

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

REPLY FINAL BRIEF OF APPELLANT

RECEIVED

APR 08 2022

SC Court of Appeals

James Anthony Primus 252315
James Anthony Primus Pro se
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TABLE OF AUTHORITIES

Cases

Primus v state 535 SE2d 152	5
Primus v state 564 SE2d 103	4-5
Al-shabazz v state 527 SE2d 742	3
Hewdly v S.C. Budget + Control 481-SE2d 159	4-5
Wicker v SCDC 602 SE2d 56	4-5
Sullivan v SCDC 586 SE2d 124	5
Slczak v SCDC 605 SE2d 506	4-5
McNeill v SCDC 02-ALS-04-00336	4
Boggs v state 696 SE2d 597	5
TANT v SCDC 759 SE2d 398	

STATUTES

S.C. Code Ann. 1-23-610 B	5
S.C. Code Ann. 24-13-410	

Administrative MATERIAL

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 S.C. Court of Appeals (Court) Pursuant to the APPEAL OF James Anthony Primus 252315 (Appellant) an Inmate Incarcerated with the SCDC on December 1, 2020 Appellant filed a Step 1 Grievance alleging no Jail Time Applied to Appellant Sentence Kidnap and ABHAN. 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 ABHAN instead of plea that was fraudulent by the Dorchester County Solicitor Walter Baily Margaret McDonald forged signature and Plea Solicitor's Help prosecute the case Harrison Bell Virgil Dea's 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 1999. Granted by Judge S. Phillip Lenski on August 17, 2021.

STANDARDS 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 right of the petitioner has been prejudiced because the findings, 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 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. *Hendly v S.C. State Budget & Control Bd* 325 S.C. 413 481 SE 2d 159 Ct. 159 Ct. App 1996. 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 id.

ARGUMENT

The Administrative Law Court ~~is~~ properly 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 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 Wicker v SCO 602 SE 2d 56.58 (2004) citation omitted such a liberty Interest is at stake in calculation of an Inmate Sentence Tant v SCO 759 SE2d 398 (2014) citation omitted there can be no doubt the length of an Inmate Incarceration Implicates a constitutional liberty Interest so 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 Filed September 28 which is Incorrect See Sullivan v SCO 586 SE2d 12 quoting Al-shabazz 527 SE2d 750 recognizing that Al-shabazz creates Review The ALQ For sentence calculation cases In sentence calculation cases the Court sits in a Appellate capacity applying the Appellate Standard of the Administrative Procedure

ARGUMENT

ACT (APA) Al-Shabazz 527-SE2d at 784-86 McNeil v
SCDC 02-ALJ-04-00336 At 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 S.C.D.C. 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 586 SE2d 127 emphasis added
more over regard categories 2 and 3 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 SE2d 56 (2004) emphasizing that the jurisdiction ALJ extends
only to cases involving 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 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 ABHAW Sentence sheet
had been forged and changed so that S.C. Court of Appeals

Conclusion

State v Primus would be reversed 535 SE2d 152 see
State v. Primus 564 SE2d 103 Jail Time 24-13-40 state
v Bogg 696 SE2d 597 TANT v SCDC 759 SE2d 398
Due Process the troubling manner By which the Department charge
Appellant A. B. H. A. N. sentence sheet without His Involvement
and it is constituted a denial of Due Process Appellant
Has not Been given and opportunity to be heard in a
Meaning Full way Appellant Request that He be granted His
Jail Time in Full and that His sentence sheet for ABHAN
Be corrected By and Judicial official and not and
executive Agency

DATE April 1 2022

Respect Fully Submitted

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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEAL

APPEAL FROM Administrative LAW COURT APR 08 2022

Administrative LAW JUDGE S. PHILLIP

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SC Court of Appeals

ALL Case No. 2021-ALJ-04-0165-AP

Appellate Case No. 2021-001379

James Anthony Primus 252315

Appellant

v

South Carolina DEPARTMENT OF CORRECTIONS Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Initial Reply Brief of Appellate complies with Rule 211 (b) SCACR and also complies with the South Carolina Supreme Court April 15 2014 order entitled Revised order concerning Personal Identifying Information and other sensitive information in Appellate Court Filings

DATE

April 1 2022

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