THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lensk

ALC Case No. 2020-ALJ-04-0470-AP
Appellate Case No. 2021-000479

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

v.

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

FINAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

ADMINISTRATIVE MATERIALS

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"). Appellant filed a Step One Grievance on May 18, 2020, stating that his inmate record classification had been changed without judicial authority and in a discriminatory manner. On July 20, 2020, SCDC denied Appellant's Step One Grievance. Thereafter, on September 15, 2020, Appellant filed a Step Two Grievance alleging that SCDC acted improperly by classifying Appellant's previous kidnapping conviction as a sexual offense on his annual review. On October 6, 2020, SCDC denied Appellant's Step Two Grievance. Appellant appealed the decision to the Administrative Law Court. 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 TO CLASSIFY APPELLANT'S KIDNAPPING OFFENSE AS A SEX OFFENSE

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).

On September 1, 1998, Appellant was sentenced to thirty years' incarceration for Kidnapping and ten years' incarceration for Assault and Battery of a High and Aggravated Nature (ABHAN), to run consecutive to one another. R. p. 7, p. 9. Appellant was sentenced under S.C. Code Ann. § 16-03-0910 which is classified as a sex offense. S.C. Code Ann. § 23-3-430(A) mandates, in relevant part, "[a]ny person regardless of age, residing in the State of South Carolina who in this State has been convicted of, . . . pled guilty or nolo contendere to an offense described

below . . . shall be required to register pursuant to the provisions of this article." Subsection (C) goes on to list the relevant offenses, stating, "[f]or purposes of this article, a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as an offender," including the offense of "kidnapping (Section 16-3-910) of a person eighteen years 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[.]" S.C. Code Ann. § 23-3-430(C)(15).

Appellant argues that SCDC's classification of Appellant's conviction as a sex offense in his inmate record is in violation of the applicable sentencing sheet completed by the judge who oversaw Appellant's criminal case in 1998. See Appellant Brief, p. 6. Appellant reasons that, because the judge did not explicitly note in his sentencing sheet that his conviction was considered a sex offense, the agency does not have the authority to classify Appellant as a sex-offender under its Inmate Records policy.

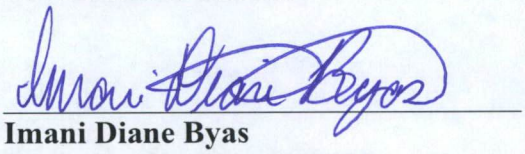
Appellant's conviction of the kidnapping offense mandates that Appellant register as a sex offender "except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense[.]" S.C. Code Ann. § 23-3-430(C)(15). SCDC has acted in accordance with the aforementioned statute. See Id. SCDC's interpretation of Appellant's conviction of kidnapping and therefore the requisite classification of him as a sex offender is entirely proper. 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



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September 21, 2021

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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September 21, 2021