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FEB 16 2021

**GENERAL COUNSEL**

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Brandon Gosnell, 340557,  
Appellant,  
vs.  
South Carolina Department of Corrections,  
Respondent.

Docket No.: 20-ALJ-04-0398- AP  
Grievance No.: FCI 128-20

**ORDER**

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**Mar 15 2021**

**SC Court of Appeals**

**STATEMENT OF THE CASE**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Brandon Gosnell (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the Department's decision denying his Step 2 Grievance regarding his placement on the sex offender registry. After careful review and consideration, the Department's decision is reversed.

**BACKGROUND**

On September 6, 2019, Appellant was sentenced to 15 years for Kidnapping in violation of S.C. Code Ann. § 16-03-910. The circuit court judge notated on the sentencing sheet that the sex offender registry requirement is to be held in abeyance until after Appellant undergoes a psycho-sexual evaluation. Also, the circuit court judge retained jurisdiction of the matter.

On March 6, 2020, Appellant filed a step 1 grievance contending the Department is violating the circuit court judge's order by stating that he is to register as a sex offender. The Department denied Appellant's grievance stating his designation as a sexual offender would remain until an update was received from the appropriate staff. Appellant then filed a step 2 grievance on July 15, 2020. The Department denied Appellant's grievance again stating that his placement on the Department's sex offender registry would remain until an evaluation is conducted and that the time for the evaluation to occur has not been identified. Appellant timely filed this appeal with the ALC challenging the Department's decision.

**FILED**

FEB 11 2021

## 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 has jurisdiction "(1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." *Id.* at 369, 750.

When reviewing the Department's decisions, this Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act. *Al-Shabazz*, 338 S.C. at 377-80, 527 S.E.2d at 754-56. Consequently, this Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

## DISCUSSION

S.C. Code Ann. § 23-3-430 governs sex offender registry registration. S.C. Code Ann. § 23-3-430(A) states in pertinent part that "Any person, regardless of age, residing in the State of South Carolina who in this State has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense described below...., shall be required to register pursuant to the provisions of this article." S.C. Code Ann. § 23-3-430(C)(16) further states, in pertinent part, that a person who pled guilty to "kidnapping (Section 16-3-910) of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense" shall be referred to as an offender. Department policy OP 21.09, Section 14.4 similarly states that "An inmate will be required to register as a sex offender at the time of release if convicted of any of the following offenses..." The offenses listed includes Section 16-3-910 (Kidnapping). The policy further states that "The

offender will not be required to register if there is a specific finding by the Court not to register (must be stated on the Court Order).”

In this appeal, Appellant argues that the Department’s record states that upon release he must register as a convicted sex offender, and that this mandate by the Department violates the circuit court judge’s order. Appellant was sentenced in Greenville County on September 6, 2019 by Judge Verdin. The following is written on the sentencing sheet “Verdin to retain jurisdiction for sex registry” and “Psycho-sexual evaluation – sex offender registry to be held in abeyance until after evaluation.” Citing to *Tant v. SC Dep’t of Corr.*, Appellant argues the Department must comply with the judge’s directives as shown on the sentencing sheet. This Court agrees. In *Tant*, a case involving an ambiguous written sentencing sheet, the Court stated, “We see no reason why the Department should not be able to rely on unambiguous sentencing sheets as indicative of the intended sentence.” 408 S.C. 334, 344, 759 S.E.2d 398, 403 (2014). In Appellant’s case, the sentencing sheet clearly and unambiguously reflects Judge Verdin’s intent to hold the issue of Appellant’s sex offender registry in abeyance until after he completed the psycho-sexual evaluation.

Citing to *Doolin Sec. Sav. Bank F.S.B. v. FDIC*, the Department contends that its decision is supported by substantial evidence and that administrative courts afford deference to agencies in reaching conclusions of fact and law where the agency decision manifests in a manner reflecting reasonable interpretation of the applicable statute and legislative intent. *See* 53 F.3d 1395, 1400 (4th Cir. 1995). However, in this instance agency interpretation is not necessary. Judge Verdin’s intent is clear and unambiguously reflected on the sentencing sheet, namely, the sex offender registry issue is to be held in abeyance until Appellant completes the psycho-sexual evaluation. The Department’s assertion that it has “no legal obligation to ensure a psycho-sexual evaluation is completed as that falls within the purview of the sentencing court...” is contrary to Judge Verdin’s sentencing directive. *See Tant*, 408 S.C. at 346, 749 S.E.2d at 404 (“[W]e hold the Department is confined to an unambiguous sentencing sheet...”). Prior to Appellant’s release, he must undergo a psycho-sexual evaluation which must be provided to the sentencing judge to determine Appellant’s registry requirement and because he is in the custody of the Department, the Department must make arrangements for the evaluation.

### **CONCLUSION**

Upon careful review and consideration of the entire record and briefs filed by the parties,

this Court finds that the Department's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.


**ORDER**

**THEREFORE, IT IS HEREBY ORDERED** that the Department's decision is **REVERSED**.

**AND IT IS SO ORDERED.**

  
**SHIRLEY C. ROBINSON**  
Administrative Law Judge

February 11, 2021  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**  
I, the undersigned, the Clerk of the Court, certify that a true and correct copy of the foregoing order was delivered to the parties by the electronic method of service as provided in the rules of the court. The date of service is the date of the filing of this order in the United States District Court for the District of Columbia. Service is also being made to the parties by first class mail.  
The 11 day of February, 2021  
By:   
Clerk of Court