



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 20530*

**PATTERSON, DWAYNE ANTHONY SHANE
A047-114-478
SDC
P.O. BOX 248
LUMPKIN, GA 31815**

**DHS/ICE Office of Chief Counsel - SDC
146 CCA Road
Lumpkin, GA 31815**

Name: PATTERSON, DWAYNE ANTHO... A 047-114-478

Date of this notice: 1/30/2014

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Malphrus, Garry D.
Guendelsberger, John
Pauley, Roger

Userteam: Docket

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Falls Church, Virginia 20530

File: A047 114 478 – Lumpkin, GA

Date: JAN 30 2014

In re: DWAYNE ANTHONY SHANE PATTERSON a.k.a. Dwayne Anthony Patterson

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

In a decision dated September 5, 2013, an Immigration Judge found the respondent removable; determined that he did not demonstrate eligibility for any relief from removal; and ordered him removed from the United States to Jamaica. The respondent submitted a Notice of Appeal on September 23, 2013, and an appellate statement on December 30, 2013, with respect to the Immigration Judge's decision. The Immigration Judge indicated that the respondent waived appeal. However, in *Matter of Rodriguez-Diaz*, 22 I&N Dec. 1320 (BIA 2000), we held that an unrepresented alien who accepts an Immigration Judge's decision as "final" does not effectively waive the right to appeal where the Immigration Judge failed to make clear that such acceptance constitutes an irrevocable waiver of appeal rights. In the present case, we cannot find that the appeal waiver is valid, as we have determined that the Immigration Judge's advisals to the respondent regarding the right to appeal did not sufficiently comply with the requirements set forth in *Matter of Rodriguez-Diaz*, *supra*.¹ Consequently, we have jurisdiction to address this appeal on the merits. The appeal will be sustained, and the record will be remanded.

The September 5, 2013, summary memorandum decision reflects that the Immigration Judge found the respondent removable and ineligible for any removal relief. However, the Immigration Judge did not prepare a separate oral or written decision setting out the reasons for the decision in this matter. An explanation of the reasons in the transcript is not sufficient. Accordingly, the respondent's appeal will be sustained, and the record will be remanded to the Immigration Judge for preparation of a full decision. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). Upon preparation of the full decision, the Immigration Judge shall issue an order administratively returning the record to the Board. The Immigration Judge shall serve the administrative return order on the respondent and the Department of Homeland Security. The Board will thereafter give the parties an opportunity to submit briefs in accordance with the regulations.²

¹ The Immigration Judge did summarily advise a group of respondents, including the respondent here, that they could appeal an adverse decision (Tr. at 3), but we find this brief advisal insufficient. *See Id.* at 1323.

² The respondent is charged with removability on two grounds, as convicted of an aggravated felony under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii), in conjunction with section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F), and as convicted of crimes involving moral turpitude under section 237(a)(2)(A)(ii) of the Act. These charges are based on his Georgia convictions for "simple battery" in 2012 and for "theft of services" in 2013. On remand, the Immigration Judge should

ORDER: The appeal is sustained, and the record is remanded to the Immigration Court for further proceedings, consistent with this opinion.


FOR THE BOARD

issue a decision that includes an analysis of whether the “simple battery” conviction qualifies as an aggravated felony in light of *Descamps v. United States*, 133 S.Ct. 2276 (2013), and whether it qualifies as a crime involving moral turpitude in light of *Matter of Solon*, 24 I&N Dec. 239 (BIA 2007), and *Matter of Sanudo*, 23 I&N Dec. 968 (BIA 2006).

IMMIGRATION COURT
146 CCA ROAD
LUMPKIN, GA 31815

In the Matter of

Case No.: A047-114-478

PATTERSON, DWAYNE ANTHONY SHANE
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 9/5/13.
This memorandum is solely for the convenience of the parties. If the
proceedings should be appealed or reopened, the oral decision will become
the official opinion in the case.

- ☒ The respondent was ordered removed from the United States to Jamaica
~~or in the alternative to .~~
- ☐ Respondent's application for voluntary departure was denied and
respondent was ordered removed to or in the
alternative to .
- ☐ Respondent's application for voluntary departure was granted until
upon posting a bond in the amount of \$ _____
with an alternate order of removal to .

Respondent's application for:

- ☐ Asylum was () granted () denied () withdrawn.
- ☐ Withholding of removal was () granted () denied () withdrawn.
- ☐ A Waiver under Section _____ was () granted () denied () withdrawn.
- ☐ Cancellation of removal under section 240A(a) was () granted () denied
() withdrawn.

Respondent's application for:

- ☐ Cancellation under section 240A(b)(1) was () granted () denied
() withdrawn. If granted, it is ordered that the respondent be issued
all appropriate documents necessary to give effect to this order.
- ☐ Cancellation under section 240A(b)(2) was () granted () denied
() withdrawn. If granted it is ordered that the respondent be issued
all appropriated documents necessary to give effect to this order.
- ☐ Adjustment of Status under Section _____ was () granted () denied
() withdrawn. If granted it is ordered that the respondent be issued
all appropriated documents necessary to give effect to this order.
- ☐ Respondent's application of () withholding of removal () deferral of
removal under Article III of the Convention Against Torture was
() granted () denied () withdrawn.
- ☐ Respondent's status was rescinded under section 246.
- ☐ Respondent is admitted to the United States as a _____ until _____.
- ☐ As a condition of admission, respondent is to post a \$ _____ bond.
- ☐ Respondent knowingly filed a frivolous asylum application after proper
notice.
- ☐ Respondent was advised of the limitation on discretionary relief for
failure to appear as ordered in the Immigration Judge's oral decision.
- ☐ Proceedings were terminated.
- ☐ Other:

Date: ~~Aug 28, 2013~~

Sep 5, 2013

DAN TRIMBLE

Immigration Judge

Appeal: Waived/Reserved Appeal Due By: