

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

Appellate case no. 2021-000481

James Anthony Primus 252315

Appellant

v

South Carolina Department of Corrections

Respondent

INITIAL REPLY BRIEF OF APPELLANT

RECEIVED

JUL 28 2021

SC Court of Appeals

James Anthony Primus 252315
James Anthony Primus Pro Se
MacDougall Correctional Inst.
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TABLE OF AUTHORITIES

Cases

Primus v state	535 SE 2d	152	5
Primus v state	564 SE 2d	103	5
Steinke v state	520 SE 2d	148	5

STATUTES

27-50-40 (A)	304
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Administrative MATERIALS

STATEMENT OF ISSUE ON APPEAL

The Administrative law Court Improperly upheld The Department of Corrections entry of Appellant 1980 Conviction For Aggravated Assault and Battery that was Completed in 1985 and the Commitment order is still being held in Appellant Current Record to be Confused with Current Conviction For assault and Battery of a High and Aggravated Nature (ABHAW) Appellant Has established Errors Committed with respect to this Sentence Sheet

STATEMENT OF THE CASE

This matter comes before the Court Pursuant to this Appeal of Appellant James Anthony Primus 252315 an Inmate in the Custody of the South Carolina Department of Correction on May 27-2020. Appellant submitted a Step 1 Grievance complaining that The Department of Correction was improperly interpreting Appellant's current conviction assault and Battery of a High and Aggravated Nature with Appellant's aggravated assault and Battery 1980 conviction after this Grievance was investigated and Denied. Appellant submitted a Step 2 Grievance on 9-15-2020 alleging that there are errors in Inmate Records ABHAN Sentence Sheet all four corners are errors after Briefs were filed by both Parties. Administrative Law Judge S. Phillip Lenski filed an order on April 23, 2021. The order concluded that Appellant failed to demonstrate that the Department's decision is clearly erroneous or arbitrary or capricious or an abuse of Discretion.

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 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. *Hendly v S.C. State Budget & Control Bd* 325 S.C. 413 481 SE 2d 159 Ct. 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 Improperly upheld the Department of Correction entry of Appellant 1980 Aggravate assault and Battery conviction that was completed to be confused with Appellant Current ABHAN conviction where Appellant established that the Department committed errors with respect to the sentence entry.

On September 1 1998 Appellant was convicted of kidnap and assault and Battery of a High and Aggravated Nature (ABHAN) and sentence to consecutive term of Thirty years for kidnap and Ten years consecutive for ABHAN see Appellant sentence sheet. Sentence sheet is clock stamp two years after Appellant was in prison although Appellant was initially indicted for Criminal Sexual Conduct in the First degree (SC 1st degree) the Jury found Appellant Guilty of ABHAN see verdict form and sentence sheet from 9-2-1998 where SCDC has not provided only one sentence sheet two years and longer after Appellant conviction. The Solicitor Margaret McDonald signed Appellant sentence sheet as Appellant attorney stating Appellant pled guilty to ABHAN in order to Reverse the S.C. Court of Appeals Reversal and Remand for a new trial see 535 SE2d 152 and see 564 SE2d 103 Primus v State & Steinkamp 520 SE2d 148.

NOTE That Appellate filed a previous Grievance asserting that the Department incorrectly listed his ABHAN, sentence as a Guilty plea 15-ALJ-04-257-AP. Dorchester County clerk of court Cheryl Graham changed sentence sheet 6-11-14 97 BS 18 1045, 1046.

Conclusion

For the foregoing reasons The Court Should Grant Appellant Appeal NUNC PRO TUNC order to correct all errors in THE Interest of Justice By And Judicial official and not and executive Agency

Respectfully Submitted

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DATE

July 16 2021