

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 2523L  
Appellant

v

SOUTH CAROLINA DEPARTMENT OF CORRECTION  
Respondent

REPLY TO FINAL BRIEF OF RESPONDENT

James Anthony Primus Pro Se  
James Anthony Primus 2523L  
Mac Dougall Correctional Institution  
1516 Old Billiard Road  
Ridgeville S.C. 29472

**RECEIVED**  
JUL 01 2020  
SC Court of Appeals

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# TABLE OF AUTHORITIES

## CASES

STATE V. HERNANDEZ 428 S.C. 257, 834 SE2d 462 Ct. App 2019	1 A
State v Al shabazz 527 SE2d 742	2 A
State v. Tant 758 SE2d 398	2 A
Statutes 16-3-600 16-3-652	6

## STATEMENT OF ISSUE ON APPEAL

The Administrative Law Court Improperly upheld The South Carolina Department of Corrections Entry of Appellant ASSAULT AND BATTERY OF A High AND Aggravated Nature Sentence Interpretation By the Statute And COR Code Absent Arrest Warrant AND written INDICTMENT where Appellant establish The South Carolina DEPARTMENT OF CORRECTIONS Has committed error with to this Sentence Interpretation

## STATEMENT OF THE CASE

This matter comes before the Court a Reply Brief to the South Carolina Department of Correction Final Brief Dated January 30 2020 and received by Appellate James Anthony Primus 252315 February 3 2020 Through South Carolina Department of Correction Departmental mail at the Mac Dougall Correctional Institution Pursuant to the Appeal of James Anthony Primus 252315 An Inmate in the Custody of the South Carolina Department of Correction 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 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 Appeal on July 24 2019 the order concludes that Appellant fail to establish that the South Carolina Department of Correction committed any error 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 First Degree.

### NOTE

- A In violation of Constitutional or statutory Provision
- 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

## ARGUMENT

The Administrative Law Court Improperly upheld the South Carolina Department of Corrections Entry of Appellant Assault and Battery of A High And Aggravated Nature Sentence where Appellant establish the South Carolina Department of Corrections committed errors with respect to this Sentence Entry by the Statute 16-3-652 AND AND CDR Code 13 Statute 16-3-600 on September 1 1998 Appellant was convicted of kidnapping and assault and Battery of and High and Aggravated Nature ABHAN and Sentence to consecutive terms of thirty years for kidnapping and Ten years for ABHAN (see Appellant Sentence sheet) although Appellant was initially indicted for criminal sexual conduct in the first degree CSC 1st degree the Jury found him guilty of ABHAN (see verdict form) The South Carolina Department of Corrections conviction Summary clearly illustrate that the South Carolina Department of Correction list this conviction as ABHAN Statute 16-3-652 CDR Code 0-13 lesser included offense of CSC 1st Degree Therefore Appellant Appeal has merit and should be granted

## Conclusion

For the Fore going reason The Court Should Vacate  
Assault and Battery of and High And Aggravated  
Nature does not Support a Crime No Arrest, Warrant  
No Indictment written

DATE

June 29 2020

RESPECTFULLY Submitted

James Anthony Primus 252315

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Note

Appellate was consulted of ABHAN in 1988 and  
ABHAN did not pass the element Test But kept  
and 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 G Klumpson

ALC 18-ALS-04-0100 AP

Appellate Case No. 2019-00127

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James Anthony Primus 252315

V

Appellant

South Carolina Department of Corrections

Respondent

### Certificate of Counsel

The undersigned certifies that this Reply to Final  
Brief, motion to Amend motion enlargement time  
late Brief Certificate of Counsel

June 29 2020

Respectfully Submitted

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