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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 2020-ALJ-04-0471-AP
Appellate Case No. 2010-000481

James Primus, #252315.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Imani Diane Byas
Staff Attorney
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRM THE DEPARTMENT'S FINAL AGENCY DECISION?

STATEMENT OF THE CASE

This matter is before this Honorable Court pursuant to the appeal of James Primus (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). On May 29, 2020, Appellant filed a Step 1 grievance alleging the Department was using his 1980 commitment sheet in his 1997 conviction for Assault and Battery of a High and Aggravated Nature (ABHAN). On July 20, 2020, SCDC considered the grievance resolved. Thereafter, on September 15, 2020, Appellant filed a Step 2 grievance alleging, again, the completed 1980 conviction for aggravated assault was being used for his current ABHAN conviction. On October 6, 2020, SCDC denied the Step 2 grievance on the basis that Appellant’s inmate records are correct and do not require correction. On April 23, 2021, Administrative Law Judge S. Phillip Lenski affirmed the department’s decision. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (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.

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.*

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DEPARTMENT'S FINAL AGENCY DECISION REGARDING APPELLANT'S INMATE RECORD

The ALC's jurisdiction to hear inmate appeals of final decisions by the South Carolina Department of Corrections 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). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 377, 527 S.E.2d at 754. Subsequently, the supreme court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of McNeil v. S.C. Dep't of Corr., 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. See Sullivan, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Appellant argues the Department is interpreting Appellant's current sentence under a previous sentence. Appellant was sentenced to ten (10) years for Assault and Battery of a High and Aggravated Nature (ABHAN), and thirty (30) years for Kidnapping on September 1, 1998. Appellant's ABHAN sentence is consecutive to the Kidnaping sentence and Appellant's projected max out date is January 1, 2028. SCDC Policy OP-21.09, Inmate Records Plan, provides "[t]he Reception and Evaluation (R&E) Inmate Records Section at Kirkland R&E Center has the primary

duty to receive, process, and enter sentencing documents for all inmates received into SCDC” and

will create an inmate central record utilizing numbered file folders. The [inmate’s]. . .sentencing documents . . . and any other related documentation will be filed in the inmate's central record. An inmate institutional record will also be created using the same inmate number and placing all duplicate information in a file folder. If the inmate has previously been incarcerated with SCDC, a request will be made to the Inmate Records Office . . . to have the inmate's previous central and institutional record retrieved from inactive status. The Inmate Records Office will send the reactivated central and institutional record and any other appropriate documentation to the R&E Center for those inmates whose records are in inactive filing status at the time the inmate is received (commonly known as recidivist records). The institutional record will remain at the R&E Center until the inmate is transferred to an institution, at which time the record is also transferred to the receiving institution. The institutional record will be moved with the inmate upon each subsequent transfer within SCDC.

Appellant argues the Department is confusing a previous sentence with his current sentence.

However, Appellant is currently serving the ABHAN sentence. Appellant’s inmate record has been properly maintained by the Department and Appellant’s sentencing sheets are correct.

To the extent Appellant’s argues the sentencing sheet is incorrect, the Department is “confined to the face of the sentencing sheets in determining the length of a sentence [unless . . .] there is an ambiguity in the sentencing sheets.” Tant v. S. Carolina Dep't of Corr., 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014). Appellant’s sentencing sheets are in no way ambiguous and SCDC has applied the sentences as indicated by the Judge on the sentencing sheets. Appellant has not carried the burden to show the Department has improperly calculated the sentence.

The Administrative Law Court properly affirmed the final agency decision of the Department.

CONCLUSION

Wherefore, for all the reasons stated above, the Court should affirm the Administrative Law Court's decision.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



Imani Diane Byas
South Carolina Bar #103715
Staff Attorney
Office of General Counsel
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

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James Primus, #252315.....Appellant,

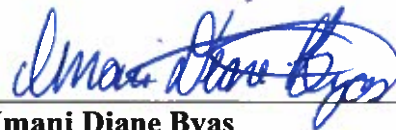
v.

South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows:

James Anthony Primus, 252315
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville S.C. 29472



Imani Diane Byas
Staff Attorney
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

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SC Court of Appeals

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

RE: James Primus, #252315, v. South Carolina Department of Corrections
Appellate Case No. 2021-000481

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Imani Diane Byas
Staff Attorney
South Carolina Department of Corrections
S.C. Bar No. 103715

cc: James Primus, #252315
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville, SC 29472