposer: KIOSK

Disposition Date: 02/25/2017 15:34

Date	Author	Note
02/25/2017 15:00	Howard Tucker	statue, its the law

02/25/2017



CMTI700M SCDC OFFENDER MANAGEMENT SYSTEM 04/17/18  
 CMTI700D COMMITMENT APPLICATION C052640  
 SCDC# > 252315 COMPLETED SCDC PRIORS  
 PRIMUS, JAMES A CURR LOC: MACDOUGA  
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE SCDC CLASSIFICATION...: VIOLENT

NUM	T X	CONV OFFENSE	YRS	MO	DYS	INCARC SENT DATE	SENT START	SENT DATE	PROJ COMP	STAT	IND
00142691											
S00001	2 N	UNAUTHORIZED	001	00	000	08/21/87	08/21/87	/ /		COM	N N
00184810											
S00002	2 N	VEHICLE THEFT	000	03	000	01/28/92	09/21/91	11/21/1991		COM	N N
S00001	2 N	FAIL TO STOP	008	00	000	01/28/92	09/21/91	10/03/1995		PAR	N N

MAKE A SELECTION AND PRESS <ENTER>...  
 PF4-MODCONV PF6-NON-SCDC PRIORS

*[Handwritten marks]*

DISI100D

SCDC OFFENDER MANAGEMENT SYSTEM  
DISCIPLINARY SYSTEM

04/17/18  
C052640

SCDC ID: 252315

DISPLAY INMATE OFFENSE HISTORY

PRIMUS, JAMES A

CURR LOC: MACDOUGALL

OFFENDER TYPE: ADULT-STRAIGHT

PURCHASED TV  
SERIOUS MENTAL ILLNESS: N

CASE#	OFFENSE DESCRIPTION	TYPE ACTION	OFFENSE DATE	HEARING DATE	NET GT LOST	DHO DECISION	OFF LVL
00007	DISRESPECT	ADMINIST	04/08/13	04/16/13	00000	CONVICTED	3
00005	INTERFERING WITH COUN	ADMINIST	06/01/06	/ /	00000	CONVICTED	3
00004	OUT OF PLACE	OTHER AC	12/27/02	/ /	00000	CLOSED	3
00003	REFUSING TO WORK	OTHER AC	10/08/01	/ /	00000	CLOSED	3
00002	REFUSING OR FAILING O	MINOR DI	09/21/01	09/28/01	00000	CONVICTED	3
00001	FIGHTING WITHOUT A WE	MAJOR DI	04/21/01	04/30/01	00000	CONVICTED	3

\*\*\*END OF LIST\*\*\*

PAGE 0001

SELECT A RECORD AND PRESS <ENTER> TO DISPLAY OR <PF04> TO MODIFY  
PF4-MODIFY PF6-DISMISSED/NOT GUILTY PF11-QUIT PF10-MAIN MENU

ROAI200D  
ROAI200M  
OMROAUDA

SCDC OFFENDER MANAGEMENT SYSTEM  
RECORD AUDIT APPLICATION  
DISPLAY RECORD AUDIT

04/13/18  
C056427

SCDC#: 00252315  
NAME.: PRIMUS, JAMES A

CURR STATUS.: INCARCERATED  
CURR LOC....: MACDOUGALL  
CURR CUSTODY: MI2

AUDIT TYPE: 06 HAYES

AUDIT DATE: 04/04/17

UPDATED BY: SCOTT, CHERYL

DATE: 05/23/17

RECORD AUDIT DISPLAYED...  
CLEAR:SUMMARY

ENTER:DISPLAY NOTES

PF8:FORWARD

ROAI200D  
ROAI200M  
OMROAUDA

SCDC OFFENDER MANAGEMENT SYSTEM  
RECORD AUDIT APPLICATION  
DISPLAY RECORD AUDIT

04/13/18  
C056427

SCDC#: 00252315  
NAME.: PRIMUS, JAMES A

CURR STATUS.: INCARCERATED  
CURR LOC....: MACDOUGALL  
CURR CUSTODY: MI2

AUDIT TYPE: 01 RECORDS AUDIT

AUDIT DATE: 09/26/98

UPDATED BY: JOHNSON, BERNICE

DATE: 09/26/98

RECORD AUDIT DISPLAYED...

CLEAR:SUMMARY

ENTER:DISPLAY NOTES

PF8:FORWARD

~~25~~

CMT1100D  
OMCOMITA

SCDC OFFENDER MANAGEMENT SYSTEM  
COMMITMENT APPLICATION  
CONVICTION SUMMARY

04/13/18  
C056427

SCDC# > 00252315

PRIMUS, JAMES A

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

CURR LOC: MACDOUGA

SCDC CLASSIFICATION..: VIOLENT

NUM	CONVICTION OFFENSE	INCARC	SENT	SENT	SENT	CONV	VIO
		YRS	MO	DYS	DATE	START	PROJ COMP STAT IND
S00003	COCAINE POSSESS	001	00	000	09/01/98	09/06/97	04/19/1998 SER N N
* S00002	ASSLT&BATTERY-HIGH&AG	010	00	000	09/01/98	07/15/97	04/20/2028 ACT N N
S00001	KIDNAPPING	030	00	000	09/01/98	07/15/97	01/07/2023 ACT V V

MAKE A SELECTION AND PRESS <ENTER>...

PAGE: 0001

PF3-ADD PF4-MODIFY/REVOKE PF6-DISPLAY CONSEC PF9-DETAIN PF12-SUMREPT

STATE OF SOUTH CAROLINA

Administrative Law Court

James Anthony Primus 252315

CIA 18 CO 100

Appellant

V.

