

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 - ALS - 04 - 0470 - AP

APPELLATE CASE NO. 2021 - 000 479

James Anthony Primus 252315

APPELLANT

v

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RESPONDENT

FINAL Reply Brief of Appellant

RECEIVED

OCT 06 2021

SC Court of Appeals

James Anthony Primus 252315

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STATEMENT OF ISSUE ON APPEAL

THE Administrative Law Court Improperly upheld
The Department of Correction. Entry of Appellant Kidnap
§5 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 Palmus 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. *Headly v S.C. State Budget & Control* 325 S.C. 413 481 SE 2d 159 App 1001

A Reviewing Court shall not substitute its own Judgment for that of the ALC as to finding 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 CORRECTION 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 S.C.C. lists Appellant on its sex offender Registry when Sled is the Gate Keeper S.C.C. sex offender Registry is premature and without legislature 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 S.C.C. do not put all persons convicted of kidnap 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 sex 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 Justiciable controversy is a real and substantial controversy which is appropriate for judicial determination as distinguished from and dispute or difference of a ~~contingent~~ 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 McWell v S.C. Dept of Corr 02-ALJ-04-336 AP 9-5-2001 ALJ ignored number 1 and ruled on NO. 2 The ALJ 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 Steinkamp 336 S.C. 386 520 S.E.2d 148 27-50-40-CA1

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 October 5, 2021

~~2021~~ 2021

NOTE: S.C. order 0016 Rule 407

Effective August 11, 2021

S.C. Rule 3.8

Respectfully Submitted

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The State of South Carolina

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ALC Case No 2020 - ALJ-04 - 0470 - AP

Appellate Case No. 2021 - 000479

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Appellant

v

South Carolina Department of Corrections

Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Reply Brief of Appellant complies with Rule 211(c)(3) SCAR 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

Date October 5 2021

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