

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Leski

ALC Case No 21-AJ-04-0165-AP

Appellate Case No 2021 - 001379

James Anthony Primus 252315

Appellant

v

South Carolina Department of Correction

Respondent

INITIAL BRIEF OF APPELLANT

RECEIVED

JAN 25 2022

SC Court of Appeals

James Anthony Primus 252315

James Anthony Primus Pro Se
Macongest Correctional Institution

1516 Old Gilliard Road

Ridgeville, S.C. 29472

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TABLE OF AUTHORITIES.

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Slzak v S.C. Dept. of Corr.	361 S.C. 327 605 S.E.2d 506 2004	5
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ADMINISTRATIVE MATERIALS

The Department Supplemental Sentence Sheets

Administrative Law court S. Phillip LenSKI order of Dismissal

STATEMENT OF ISSUE ON APPEAL

By Issuing and Supplemental Brief and Sentence Sheets
The Department Conceded that The Administrative Law Court
DID Improperly Dismissed Appellant Appeal where Appellant
claim DID Implicate A State Created Liberty or Property
Interest

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals (Court) Pursuant to the Appeal of James Anthony Primus 252318 (Appellant), an Inmate incarcerated with the South Carolina Department of Corrections (SCDC) or Department on December 1, 2020 Appellant filed a Step 1 Grievance alleging no jail time applied to Appellant's sentence Kidnap and ABHAM. The Grievance was denied thereafter on March 4, 2021 Appellant filed a Step 2 Grievance alleging that Page 11 of 16 in the Record no jail time on March 24, 2021 SCDC denied the Step 2 Grievance and Appellant appealed to the Administrative Law Court on November 5, 2021 Administrative Law Judge S. Phillip Lenski dismissed the Appeal ignoring clear evidence through Respondent's Supplemental Brief that was filed August 17, 2021 Appellant updated the sentence sheet for A.B.H.A.M. instead of a plea that was fraudulent by the Dorchester County Solicitor Walter Baily, Margaret McDonald forged signature and plea solicitor's also help prosecute the case Harrison Bell Virgil Dea's Maite Murphy and ~~SCDC~~ Michael Strabbe. The Department changed back to trial and also stated that Appellant's jail time has been updated to reflect from 1997 JW instead of 1998 granted by Judge S. Phillip Lenski on August 17, 2021. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. 1-23-610 (B) provides the applicable standard of review. The Review of the Administration Law Judge's order must be confined to the Record. The Reviewing Tribunal may affirm the Decision or remand the Case for further Proceeding 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
- f Arbitrary or capricious or characterized by a 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 Finding 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. Hendry v. S.C. Budget & Control Bd 325 S.C. 413, 481 SE2d 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 DISMISSED APPELLANT'S APPEAL WHERE APPELLANT CLAIMS DID IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTEREST IN SUPPLEMENTING THE RECORD THE DEPARTMENT CONCEDED KIDNAP JAIL TIME AND OPEN THE DOOR FOR ABHAW FIFTH AMENDMENT VIOLATION

IN SUPPLEMENTING THE RECORD THE DEPARTMENT CONCEDED THE COURT JURISDICTION TO HEAR THIS MATTER IS DERIVED FROM THE DECISION OF THE S.C. SUPREME COURT IN AL-SHABAZZ DECISION AL-SHABAZZ V STATE 338 S.C. 354 527 S.E.2D 742 (2000) EXPLAINED THAT PROCEDURAL DUE PROCESS IS GUARANTEED WHEN AN INMATE IS DEPRIVED OF AN INTEREST ENCOMPASSED BY THE FOURTEENTH AMENDMENT PROTECTION OF LIBERTY WALKER V. S.C. DEPT OF CORR. 360 S.C. 421, 424 602 S.E.2D 56, 58 (2004) CITATION OMITTED SUCH A LIBERTY INTEREST IS AT STAKE IN CALCULATION OF AN INMATE SENTENCE TAYLOR V S.C. DEPT. OF CORR. 408 S.C. 334 341 759 S.E.2D 398 401 (2014) CITATION OMITTED