Grievance NO. MACD 146-17

South Carolina Department of  
Corrections

RECEIVED

MAR 29 2018

RESPONDENT

GENERAL COUNSEL

This matter is before the South Carolina Administrative Law court (ALC or COURT) Pursuant to Notice of Appeal filed by Appellant James Anthony Primus 252315 above named who is incarcerated in the South Carolina Department of Corrections (Department or SCDC) Inmate is appealing a Step two decision that upheld his Appeal and modified re interpretation of Inmate A B HAW Sentence Inmate now request that he should be entitled to a Declaratory action in Circuit Court As will be stated below Appellant Has not received the Due process he is entitled to

~~Standard of Review~~

~~This court Jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court~~

## Over view

Appellant was sentenced on 1 September 1998 to thirty years for kidnapping plus ten years for ABHAW consecutively. Sentence Appellate is now serving Appellate sentencing a scrivener's error by checking the wrong box on Appellant sentencing sheet. Judge Brown check the box PLEA instead of a trial. Appellant filed Grievance IS ALJ-04 0257-AP now SCOC want to interpret ABHAW by the statute 16-3-652 which is and violent statute that would change Appellant to 85 per cent which Appellate would be incarcerated for and longer period of time that would be fraud and attempt to deceive Appellant. ABHAW conviction do not support a crime kidnapping there was no abduction no threats no coercion victim left of her own free will.

Primus v. State 535 S.E.2d 152 ct. 2000

Primus v. State 564 S.E.2d 103-09

Validity of sentence Eagle v. OHES 755 SE2d 444-449

Hicks v. State 659 SE2d 499 12

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JUDGE MADE  
MAR 29 2018

GENERAL COUNSEL

In Trial original transcripts, Judge Brown instructed the Jury to Deliberate the Sexual Conduct offenses First and then charge the Jury with Kidnapping which Judge Brown explain How another Crime come out of and Greater Crime Judge Brown charge the Jury with another ABHAN No arrest warrant No Indictment Just using the metaphor that another crime can come out of the Kidnapping Phillip v. State 314 S.E.2d 313

Step 1 and 2 states that Appellate Sentence for Abhan was modified and His Due Process rights were violated and is entitled to and Declaratory Judgment  
Judicial Official

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BY END  
MAR 29 2016  
GENERAL COUNSEL

### Conclusion

Appellant Sentence Has been Reinterpreted Four times Since His Incarceration without And Declaratory Judgment Tant v. SCOC 759 S.E.2d 30 state it is not the Inmate Responsibility

When the Appellant is not satisfied with  
the Reinterpretation of sentence it is  
the S.C. Dept of Correction Responsibility

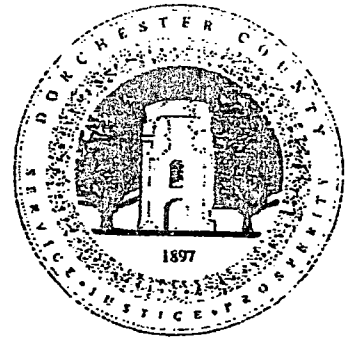
March 27 2018

Respectfully Submitted

James Anthony Finnis 2523  
1516 Old Gilliland Rd  
Ridgeville S.C. 29472

**RECEIVED**  
MAR 29 2018  
GENERAL COUNSEL

DORCHESTER COUNTY CLERK OF COURT  
Cheryl Graham, Clerk of Court  
5200 East Jim Bilton Blvd.  
St. George, SC 29477



To: James Primus  
From: Dorchester County Clerk of Court  
Date: 6/11/14  
RE:

Please find the enclosed copy or copies of requested indicated information concerning your case.

Sentencing Sheet(s) Amended

Warrant(s)

Ticket(s)

Indictment(s)

---

Contact the Magistrates Court or Arresting Agency Concerning your Request

Jail Time Served in Dorchester County - Contact: Dorchester County Sheriff Department, 100 Sears Street, St. George, SC 29477. Any other location where jail time was served Contact: The South Carolina Department of Corrections where you were located.

---

Transcript(s): Contact the Court Reporter by mail.

PCR Form

Hold/Detainer contact caseworker, attorney or arresting agency. Contact the Family Court where your Divorce Case was heard or where you plan to have it heard.

Contact Probation, Parole & Pardon Office

Information not available in the Clerk of Court's Office

Other: You did not sign your sentence sheet because it was a trial. If you had plead, you would have signed it.

St. George: 563-0160 or 832-0160 (outside St. George area)

Fax: 563-0178 or 832-0178

E x B

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

IN THE COURT OF GENERAL SESSIONS

CERTIFIED COPY 97-GS-18-1045  
INDICTMENT/CASE #

STATE VS COURT OF 2007 JAN 30 PM 3:58

*James A. Brumby*  
AKA  
Race: *B* Sex: *M*  
DOB: \_\_\_\_\_ Age: \_\_\_\_\_  
SSN: \_\_\_\_\_  
DL#: \_\_\_\_\_  
SID#: \_\_\_\_\_

A/W#: *E 091978*  
Date of Offense: *7-13-97*  
S.C. CODE §: *16-3-652*  
CDR Code #: *113*

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO *Act of Battery of a High and Aggravated Nature* in violation of § \_\_\_\_\_ of the S.C. Code of Laws, bearing CDR Code # *113*

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury

The plea is:  Without Negotiations or Recommendation  Negotiated Sentence  Recommendation by the State

MAR 29 2018

ATTEST  
*Margaret M. Chase*  
Solicitor

Defendant *James A. Brumby* Attorney for Defendant  
GENERAL COUNSEL

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, or  Under Youthful Offender Act for a term of *10* days/months/years and/or to pay a fine of \$ \_\_\_\_\_ provided the sentence be suspended upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable\*; the balance suspended with probation for \_\_\_\_\_ months/years.

