

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 21-ALJ-04-0165-AP

Appellate Case No. 2021 - 001379

James Anthony Primus 252315

Appellant

v

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS Respondent

FINAL BRIEF OF APPELLANT

RECEIVED

MAR 10 2022

SC Court of Appeals

James Anthony Primus 252315

James Anthony Primus Pro Se

1516 Old Gilliam Road

Ridgeville S.C. 29472

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TABLE OF AUTHORITIES

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Wicker v S.C.OC	360 S.C. 421 602 SE2d 56 (2004)	4+5
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McWeil v S.C.OC	02-ALJ-04-0036	4+5
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STATUTES

S.C. Code Ann. 1-23-610 (B)

S.C. Code Ann. 24-13-40

Administrative Materials

STATEMENT OF ISSUE ON APPEAL

By Issuing and Supplemental Brief and Sentence
Sheets The Department Conceded That The Administrative
LAW COURT DID Improperly Dismissed 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 252315 (Appellant) an Inmate Incarcerated with the South Carolina Department of Correction (SCDC) or DEPARTMENT on December 1 2020 Appellant Filed a Step 1 Grievance alleging no Jail Time Applied to Appellant Sentence Kidney and ABHAW 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 NOV 5 2021 Administrative Law JUDGE S. Phillip Lenski dismissed the Appeal Ignoring clear evidence through Respondent supplemental Brief that was Filed August 17 2021 Appellant updated sentence sheet for ABHAW Instead of plea that was fraudulent by the Dorchester County Solicitor Walter Baily, Margaret McDonald Forged Signature and Plea. Solicitors also help prosecute the case Harrison Bell, Virgil Deas, Maite Murphy and SCDC Michael Strobbe The Department changed back to trial and also stated that Appellant Jail Time has been updated to reflect from 1997 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 Administrative Law Judge 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 or
- F Arbitrary or capricious or characterized by abuse of discretion clearly
unwarranted exercise of discretion

IN An Appeal of a Final Decision of an administrative Agency the Standard
of Appellate Review is whether the ALE findings are supported by Substantial
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. *Healy v. S.C. State*

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
ALE 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*

THE Administrative Law Court Improperly Dismisses
 Appellant APPEAL where Appellant claim 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 SE2d
 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 Wisker v S.C. Dept. of Corr. 360 S.C. 422 424
 602 SE 2d 56.58 (2004) Citation omitted Such a liberty Interest is at
 Stake in Calculation of an Inmate Sentence Tant v SCDC 408 S.C. 334
 341 759 SE 2d 398 401 (2014) Citation omitted There can be no doubt the
 length of an Inmate Incarceration Implicates a constitutional liberty
 Interest on September 13 2021 The Court ordered the Department to
 Provide a supplemental Brief on how the Department arrived at a
 Projected release date of January 1 2028 For Appellant Filed September
 28 2021 which is Incorrect See Sullivan v SCDC 355 437 441-42
 586 SE 2d 126 2005 quoting Al-shabazz 527 SE.2d 750 recognizing
 That Al-shabazz created Review The ALC For sentence calculation
 cases In sentence calculation cases the court sits in an Appellate
 capacity Applying the Appellate standard of the Administrative
 Procedure

ARGUMENT

The Administrative Law Court Improperly dismiss Appellant 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 527 SE2d 742 (2000) explained that Procedural Due Process is guaranteed when an Inmate is deprived of an Interest encompass by the Fourteenth Amendment Protection of liberty wicker v SCOC 602 SE2d 56.58. (2004) Citation omitted Such a liberty Interest is at stake In Calculation of an Inmate Sentence Tant v SCOC 759 SE2d 398 [2014] Citation omitted there can be no doubt the length of an Inmate Incarceration Implicates a constitutional liberty Interest on September 13 2021 The Court ordered the Department to provide a Supplemental Brief and How the Department arrived at a Projected release date of January 1 2028 For Appellant Filled September 28 which is Incorrect See Sullivan v SCOC 586 SE2d 126 quoting Al-Shabazz 527 SE2d 750 Recognizing that Al Shabazz created Review The ALC For Sentence Calculation

ARGUMENT

ACT (APA) AL-Shabazz 527 SE 2d at 754-56 McNeil v. SCDC 02-ALJ-04-00356 AP September 5 2001 The Supreme Court held the ALJ 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 Hearing and ③ Cases in which an Inmate confinement implicated a state created liberty interest See Sullivan 586 SE 2d 127 emphasis Added moreover regard categories 2 and 3 Supra the S.C. Supra the S.C. Supreme court has consistently emphasized that the liberty or property implicated must be one that is state created Wicker v SCDC 602 SE 2d (2004) emphasizing that the Jurisdiction ALJ extends only to cases involve the denial of state created liberty interest and that the court holding in Wicker is not viewed as expanding the Jurisdiction of the ALJ in any other circumstance Slezak v SCDC 605 SE 2d 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 24-13-48 The Department conceded that Appellant sentence sheet had been forged and changed so that S.C. Court of Appeals

Conclusion

STATE v. Primus would be reversed 535 SE 2d 152 See state
v Primus 564 SE 2d 103 Jail Time 24-13-40 State v Bogg
696 SE 2d 599 TANT v SCOC 759 SE 2d 398 Due Process
The troubling manner by which the Department change Appellant
A BKAWS 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 request that he be granted his jail time in full
and that his sentence sheet for Ab haw be corrected by a
judicial official and not an executive agency

Date

Respectfully Submitted

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THE STATE OF SOUTH CAROLINA
IN South Carolina Court of Appeals
Appeal From the Administrative Law Court
Administrative Law Judge S. Phillip Lenski
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Appellate Case No. 2021-001379

James Anthony Primus 252315 **RECEIVED** Appellant
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U SC Court of Appeals
South Carolina Department of Corrections Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Appellate complies with Rule 211(b) SCACR and also complies with the S.C. Supreme Court April 15 2014 order entitled Reviser order concerning Personal Identifying Information and other Sensitive Information in Appellate Court Filings

DATE

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