THERE CAN BE NO DOUBT ~~THE LENGTH OF AN INMATE'S INCARCERATION~~ IMPLICATES A CONSTITUTIONAL LIBERTY INTEREST ON SEPTEMBER 13 2021 THE COURT ORDERED THE DEPARTMENT TO PROVIDE A SUPPLEMENTAL BRIEF AND NOW THE DEPARTMENT ARRIVED AT A PROJECTED RELEASE DATE OF JANUARY 1 2028 FOR APPELLANT FILED SEPTEMBER 28 2021 WHICH IS INCORRECT SEE SULLIVAN V S.C. DEPT. OF CORRECTION 355 437 341-42 586 S.E.2D 126 2003 QUOTING AL-SHABAZZ 527 S.E.2D 750 RECOGNIZING THAT AL-SHABAZZ CREATED REVIEW THE AHE FOR SENTENCE CALCULATION CASES IN SENTENCE CALCULATION CASES THE COURT SITS IN AN APPELLATE CAPACITY APPLYING THE APPELLATE STANDARD OF THE ADMINISTRATIVE PROCEDURE

Argument

ACT (APA) Al-Shabazz 338 S.C. at 372-80 527 SE2d
at 754-56 McNeil v. S.C. Dept. of Corr. 02-ALT-04-00356
AP September 5, 2001 The Supreme Court held the ALC Jurisdiction
was limited to ① cases in which an Inmate contends Prison
officials have erroneously calculated his sentence related
credits or custody status ② cases in which SCDC has taken an
Inmate state created liberty interest in major disciplinary hearings
and ③ cases in which an Inmate confinement implicates a state
created liberty interest see Sullivan 355 S.C. at 443 586 SE2d 127
emphasis added

moreover regard categories 2 and 3 supra the South Carolina Supreme
Court has consistently emphasized that the liberty or property
implicated must be one that is state created Wicker v. SCDC 360 S.C.
411 602 SE2d 56 (2004) emphasizing that the ALC Jurisdiction
extends only to the cases involving the denial of state created liberty
interests and that the court holding in Wicker is not to be viewed as
expanding the Jurisdiction of the ALC in any other circumstance Sleza
v. S.C. Dept. of Corr. 361 327 605 SE2d 506 (2004) not implicate
an Inmate state created liberty or property interest emphasis added

CONCLUSION

The Department conceded that Appellant had ^{not} receive Jail Time 24-
13-40 The Department conceded that Appellant ABHAN Sentence sheet
had been forged and changed so that S.C. Court of APPEALS State v.
Primus would be reversed 535 SE2d 152 see State v. Primus
564 SE2d 63 Jail Time State v. Bogg 696 SE2d 597 Tant v. SCDC
Due Process The Troubling manner by which the Department

Conclusion

Appellant A. B. H. A. W. Sentence Sheet without his involvement and it is constituted a denial of Due Process Appellant has not been given an opportunity to be heard in a meaningful way Appellant requests that he be granted his jail time in full and that his sentence sheet for ABHAW be corrected by a judicial official and not an executive agency

Date January 18 2022

Respectfully Submitted
James Anthony Primus 252315
James Anthony Primus Pro Se
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgelyville S.C. 29472

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Administrative Law Judge S. Phillip Lenski

ALC case no. 21-ALJ-04-0165-AP

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James Anthony Primus 252315

Appellant

v

South Carolina Department of Correction

Respondent

PROOF OF SERVICE

Undersigned Pro Se Appellant James Anthony Primus 252315
hereby certifies that on Today's date I mailed a copy
of The Initial Brief of Appellant and Designation of matter
To Respondents Addressed as follows.

Date January 18 2022

S. C. Court of Appeals S. C. Dept. of Corr.
Clerk office P.O. Box 21787
1220 Senate Street Columbia S.C. 29221
Columbia S.C. 29201

S. C. Admin. Law Court
Clerk office
1205 Pendleton St. Suite 224
Columbia S.C. 29201

James Anthony Primus 252315
James Anthony Primus Pro Se
MacDougal Correctional Institute
1516 Old Gilliland Road
Bridgville S.C. 29822

James Anthony Primus 252315
MacDougal Correctional Institution
1516 Old Gilliard Road
Ridgeville S.C. 29472
January 18 2022

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SC Court of Appeals

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

RE: James Anthony Primus 252315 v. SCDC
Appellate Case no. 2021 - 001379

Dear Ms. Kitchens

Enclosed please find the Initial Brief of Appellant 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

James Anthony Primus 252315
James Anthony Primus pro se
MacDougal Correctional Institution
1516 Old Gilliard Road
Ridgeville S.C. 29472

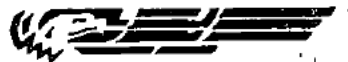
JAMES ANTHONY
MAGISTRATE CORR. INST.
1516 OLD WARD RD.
RIDGEBILL SC 29472

PRIMUS 252315

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clerk MS. Jenny ABBOTT KITCHINGS
1220 Senate Street
Columbia S.C. 29201

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