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Nov 28 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Frank R. Addy, Circuit Court Judge

THE STATE,

APPELLANT,

V.

JOEY CORVELL REID,

RESPONDENT.

APPELLATE CASE NO. 2021-001465

INITIAL BRIEF OF RESPONDENT

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ATTORNEY FOR RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUES ON APPEAL

1.

Can a circuit court judge vacate a sentencing order issued by another circuit judge when there was no appeal taken from the original sentence?

2.

Should a sentence that was not appealed by either party become the law of the case even though it was not permitted by statute?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE ON APPEAL

Do either the general rule that one circuit judge may not overrule another circuit judge or the doctrine of "law of the case" require a trial court to enforce a sentence that the parties agree is illegal?

STATEMENT OF THE CASE

On January 27, 2014, respondent Joey Reid pled guilty before the Honorable Doyet Early pursuant to a negotiated plea to one count of first-degree assault and battery and one count of attempted murder. Accepting the plea and following the negotiation for sentencing, Judge Early sentenced Reid to ten years' imprisonment on the assault charge and a consecutive twenty years' imprisonment suspended to five years' probation for attempted murder. No appeal was taken.

Reid began serving his probationary sentence and the State issued warrants seeking to revoke his probation. On October 28, 2021, a hearing on the probation warrants was held before the Honorable Frank R. Addy, Jr. R. _____. David Stumbo represented the State, Agent Wright appeared for DPPPS, and Tristan Shaffer represented Reid. R. _____. On December 31, 2021, Judge Addy issued a written order refusing to revoke Reid's probation, vacating Reid's attempted murder sentence, and granting Reid leave to move to withdraw his guilty plea to attempted murder. R. _____. DPPPS appealed to this Court.

STANDARD OF REVIEW

The issues before the Court are legal and should be reviewed *de novo*.

ARGUMENT

Neither the general rule that one circuit judge may not overrule another circuit judge nor the doctrine of “law of the case” requires a trial court to enforce a sentence that the parties agree is illegal.

Two valid and reasonable legal principles collide in this appeal. The first principle is that one circuit judge may not overrule another circuit judge. The second is that courts may not condone illegality, even though urged to do so by the parties. The trial court recognized this dilemma and decided that a “do-over” was the proper outcome. This Court should affirm.

No dispute exists that the sentence given to respondent Joey Reid (“Reid”) for attempted murder is illegal. Appellant properly admits this in the statement of its second issue on appeal. Br. App. at 4 (“...even though it was not permitted by statute.”). In 2014, before the Honorable Doyet A. Early, III, respondent Reid pled guilty with a negotiated plea to first-degree assault and battery and to attempted murder. R. ____ (Sentencing Sheets). Tr. 11, l. 4 – 17. Judge Early sentenced Reid to ten years’ imprisonment for the assault and battery conviction. R. ____ (Sentencing Sheets). Tr. 11, l. 4 – 12, l. 24. Judge Early also sentenced Reid to a consecutive twenty years’ imprisonment for attempted murder, suspended to five years’ probation. R. ____ (Sentencing Sheets). Tr. 11, l. 4 – 12, l. 24.

Reid’s attempted murder sentence is patently illegal because it cannot be suspended and probation cannot be imposed. S.C. Code Ann. § 16-3-29. The attempted murder statute provides:

A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted.

S.C. Code Ann. § 16-3-29 (emphasis added). The plain language of the statute makes Reid's sentence illegal.

Reid served his active sentence for assault and battery and began serving probation. When the probation department brought Reid before Judge Addy on a probation violation warrant, the parties agreed that the sentence was illegal. Tr. 5, l. 1 – 21. Tr. 13, l. 5 – 15, l. 21. Reid argued that the probation warrant should be dismissed because the sentence was illegal. Tr. 7, l. 4 – 7. The probation department argued that because no one appealed the sentence, the department was required to enforce the sentence as given and sought a ten-year revocation. Tr. 13, l. 5 – 15, l. 21. R. ___ (Dec. 31, 2021, Order at p. 2 and n.6).

The trial judge first refused to revoke Reid's probation because of the illegal sentence. R. ___ (Dec. 31, 2021, Order at p. 8). Judge Addy then crafted a result not sought by either party. R. ___ (Dec. 31, 2021, Order at p. 9, n.18). The judge vacated Reid's sentence and ordered resentencing. R. ___ (Dec. 31, 2021, Order at p. 9). Judge Addy granted Reid leave to move to withdraw his plea to attempted murder at the resentencing. R. ___ (Dec. 31, 2021, Order at p. 9-10).

The State argues that Judge Addy had no authority to vacate Reid's sentence because it "is well-settled that one circuit judge may not reverse an order of another circuit judge." Br. App. at 4. The general legal principle cited by the State is correct and is, admittedly, not without force in this case. Judge Addy recognized this principle and stated he was "not attempting to overrule another judge." R. ___ (Dec. 31, 2021, Order at p. 9, n. 18).

