

THE STATE OF SOUTH CAROLINA **RECEIVED**
IN THE COURT OF APPEALS

AUG 23 2021

APPEAL FROM THE ADMINISTRATIVE LAW COURT
SC Court of Appeals

ADMINISTRATIVE LAW JUDGE S. Phillip Lenski

ALC CASE NO. 2020 - ALS - 04 - 0470 - AP

APPELLATE CASE NO. 2021 - 000479

James Anthony Primus 252315

APPELLANT

v

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RESPONDENT

James Anthony Primus 252315

James Anthony Primus Pro-Se
MacDougall Correctional Institution
Birch 1 B 13A
1516 Old Billiard Road
Ridgeville S.C. 29472

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TABLE OF AUTHORITIES

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STATUTES

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STATEMENT OF ISSUE ON APPEAL

THE Administrative Law Court Improperly upheld
The Department of Correction Entry of Appellant Kidnap
IS and sex offense where Appellant establish error
Under the plain language of the Act

STATEMENT OF THE CASE

This matter comes before the court pursuant to the Appeal of James Anthony Primus 252315 an Inmate in the Custody of the South Carolina Department of Corrections on May 18 2020 Appellant submitted a step 1 Grievance complaining that the Department was not properly interpreting his kidnap conviction after this Grievance was investigated and was denied Appellant submitted a step 2 Grievance on September 15 2020 The step 2 was also investigated and was denied on November 24 2020 Appellant filed a Notice of Appeal in the Administrative Law Court after Briefs were filed by both Parties Administrative Law Judge S. Phillip Lenski filed an order dismissing Appellant Appeal on April 23 2021 The order concluded the Department was obligated to designate kidnap as a sex offense

STANDARD OF REVIEW

S.C. Code Ann. 1-23-610 (B) provides the Applicable standard of Review

The Review of the Administrative Law Judge 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 Substantial rights of the Appellant have been prejudiced because the findings conclusion or decision is,

- 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

S.C. Code Ann. 1-23-380 (5)

In an Appeal of a Final Decision of an administrative Agency the Standard of Appellate Review is whether the ALJ findings are supported by substantial evidence which considering the Record as a whole would also allow a reasonable mind to reach the same Conclusion that Administrative Agency reached

State budget & Control 325 S.C. 413 481 SE 2d 150

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

ARGUMENT

THE Administrative Law Court Improperly upheld THE DEPARTMENT OF CORRECTIONS Entry of Appellant kidnap sentence as And convicted sex offender where Appellant established the Department committed error with respect to convicted sex offender sentence entry

Appellant is a state prisoner serving thirty years for kidnap and Ten years consecutive for assault and Battery of and High and aggravated nature Appellant filed and Grievance SCOC lists Appellant on its sex offender Registry when filed is the Gatekeeper SCOC sex offender Registry. is premature and without legislative authority as Approval and vindictive and inscrupulous S.C. Code 23-3-430 mandates that all persons convicted of kidnap must be placed on the sex offender Registry (But SCOC do not put all persons convicted of kidnap be placed on the sex offender Registry) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted or attempted sexual offense S.C. Code 23-3-430 (15) Appellant sentencing Judge Luke N. Brown Jr. did not make such a finding 16-3-652 Appellant was found not guilty of all sex offenses also Appellant is not suppose to be on the sex offender Registry because

Argument

The Statute plain language of the Law 16-3-910 mandating that kidnap offenders be placed on the Sex offender Registry only after their Release from Confinement Appellant Filed and Grievance for SCDC Placing him on the Sex offender Registry as a Convicted Sex offender Judge Renee Lee explain to Appellant ABHAN sentence sheet 16-3-652 is not and Sex Registry offense See Record Judge Lee letter to Appellant also See Clifford Thompson v state 415 S.C. 560 785 SE2d 189 S.C. Code 15-53-20 15-53-30 Sunset Cay LLC v Folly Beach 357 S.C. 414 423 593 SE2d 462 466 2004 A Justifiable controversy is a real and substantial controversy which is appropriate for judicial determination as distinguished from and dispute or difference of a ~~dispute~~ hypothetical or abstract See ABHAN sentence sheet Records Appellant sentence sheet was altered by Purchester clerk of Court Cheryl Graham June 11 2014 From plea to Trial

Al-Shabazz 338 S.C. at 375 527 SE2d at 753 Inmate Custody status Maxwell v S.C. Dept of Corr 02-ALJ-04-336 AP 9-5-2001 ALC Ignored number 1 and ruled on No. 2. The ALC decline to dismiss the case for the reason in Part 1 SCDC classification did act arbitrarily capriciously and from personal bias and prejudice when determining Appellant classification as a convicted sex offender

Argument

Finally, the Record on Appeal is not void of any fact indicating that the Appellant classification is a convicted Sex offender would affect Appellant sentence with errors contain on Appellant sentence sheet: misspelled Name wrong Social Security Number Solicitor Signed as Appellant attorney Clerk of Court change Sentence sheet after Judge Brown Signed Sentence sheet Clerk of Court filed Sentence sheet two years after Appellant conviction
Steink 336 S.C. 386 520 SE2d 148 27-50-40-41

Conclusion

The court should Grant this Appeal Pursuant to NUNC PRO TUNC to the many errors SCDC officials Applied Judge Luke N. Brown Applied his experienced as and Trial Judge after Full consideration of the Circumstances and Facts Presented made no Special Conditions on Appellant Sentencing sheets

DATE

August 19 2021

Respectfully Submitted

James Anthony Primus 252315
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IN THE COURT OF APPEALS

Appeal From The Administrative Law court

Administrative Law Judge S. Phillip LenSKI

ALC Case No. 2020 - ALJ - 041 - 0470 - AP

Appellate case no 2021 - 000479

James Anthony Primus 252315

Appellant

v

South Carolina Department of Correction

Respondent

CERTIFICATE OF SERVICE

Undersigned Appellant hereby certifies that on Today's Date August 19 2021 I mailed a copy of the Initial Reply Brief of Appellate and Designation of matter to be included in the Record on Appeal to Respondents address as follows

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Clerk office
1220 Senate Street
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Judge S. Phillip LenSKI
S. C. Admin. Law Court
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By
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August 19 2021

The Honorable Jenny A. Kitchings
Clerk of Court S.C. Court of Appeals
1220 Senate Street
Columbia S.C. 29201

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SC Court of Appeals

RE: James Anthony Primus 252315 v. SCDC
Appellate Case No. 2021-000479

Enclosed please find the Initial Reply Brief of Appellate
and Designation of matter to be included in the Record
on Appeal in the above captioned Case / 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

Imani Diane Byas
General Counsel
P.O. Box 21787
Columbia S.C. 29221

Sincerely
James Anthony Primus 252315

James Anthony Primus 252315
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SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS
Ms. Jenny ABBOTT Kitchings Clerk
1220 Senate Street
Columbia S.C. 29201

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