CONCURRENT or  CONSECUTIVE to sentence on: *97-GS-18-1046*

SPECIAL CONDITIONS:

RESTITUTION  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_  
Pay Terms: \_\_\_\_\_  
Recipient: \_\_\_\_\_

- PTUP
- \_\_\_\_\_ days/hours Public Service Employment
- Obtain GED
- Attend Voc Rehab. or Job Corps
- May serve W/E beginning \_\_\_\_\_
- Substance Abuse Counseling
- Random Drug/Alcohol Testing
- Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_
- Other: *Credit for jail time served July 15, 1997*
- Other: \_\_\_\_\_

\*Fine \$ \_\_\_\_\_  
§14-1-206 - Assessments 100% \$ \_\_\_\_\_  
§14-1-211 - Surcharge \$ *100.00*  
(Exceptions: See §14-1-211)  
§5-5-205 (FUE) \$ \_\_\_\_\_  
TOTAL \$ *100.00*

*Deal E. Stutz*  
Clerk of Court/Deputy Clerk  
Court Reporter: *R. Keil*

PRESIDING JUDGE  
Sentence Date: *9-1-98*

Judge Code: *090*

#252315  
Stobae

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF GENERAL SESSIONS

CERTIFIED COPY 97-GS-18-1045  
INDICTMENT/CASE #:

STATE VS.

2014 JUN 11 AM 11:37

James A. Primm

A/W#: E 091778  
Date of Offense: 7-13-97  
S.C. CODE §: 16-3-652  
CDR Code #: 113

AKA: \_\_\_\_\_  
Race: B Sex: M  
DOB: \_\_\_\_\_ Age: \_\_\_\_\_  
SSN: \_\_\_\_\_  
DL#: \_\_\_\_\_  
SID#: \_\_\_\_\_  
CLERK OF COURT  
DORCHESTER COUNTY

SENTENCE  
~~TRIAL~~ TRIAL 6-11-14

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Simple Battery of a High and Aggravated Nature  
in violation of § \_\_\_\_\_ of the S.C. Code of Laws, bearing CDR Code # 113

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury

The plea is:  Without Negotiations or Recommendation  Negotiated Sentence  
 Recommendation by the State

ATTEST:  
Margaret Anne Grace  
Solicitor

Defendant

Attorney for Defendant  
MAR 29 2018  
GENERAL COUNSEL

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, or  Under Youthful Offender Act for a term of 10 days/months/years and/or to pay a fine of \$ \_\_\_\_\_ provided the sentence be suspended upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable\*; the balance suspended with probation for \_\_\_\_\_ months/years.

CONCURRENT or  CONSECUTIVE to sentence on: 97-GS-18-1046

SPECIAL CONDITIONS:

RESTITUTION  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_  
Pay Terms: \_\_\_\_\_  
Recipient: \_\_\_\_\_

- PTUP
- \_\_\_\_\_ days/hours Public Service Employment
- Obtain GED
- Attend Voc Rehab. or Job Corps
- May serve W/E beginning \_\_\_\_\_
- Substance Abuse Counseling
- Random Drug/Alcohol Testing
- Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_
- Other: Credit for jail time since July 15, 1997
- Other: \_\_\_\_\_

inc. \_\_\_\_\_ \$ \_\_\_\_\_  
 -1-206 - Assessments 100% \_\_\_\_\_ \$ \_\_\_\_\_  
 -1-211 - Surcharge \_\_\_\_\_ \$ 100.00  
 Options: See §14-1-211  
 -2995 (DUI) \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ 100.00

Deal E. [Signature]  
Clerk/Deputy Clerk  
Reporter: R. Keil

PRESIDING JUDGE  
Sentence Date: 9-1-98

Judge Code: 090

WITNESSES

Det. 31115

DOCKET #: 97-0318-1040

THE STATE OF SOUTH CAROLINA  
County of Dorchester

RECEIVED

COURT OF GENERAL SESSIONS

MAR 20 2000

Term: September

GENERAL COUNSEL

[REDACTED]

THE STATE

vs.

JAMES ANTHONY FOLINS

[REDACTED]

INDICTMENT FOR

§160

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

ARREST WARRANT #:

E091998

Arrested on July 15, 1997

ACTION OF GRAND JURY

TRUE BILL

By: \_\_\_\_\_

Date \_\_\_\_\_

Foreman: Don Village 7/18/97  
Grand Jury

[REDACTED]

VERDICT

- ① Not Guilty of Criminal Sexual Conduct \_\_\_\_\_
- ② Guilty of Criminal Sexual Conduct in the First Degree \_\_\_\_\_
- ③ Guilty of Criminal Sexual Conduct in the Second Degree \_\_\_\_\_
- ④ Guilty of Assault and Battery of a High and Aggravated nature ✓

Part 1 1000

[Signature]

STATE OF SOUTH CAROLINA )  
 )  
County of Dorchester )

**INDICTMENT #97GS18-1045**

At a Court of General Sessions, convened on September 18, 1997  
the Grand Jurors of Dorchester County present upon their oath:

**COUNT: CRIMINAL SEXUAL CONDUCT - FIRST DEGREE  
(16-3-652)**

That James Anthony Primos did in Dorchester County on or about July 13,  
1997, wilfully and unlawfully engage in criminal sexual conduct in the first  
degree in that James Anthony Primus, engaged in sexual battery with Nikki M.  
Scott and did use aggravated force to accomplish such sexual battery.

Against the peace and dignity of the State, and contrary to the statute  
in such case made and provided.

SOLICITOR

*Margaret Ann Small*

CERTIFIED COPY  
2012 MAY 30 AM 10:36  
CLERK OF COURT  
DORCHESTER COUNTY

1 of any object into the genital or anal openings of  
2 another person's body, except when such intrusion is  
3 accomplished for medically recognized treatment or  
4 diagnostic purpose.

5 So I charge you, Mr. Foreman, members of the  
6 jury, that if you find that the State has not shown  
7 beyond a reasonable doubt that nonconsenting sexual  
8 battery occurred, then your deliberations on this  
9 would end at this time. Your verdict would have to  
10 be we find the defendant not guilty of the criminal  
11 sexual conduct charge.

12 If you should find, however, that a  
13 nonconsenting sexual battery had occurred, it would  
14 then become your duty to determine the degree of  
15 criminal sexual conduct which the defendant had  
16 committed against the victim.

17 Under a principle recognized in South  
18 Carolina as I told you earlier, that a greater crime  
19 may include a lesser crime, then I want to tell you  
20 what criminal sexual contact in the second degree  
21 is. Criminal conduct in the first degree is the  
22 more serious of the two crimes that I'm about to  
23 tell you. A person is guilty of criminal sexual  
24 conduct in the first degree, as I said earlier, if  
25 that person engages in sexual battery with the

1 THE COURT: All right. Appears to be in  
2 order. You may publish it.

3 THE CLERK: Indictment number  
4 97-GS-18-1045, the State of South Carolina versus  
5 James Anthony Primus indicted for criminal sexual  
6 conduct first degree. Verdict: Guilty of assault  
7 and battery of a high and aggravated nature.

8 Indictment number 97-GS-18-1046, the State of  
9 South Carolina versus James Anthony Primus, indicted  
10 for kidnapping. Verdict: Guilty.

11 Indictment number 97-GS-18-1043, the State of  
12 South Carolina versus James Anthony Primus indicted  
13 for burglary in the second degree. Verdict: Not  
14 guilty of burglary. Signed by Samuel Joyner, Jr.

15 If this is your verdict, would you please all  
16 raise your right hand?

17 (All jurors raise their right hand.)

18 THE COURT: Appears to be in order.  
19 Anything further from the State?

20 MS. MCDONALD: Nothing from the State,  
21 your Honor.

22 THE COURT: Defense?

23 MR. RUNYON: Waive polling, Judge..

24 THE COURT: You waive it?

25 MR. RUNYON: We waive polling, yes, sir.

WITNESSES

Det. Bills

ARREST WARRANT #:

E091999

Arrested on July 15, 1997

ACTION OF GRAND JURY

TRUE BILL

By:

Foreman:

Date 7/18/97

Grand Jury

- ~~1~~ 1 Not Guilty " "
- 2 Guilty " "

Foreman:

Rec'd Jury

Date: Sept 1, 1998

DOCKET #: 97GS18-1046

THE STATE OF SOUTH CAROLINA  
County of Dorchester

COURT OF GENERAL SESSIONS

Term: September, 1997

THE STATE

vs.

James Anthony Primus

INDICTMENT FOR

0095

KIDNAPPING

(16-3-910)

STATE OF SOUTH CAROLINA )  
 )  
County of Dorchester )

**INDICTMENT #97GS18-1046**

At a Court of General Sessions, convened on September 18, 1997  
the Grand Jurors of Dorchester County present upon their oath:

COUNT: KIDNAPPING  
(16-3-910)

That James Anthony Primos did in Dorchester County on or about July 13,  
1997, did wilfully and unlawfully seize, confine, inveigle, decoy, kidnap,  
abduct, or, carry away one Nikki M. Scott, without authority of law.

Against the peace and dignity of the State, and contrary to the statute  
in such case made and provided.

SOLICITOR Margaret H. McDaniel

~~EXHIBIT~~

Exhibit A

Jury Charge

40

1           The essence of the offense of kidnappin  
2           the unlawful holding or imprisonment of a pers  
3           Kidnapping means the carrying away of a person  
4           unlawful force or by fraud and against his will.  
5           seizing and detaining him against his will for  
6           length of time. Do you think that explains it  
7           you? All right. Let me know if I can help you

8                           (Jury excused.)

9                           **THE COURT:** Any exception from the  
10           State?

11                           **MS. MCDONALD:** Not from the State.

12                           **THE COURT:** Defense?

13                           **MR. RUNYON:** No exceptions or additi  
14           your Honor.

15                           **THE COURT:** All right. Court's in  
16           recess.

17                           (Marked for identification was  
18           Court's Exhibit 5.)

19                           (Recess taken.)

20                           (Whereupon, the jury returned to open  
21           court to report its verdict at  
22           6:04 p.m.)

23                           **THE COURT:** Go ahead.

24                           **THE CLERK:** Ladies and gentlemen of th  
25           jury, have you agreed upon a verdict?

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Ex C

James A. Primus, #252315,

Docket No. 15-ALJ-04-0257-AP

Appellant,

MAR 29 2016

vs.

GENERAL COUNSEL

South Carolina Department of Corrections,

ORDER AFFIRMING DECISION

Respondent.

FILED

NOV 20 2015

SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated in the South Carolina Department of Corrections (Department or SCDC). Inmate is appealing a Step Two decision that upheld his appeal and modified inmate's sentence as requested. Inmate now claims that he should be entitled to a declaratory action in Circuit Court. As will be stated below, Appellant has received the due process he is entitled to.

**STANDARD OF REVIEW**

The Court's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Court's appellate jurisdiction in inmate appeals is limited to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id. at 756. Consequently, the review in these inmate grievance cases is limited to the Record presented.

An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2014). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly

erroneous in view of the substantial evidence on the whole Record, arbitrary or affected by an error of law. See Section 1-23-380(5); See also Marietta Garage, Inc. v. South Carolina Dep't of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999); South Carolina Dep't of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998). "Substantial evidence" is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." Lark v. Bi-Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

RECEIVED  
MAR 29  
GENERAL COUNSEL

LAW/ANALYSIS

Inmate, in his initial Step One Grievance, requested that his sentence sheet correction be accepted by SCDC. Specifically, Inmate requested that his sentence for Assault and Battery of a High and Aggravated Nature (ABHAN) be modified from "pled guilty" to "not guilty," to reflect the change that was made by the Dorchester County Clerk of Court.<sup>1</sup> The Warden's decision, in Inmate's Step One Grievance, stated that "SCDC's system had already changed the Order of Sentence, Warrant #E091998, to change [Inmate's] plea from "GUILTY" to "HAD A JURY TRIAL." (emphasis in original). Inmate appealed the decision, and the Step Two Grievance decision stated that Inmate's sentence was modified and Inmate's grievance was upheld. Now, Inmate, in his appeal to the ALC, claims that his due process rights were violated, and claims that he is entitled to a declaratory action in Circuit Court for clarification of his sentence.

Inmate makes references to Tant v. S.C. Dep't of Corr., 408 S.C. 334, 759 S.E.2d 398 (2014), to support his contention that he is entitled to a declaratory action. Tant specifically states that "whenever the Department alters an inmate's sentence in its records, it must give the inmate formal notice of the change and advise him of his right to file a grievance and obtain a hearing." Id. at 342, 759 S.E.2d at 401. Inmate's sentence, in SCDC's records, was updated on January 14, 2015. Inmate then proceeded to go through the grievance process in regards to his sentence record. SCDC had given Inmate notice of the change and provided him the opportunity to file a grievance

<sup>1</sup> His conviction for ABHAN was for Indictment Number 97-GS-18-1045. Inmate was sentenced to ten years as a result of this conviction for this charge.

and appeal the grievance decision to the ALC. Inmate is not entitled to a declaratory action.<sup>2</sup>


Upon review of the Record, SCDC has correctly updated Inmate's sentencing records to reflect Inmate's conviction for ABHAN from "guilty" to "not guilty." Further, Inmate has been provided with the due process required, as he was given notice of the change in his sentence and given the opportunity to seek judicial review through the grievance process.

**CONCLUSION**

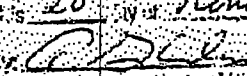
Therefore, the order appealed from is **AFFIRMED** and this appeal **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**

November 20, 2015  
Columbia, S.C

  
John D. McLeod, Judge  
S.C. Administrative Law Court

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MAR 29 2019  
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... SERVICE  
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... 20 ... November, 2015  
  
... Law Clerk

<sup>2</sup> Inmate's argument that he is entitled to a declaratory judgment action is taken from the concurring opinion in the Tant case, and is not the majority decision. Tant, 408 S.C. 334, 347, 759 S.E.2d 398, 404 (Pleicones, J., concurring).

James Anthony Primus 252315  
MacDougall Correctional Institution  
Magnolia unit 2 D24A  
1516 Old Gilliard Road  
Ridgeville S.C. 29472

June - 4 - 2018

**RECEIVED**

JUN 07 2018

GENERAL COUNSEL

The Honorable Milton G. Kimpson  
South Carolina Administrative Law Court  
Edgar A. Brown Building Suite 224  
1205 Pendleton Street  
Columbia S.C. 29201

RE: Inmate James Anthony Primus vs SCP  
Docket no-18-ALJ-04-0100-AP

Dear Judge Milton G. Kimpson

Please find enclosed Appellate James Anthony Primus OBJECTION  
TO RESPONDENT SCDC Record Consisting of Inmate James  
Anthony Primus 252315 Grievance MACD 146-17 And Sentencing  
Sheet As Fraudulent with the Intent to Deceive in the  
above referenced case Please File in your Office

Sincerely

James Anthony Primus  
James Anthony Primus 252315  
MacDougall Correctional Institution  
Magnolia unit 2 D24A  
1516 Old Gilliard Rd  
Ridgeville S.C. 29472

CERTIFICATE OF SERVICE

I Hereby Certify that a copy of the Foregoing OBJECTION OF THE RESPONDENT RECORD was this Date June 4 2018 Served upon the Following Individuals by Placing a Copy of The Same VIA Mail to his/her last known address as Follows

OFFICE of General Counsel  
P.O. Box 21787 / 4444 Broadriver Road  
Columbia S.C. 29221

CHERON HESS  
Administrative Assistant  
South Carolina Department of Corrections  
4444 Broadriver Rd / P.O. Box 21787  
Columbia S.C. 29221 - 1787

June 4 2018

James Anthony Primus  
James Anthony Primus 252315  
MacDougall Correctional Institution  
Magnolia Unit 2 D 24A  
1516 Old Gilliard Road  
Ridgeway, S.C. 29472

State of South Carolina  
Administrative Law Court

James Anthony Primm 282315  
Appellant

C/A 18 CO 100

v.

Grievance No Mac 146-1

S.C. Dept of Correction  
Respondent

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MAR 29 2018

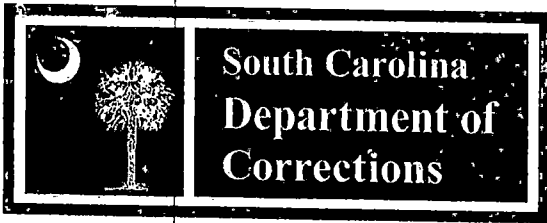
GENERAL COUNSEL

Certificate of Service

The undersigned hereby certifies on 3-29-18  
a copy of the foregoing was duly served on  
Respondent by depositing the same in the  
United States mail first class postage  
pre paid addressed as follows Date 3-29-18

S.C. Dept of Corrections  
Office General Counsel  
P.O. Box 21787  
Columbia S.C. 29221  
S.C. Admin Law Court  
1205 Pendleton St. Suite 224  
Columbia S.C. 29201

By  
James Anthony Primm  
1516 Old Gilliard Rd  
Ridgeville S.C. 29472



South Carolina  
Department of  
Corrections

HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

July 9, 2018

The Honorable Milton G. Kimpson  
South Carolina Administrative Law Court  
Edgar A. Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, South Carolina 29201

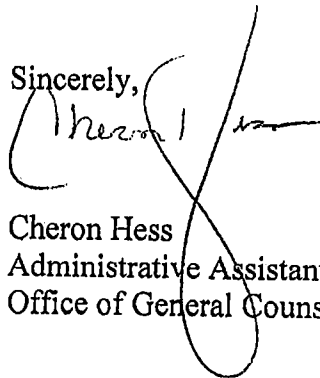
Reference: Inmate James A. Primus, #252315, vs. SCDC  
Docket No. 18-ALJ-04-0100-AP

Dear Judge Kimpson:

Find enclosed an original and one copy of the *Respondent's Brief* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,



Cheron Hess  
Administrative Assistant  
Office of General Counsel

Enclosures

cc: Inmate James A. Primus, #252315  
File





Shabazz. That decision holds that the ALC's appellate jurisdiction in inmate appeals is limited to two types of cases: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which the SCDC has taken an inmate's created liberty interest as punishment in a major disciplinary hearing. Jurisdiction of the ALC was most recently addressed in Sullivan v. SCDC, 355 S.C. 437, 586 SE.2d 124 (2003).