The judge was rightly concerned that instead of being asked to overrule another circuit judge, he was being asked to enforce an illegal sentence. Faced with this dilemma, Judge Addy made the right decision. The court correctly started from the fact that Reid's sentence came from

a negotiated plea. Plea bargaining and negotiated sentences are interpreted using principles from contract law. See Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). In State v. Thrift, the Court cited with approval a Fourth Circuit case holding that while contract law applies, “a plea agreement analysis must be more stringent than a contract because the rights involved are fundamental and constitutionally based.” 312 S.C. 282, 293, 440 S.E.2d 341, 347 (1994) citing United States v. Ringling, 988 F.2d 504 (4th Cir. 1993).

The court then correctly stated it was without the power to enforce an illegal contract. See Hinnant v. Southern Ry. Co., 113 S.C. 19, 100 S.E. 709 (1919). In Hinnant, the plaintiff hitched a ride on a train and then sued for injuries sustained when it crashed. Id. State and federal statutes prohibited the plaintiff’s presence on the train. Id. The plaintiff claimed he was legally on the train pursuant to a contract with the conductor and engineer. Id. The Court held, “Neither the conductor, the engineer, nor the defendant itself can make a contract in violation of law, or waive the requirements of the law.” Id.

Similar to the conductor and the plaintiff in Hinnant, the contract between Reid and the solicitor violated the law. Judge Addy correctly concluded that such a contract was void and refused to enforce it. Refusing to enforce an illegal contract does not contravene the general rule that one circuit judge may not overrule another circuit judge. Judge Addy correctly refused to violate Reid’s probation. Reid properly raised the illegality of the sentence as a defense to the probation violation warrant. See State v. Lee, 350 S.C. 125, 132-33, 564 S.E.2d 372, 376 (Ct. App. 2002) (“the statutory authority of the sentencing court to issue the underlying sentence could have been challenged in a motion to reconsider the sentence, on direct appeal, or as a defense to the probation revocation proceedings.”)

Judge Addy also was correct to vacate the sentence and grant Reid leave to withdraw his plea. The court recognized that continuing Reid on a probationary sentence that it was impossible for him to violate deprived the State of the benefit of its bargain. This ruling does not violate the doctrine of “law of the case” and was, as the trial judge recognized, the only way out of this dilemma. Judge Addy could not violate Reid without enforcing an illegal sentence. And as stated above, State v. Lee allows a probationer to challenge the legality of the sentence as a defense to revocation. Therefore, the State’s “law of the case” argument fails.

Additionally, placing the parties back in the position before the illegal contract was made comports with the duties of solicitors and the Rule of Lenity. “Prosecutors are ministers of justice and not merely advocates.” State v. Quattlebaum, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000). South Carolina places “unfettered discretion” to prosecute in the hands of solicitors. Thrift at 291-92, 440 S.E.2d at 346-47. While this case involves a mistake by the solicitor (and defense counsel and the court) and not the egregious conduct condemned in Quattlebaum, holding the State to a higher standard with respect to sentencing errors complies with the duties that run with their vast power.

The State should bear the minimal costs of the mistake in this plea bargain, not Reid. The trial judge cited the legal maxim that when parties are of equal fault, the defendant’s position is the stronger (In pari delicto potior est conditio defendentis). R. ___ (Dec. 31, 2021, Order at p. 9). Another rule that also could have been applied is the Rule of Lenity. See State v. Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017). The Rule of Lenity is a canon of statutory construction and holds that any doubt about a statute’s scope should be interpreted in the defendant’s favor. Id. While this rule does not technically apply because the court interpreted an illegal contract instead of a statute, the logic of the rule applies here. Furthermore, the State

should be viewed as the drafter of the contract, and terms of a contract are strictly enforced against the drafter. Maybank v. BB&T Corp., 416 S.C. 541, 574, 787 S.E.2d 498, 515 (2016). While Reid is not seeking enforcement of the terms of the illegal contract, this maxim together with the logic of the Rule of Lenity shows that the State was in the best position to avoid requesting an illegal sentence and cannot now complain when the trial judge undoes the agreement. Faced with a difficult legal question, Judge Addy reached the right result and this Court should affirm.

CONCLUSION

This Court should affirm the decision of the trial court and remand for resentencing or withdrawal of a plea as dictated in the trial court's Order.



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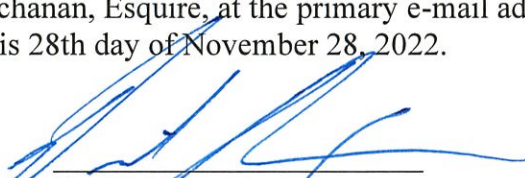
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RESPONDENT.

APPELLATE CASE NO. 2021-001465

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Respondent and Designation of Matter in the above-referenced case has been served upon Matthew C. Buchanan, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 28th day of November 28, 2022.



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Subject: Reid, J - Initial Brief of Respondent - 2021-001465
Date: Monday, November 28, 2022 4:10:00 PM
Attachments: [Reid, J - Initial Brief of Respondent - 2021-001465 - AG Cover Letter.pdf](#)
[Reid, J - Initial Brief of Respondent - 2021-001465.pdf](#)

Mr. Buchanan,

Please find attached for service the Initial Brief of Respondent & Designation of Matter for Joey Corvell Reid's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

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