In this case, appellant contends that SCDC has incorrectly calculated his sentence. Consequently, the ALC has jurisdiction to hear his appeal.

#### **STANDARD OF REVIEW**

A reviewing court will not disturb findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Svc. Comm'n of S.C., 332 S.C. 20, 503 S.E.2d 739 (1998).

## ARGUMENT

### APPELLANT'S SENTENCE HAS BEEN CORRECTLY CALCULATED BY RESPONDENT

On September 1, 1998 Appellant received three consecutive sentence: one year for Cocaine Possession, which has already been served; ten years for Assault and Battery of a High and Aggravated Nature (ABHAN); and thirty years for Kidnapping. *See* Sentencing Sheets and Conviction Summary. The ABHAN sentencing sheet clearly indicates that the sentence is to run consecutively to case number 97-GS-18-1046, which corresponds to the Kidnapping sentencing sheet. *See* Sentencing Sheets. Appellant contends his sentence was incorrectly calculated due to an error on the sentencing sheets. *See* App. Brief, p. 2.

Appellant does not dispute that he received a consecutive sentences for ABHAN and Kidnapping, App. Brief, p. 1. Instead, he argues that the judge mistakenly checked the wrong box on the sentencing sheet and that SCDC is applying the ABHAN sentence as a violent offense. He further argues that SCDC violated his due process rights by not addressing his claim and that, in accordance with *Tant*, SCDC has a responsibility to bring an action in circuit court. App. Brief, p. 3-4.

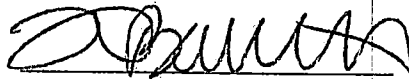
This argument is without merit and misapplies *Tant*. Where an inmate's sentencing sheet is unambiguous, SCDC is limited to that sentencing sheet in calculating and administering the inmate's sentence. *Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 344, 759 S.E.2d 398, 403 (2014). Appellant's sentencing sheets are not ambiguous. The sentencing judge did originally check the box for "PLEA" on the ABHAN sentencing sheet, but very clearly marked it out and checked the "TRIAL" box. Additionally, as the Conviction Summary sheet filed in the Record, shows, SCDC has the ABHAN

conviction entered as a non-violent offense and the Kidnapping conviction as violent. This corresponds with both sentencing sheets. SCDC has applied Appellant's sentences in accordance with unambiguous sentencing sheets. SCDC cannot look beyond the sentencing sheets in administering Appellant's sentences. Thus, SCDC respectfully requests that this Court affirm SCDC's final agency action.

**RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED  
BY SUBSTANTIAL EVIDENCE**

The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. *See Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden and his claim should be dismissed with prejudice.

Respectfully submitted,



Kensey Barrett  
Staff Attorney  
South Carolina Department of Corrections  
4444 Broad River Road  
Columbia, South Carolina 29221  
(803)896-8508

July 9, 2018  
Columbia, South Carolina

James Anthony Primus 252315  
MacDougall Correctional Institution  
Magnolia unit 2 0211A  
1516 old Gilliard Rd  
Ridgeville S.C. 29472  
July 19 2018

RECEIVED

JUL 19 2018

GENERAL COUNSEL

The Honorable Milton G. Kimpson  
South Carolina Administrative Law Court  
Edgar A. Brown Building Suite 2444  
1205 Pendleton Street  
Columbia S.C. 29201

Reference inmate James Anthony Primus  
252315 vs S.C.D.C.  
Docket no. 18-ALJ-041-0100-AP

Dear Judge Kimpson

on may 19 2018 I receive and copy of the  
Respondent S.C.D.C. Record consisting of inmate Grievance  
MACO 146-17 in the above referenced case containing just  
two sentencing sheets A.B.H.A.W. and kidnapping  
on July 9 2018 I receive and copy of Respondent Brief  
on the above referenced case Page 3 states three  
consecutive sentences in referenced to the cocaine possession  
is not consecutive the sentence is concurrent Enclosed  
is Appellate Sentence Sheet Appellate Sentence Sheet has  
not been correctly calculated by Respondent  
A.B.H.A.W. do not support a crime and kidnapping

There is no Abduction There was no Coercion  
Nikki Scott Left of Her own Free Will By Her  
own admission as to original Trial Transcripts

### Conclusion

S.C.O.C. decision is clearly erroneous and arbitrary  
to Law see Daniel Crook Crash Case in Sentence.  
Capricious mean spirited its abuse of discretion  
being held until it is accepted as fact Appellant  
has met this burden of Proving That V. S.C.O.C. is  
Correct in Deciding this Case and Appellate Prays  
that this Court will Grant Declaratory Judgment  
be brought by and Judiciary Agency and not an  
executive Agency and this is not my Responsibility  
it is S.C.O.C. Responsibility I am not satisfied  
with the Reinterpretation of my Sentence and  
Conviction By S.C.O.C.

July - 19 - 2018

RESPECTFULLY SUBMITTED

James Anthony Primus 252315

James Anthony Primus Pro Se  
MacOeugall Correctional Institution  
Magnolia unit 2 D 24 A  
1516 Old Gilliard Rd  
Ridgeville S.C. 29472

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

James Anthony Primus 252315  
Appellant

CERTIFICATE OF SERVICE

VS.

Docket 18-AJ-04-0100-AP

SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS

RESPONDENT

I Hereby Certify that a copy of the Foregoing  
Brief was this date served upon the Following  
individuals by placing a copy of the Same via  
mail to his/her last known address as follows

OFFICE OF GENERAL COUNSEL  
South Carolina Department of Corrections  
4444 Broadriver Rd  
P.O. Box 21787  
Columbia S.C. 29221-1787

Respectfully

July - 19 - 2018

James Anthony Primus 252315

James Anthony Primus Pro Se  
MacDougall Correctional Institution  
Magnolia Unit 2 D 24A  
1514 Old Gilliard Road  
Ridgenville S.C. 29472

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STATE VS.

JAMES ANTHONY PRIMUS

AKA

Race: B

Sex: M

DOB:

Age:

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE #:

97 -GS- 18 - 1044

A/W#: F 418891

Date of Offense: 7-17-97

S.C. CODE §: 44-53-375(A)

CDR Code #:

100

SENTENCE

PLEA

TRIAL

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: POSSESSION OF CRACK COCAINE

in violation of § 44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 100

NON-VIOLENT

VIOLENT

SERIOUS

MOST SERIOUS

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury

The plea is:  Without Negotiations or Recommendation  Negotiated Sentence

Recommendation by the State

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, or  Under Youthful Offender Act for a term of 90 days/months/years and/or to pay a fine of \$ \_\_\_\_\_ provided the sentence be suspended upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable\*; the balance suspended with probation for \_\_\_\_\_ months/years.

CONCURRENT or to term being served  CONSECUTIVE to sentence on: credit for time year just done

SPECIAL CONDITIONS:

RESTITUTION  Heard,  Waived,  Ordered

Total: \$ \_\_\_\_\_

Pay Terms: \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_

\$14-1-206 - Assessments 100% \_\_\_\_\_

\$14-1-211 - Surcharge \_\_\_\_\_

(Exceptions: See §14-1-211) \_\_\_\_\_

§56-5-2995 (DUI) \_\_\_\_\_

TOTAL \_\_\_\_\_

PTUP

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab. or Job Corps

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

Other: \_\_\_\_\_

Other: \_\_\_\_\_

PRESIDING JUDGE

Sentence Date: 9-1-98

Judge Code: 090

Clerk of Court/Deputy Clerk

Court Reporter: P. Reid



South Carolina Code. The Warden denied Appellant's grievance on November 24, 2017. Appellant then appealed via a Step 2 Grievance submitted on November 29, 2017. Within this grievance, Appellant cited *Tant v. South Carolina Department of Corrections*, 408 S.C. 334, 759 S.E.2d 398 (2014),<sup>2</sup> for the proposition that if an inmate is dissatisfied with the reinterpretation ostensibly of his or her sentence, the Department must bring a declaratory judgment action in Circuit Court. Appellant noted that this is not an inmate's responsibility; instead, the responsibility for bringing such an action is that of the Department. The Responsible Official considered and denied Appellant's grievance on February 2, 2018.

Thereafter, Appellant filed his Notice of Appeal with the Court on March 13, 2018. This matter was assigned to the undersigned on March 22, 2018. Appellant filed his brief along with accompanying exhibits on March 27, 2018.<sup>3</sup> The Department filed the Record on Appeal (Record) on May 29, 2018,<sup>4</sup> and its brief on July 11, 2018. Appellant filed a reply brief on July 18, 2018.<sup>5</sup>

#### JURISDICTION/STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabazz*, the court held that the ALC's jurisdiction in inmate appeals is limited to non-collateral or administrative matters typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 369, 527 S.E.2d at 750. In *Slezak v. South Carolina Department of Corrections*, 361 S.C. 327, 605 S.E.2d 506 (2004), the court clarified that the ALC has subject matter jurisdiction to hear appeals from final decisions of the Department in non-collateral or

---

<sup>2</sup> Despite Appellant only listing "Tant vs State SCOC" within his grievance, the Court believes he is referring to the case correctly identified *supra*.

<sup>3</sup> Although the Court appreciates the effort and thoroughness Appellant has undertaken by providing numerous exhibits along with his brief, to the extent the contents of the exhibits accompanying Appellant's brief are not contained in the record on appeal, the Court has not considered the contents therein in its review. *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2018) (explaining the Court's review "must be confined to the record.").

<sup>4</sup> On June 5, 2018, Appellant filed a letter objecting to the Record filed by the Department contending that it was "fraudulent with the intent to deceive." The Department has not filed a response to Appellant's objection. By virtue of this order, Appellant's objection is denied.

<sup>5</sup> This document is untitled; nevertheless, the Court has interpreted it as a reply brief.

administrative matters. In the case at bar, Appellant alleges that the Department is erroneously interpreting his ABHAN conviction leading to an incorrect calculation of his sentence. "There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest." *Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted). Therefore, pursuant to *Al-Shabazz* and *Slezak*, the Court has subject matter jurisdiction over Appellant's appeal.

When reviewing the Department's final decision in a non-collateral or administrative matter, the Court sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 376-77, 527 S.E.2d at 754. Accordingly, the Court's review is limited to the record presented. S.C. Code Ann. § 1-23-380(4) (Supp. 2018). Subsection 1-23-380(5) of the South Carolina Code (Supp. 2018) provides the standard used by appellate bodies to review agency decisions. *See* S.C. Code Ann. § 1-23-600(E) (Supp. 2018) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Pursuant to this standard:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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)(a)-(f).

The Court's review of the facts is governed by the substantial evidence standard. *See generally Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 295, 422 S.E.2d 118 (1992) (recognizing that under the APA, the Court must sustain an agency decision if there is substantial evidence to support it). The South Carolina Supreme Court has observed that "[s]ubstantial evidence is not a mere scintilla; rather, it is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency." *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010) (citation omitted). Thus, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an

administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). "The burden is on [an] appellant[] to prove convincingly that the agency's decision is unsupported by the evidence." *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008) (quoting *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996)).

### DISCUSSION

The thrust of Appellant's contention is that the Department violated his due process rights by failing to provide him with prior notice before modifying his sentence. In that regard, Appellant maintains that the Department is erroneously interpreting his ABHAN conviction by an incorrect statute—section 16-3-652 of the South Carolina Code—which he insists causes him to be incarcerated for a longer period of time since it is codified as a violent crime.<sup>6</sup> To rectify this perceived error, Appellant claims that he is entitled to a declaratory judgment action in Circuit Court. The Court disagrees.

In *Tant*, the South Carolina Supreme Court addressed the Department's authority to alter its initial determination as to the length of an inmate's sentence. *Id.* at 337, 759 S.E.2d at 399. Based upon receipt of the inmate's sentencing sheets, the Department originally recorded his sentence as fifteen years imprisonment. *Id.* Without notifying the inmate, the Department thereafter determined that the sentencing judge intended to sentence him to forty years imprisonment and changed its records to reflect such. *Id.* In determining that the Department violated the inmate's due process rights by altering his sentence without his involvement, the court held that "whenever the Department alters an inmate's sentence in its records, it must give the inmate formal notice of the change and advise him of his right to file a grievance and obtain a hearing." *Id.* at 342, 759 S.E.2d at 401. Stated differently, the court ruled: "the Department must provide an inmate with timely, formal notice when it seeks to recalculate its initial determination of his sentence and advise him of his right to file a grievance and obtain a hearing." *Id.* at 346, 759 S.E.2d at 404.

In addition, the court clarified that, when administering and enforcing an inmate's sentence, the Department, absent ambiguity, must refer to the sentencing sheet. *Id.* at 337, 759 S.E.2d at 399 (holding "the Department is generally confined to the face of the sentencing sheets in determining

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<sup>6</sup> See S.C. Code Ann. § 16-1-60 defining a violent crime to include criminal sexual conduct in the first degree under section 16-3-652.

the length of a sentence . . . [unless] there is an ambiguity in the sentencing sheets.”). “Ambiguity in a sentence is established the same way as it is established for contract terms or statutes, essentially where the language, and therefore the intent, is in some way unclear.” *Id.* at 345 n.4, 759 S.E.2d at 403 n.4; *see also Bordeaux v. State*, 410 S.C. 495, 499, 765 S.E.2d 143, 145 (2014) (“A sentence is ambiguous if its pronouncement is susceptible of differing interpretations based on the totality of the circumstances.”) (citation omitted). Here, Appellant’s applicable sentencing sheet reveals that he received a ten-year sentence following being convicted at trial for ABHAN.<sup>7</sup> While the sentencing sheet does not list which statute his ABHAN conviction was in violation of, it indicated that the applicable statute bore CDR Code # 13, which correlates to ABHAN.<sup>8</sup> Therefore, because the Court finds this sentencing sheet unambiguous, the Department appropriately utilized it in calculating Appellant’s sentence.

The Court finds the due process violation identified in *Tant* inapplicable to the case *sub judice*. Unlike the inmate in *Tant*, there is no evidence that the Department altered, recalculated, or otherwise modified Appellant’s original sentence for the ABHAN offense in any manner. A review of the Department’s conviction summary further reveals that the Department is not treating any of Appellant’s convictions as criminal sexual conduct in the first degree as he claims.<sup>9</sup> Instead, the conviction summary lists the convictions he is currently serving sentences for as possession of cocaine, kidnapping, and ABHAN. The conviction summary also indicates that Appellant is to be incarcerated for ten-years for the ABHAN conviction and that this offense is non-violent, which is consistent with his sentencing sheet for this offense. Accordingly, the Department did not violate Appellant’s due process rights. Furthermore, aside from relying on the concurring opinion in *Tant* for the proposition that he entitled to a declaratory judgment action in Circuit Court, which the

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<sup>7</sup> The Court notes that the box for “PLEA” was originally checked but was clearly marked out and the “TRIAL” box was checked in its place.

<sup>8</sup> *See* South Carolina Judicial Branch, CDR Codes, <https://www.sccourts.org/cdr/displayCDRCode.cfm> (last visited July 23, 2019).

<sup>9</sup> This offense is codified in section 16-3-652 of the South Carolina Code (2015).

majority expressly declined to adopt,<sup>10</sup> Appellant has cited no authority in support of his position. Consequently, without more, the Court denies this requested relief.

Finally, to the extent Appellant challenges his conviction for kidnapping, Appellant raises this issue for the first time on appeal. Accordingly, this issue is not preserved for the Court's review. *See, e.g., Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) ("In order for an issue to be preserved for appellate review, with few exceptions, it must be raised and ruled upon by the trial judge.") (citation omitted); *see generally S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) ("There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity.") (quoting Jean Hoefler Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002)).<sup>11</sup>

**ORDER**

**IT IS HEREBY ORDERED** that the decision of the Department is **AFFIRMED**.

**AND IT IS SO ORDERED.**

CERTIFICATE OF SERVICE  
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the United States Postal Service addressed to the party(ies) or their attorney(s).

*[Handwritten Signature]*  
Milton G. Kimpson, Judge  
South Carolina Administrative Law Court

July 24, 2019  
Columbia, South Carolina

This 24 day of July, 2019  
By: *[Handwritten Signature]*  
Judicial Law Clerk

<sup>10</sup> Appellant's argument is grounded in the procedure laid out in the concurring opinion in *Tant*. *See id.* at 347, 759 S.E.2d at 404 (Pleicones, J., concurring). Within the majority's opinion, however, the court disagreed with the concurrence's procedure:

The concurrence would have us require the Department to bring a declaratory judgment action in the circuit court in instances where the inmate disagrees with a reinterpretation of his sentence. The concurrence sets forth no basis in law for imposing this procedure upon the Department. The relevant legal doctrine at issue here is that of due process, and as applied in our opinion, due process requires notice and an opportunity to be heard, both of which are afforded by the procedure outlined above. The inmate who is allegedly aggrieved by an ambiguous sentence can, if he chooses, seek judicial review through the grievance process and thus, "the interpretation of the unclear sentence" would be "made by a judicial officer."

*Id.* at 342 n.3, 759 S.E.2d at 401 n.3.

<sup>11</sup> Moreover, even if this issue had been properly preserved, which it has not, the ALC is the improper forum for this type of challenge. "[A]side from two non-collateral matters specifically listed in the PCR Act, PCR is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence ....". *Williams v. State*, 378 S.C. 511, 515, 662 S.E.2d 615, 617 (Ct. App. 2008) (alteration in original) (quoting *Al-Shabazz*, 338 S.C. at 367, 527 S.E.2d at 749 (2000)).

CERTIFICATE OF Counsel Appellant

Counsel Pro Se Appellant Certifies that this Record on Appeal contains all material proposed to be included by any of the Parties and not any other material

February 3 2020

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FEB 06 2020

SC Court of Appeals

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