STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the Circuit Court
The Honorable Frank R. Addy, Jr.

Appellate Case No. 2021-001465

STATE OF SOUTH CAROLINA .....APPELLANT

v.

Joey Reid, #1392728,.....RESPONDENT

REPLY OF APPELLANT

Matthew C. Buchanan
General Counsel

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Parole and Pardon Services
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ATTORNEY FOR APPELLANT

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Argument in reply

A sentence not appealed by either party is the law of the case even if not authorized by statute when the sentence is not disadvantageous to the defendant.

Respondent seeks for this Court to uphold the trial judge's decision to require a new sentencing proceeding, emphasizing the "illegal" nature of the original sentence while downplaying the fact that the Respondent received a significant benefit in its illegality. Admittedly, the sentencing judge should not have suspended the sentence. However, only upon facing a revocation of probation – which would require service of some or all of that suspended sentence – does the Respondent cry foul.

A ruling not objected to becomes the law of the case. State v. Sampson, 317 S.C. 423, 545 S.E.2d 721 (1995). The sentence pronounced by the Honorable Doyet Early on January 27, 2014, was ripe for appeal and/or objection – it was clearly contrary to statute. However, it was not appealed, nor was it challenged under the post-conviction relief act. Furthermore, it was far from an unconscionable sentence. Per the negotiations agreed to by both Respondent and the Eighth Circuit Solicitor's Office, he agreed to the terms of the sentence which included abiding by the conditions of probation or face a revocation of up to twenty years – a sentence that could have been accomplished by reducing the charge to assault and battery of a high and aggravated nature (ABHAN).

Because neither the State nor the Respondent objected to the sentence, it became the law of the case. While originally not legal, by virtue of neither side appealing or challenging the sentence, either on direct appeal or via PCR, it became binding on the parties. Thus, Judge Addy was not asked to enforce an illegal sentence. The sentence before him was a negotiated sentence agreed upon by both parties and ratified by Judge Early. Ideally, the mistake should have been

caught during the time of the plea because the identical sentence could have been achieved by Respondent pleading guilty to ABHAN. Sadly this did not occur, but because neither side appealed, the finality of the negotiated sentence should be upheld and enforced in the subsequent probation violation proceeding.

Respondent argues that the State should "bear the minimal costs of the mistake in this plea bargain, not Reid." Br. Of Respondent at 7. Appellant submits that the costs would be significant to the State. A resentencing under attempted murder cannot restore Respondent's probationary sentence, and anything greater than a suspended sentence would certainly be challenged by Respondent as contrary to the original negotiation. Resuming or renewing plea negotiations, as the Honorable Frank R. Addy, Jr. suggests in his order, would not result in a minimal cost for the State. The original offense was committed in 2012, more than ten years ago. The State is not in the same bargaining position as it was in 2013 and 2014, when witnesses' recollections were fresher and their whereabouts known. Allowing Respondent to withdraw his plea and forcing the State to prepare for a possible trial years after the finality of a negotiated plea disproportionately punishes the State and rewards Respondent – especially when he failed to live up to his terms of the agreement by violating probation.

Respondent also calls for the Rule of Lenity and cites State v. Quattlebaum,[1] a case of egregious prosecutorial overreach. If anything, this is a case of prosecutorial *underreach*. Agreeing to a probationary sentence is far from egregious. Notably, Respondent did not object to his own negotiated windfall until faced with the consequences of failing to abide by the conditions of probation. Thus, instead of fearing to enforce an "illegal sentence" as done in this case, the court should have embraced the version of judicial estoppel espoused by Judge Few in his dissent in

[1] 338 S.C. 441, 527 S.E.2d 105 (2000).

State v. Blakney, 410 S.C. 244, 763 S.E.2d 622 (2014). As discussed by Few, judicial estoppel would "prevent[] a litigant from asserting a position inconsistent with ... one the litigant has previously asserted in the same or related proceeding." Id. At 255 (internal citations omitted). Respondent here *negotiated* for a probationary sentence. Then, years later in a related proceeding (his probation violation hearing), he objected to having received the probationary sentence in the first place. Placing the fault and significant costs upon the State as a consequence for the original sentence unduly burdens the State and unduly rewards Respondent.

Conclusion

Neither party appealed the sentence and Respondent did not challenge his sentence in PCR. As such, the sentence imposed became the law of the case. The violation court could have and should have treated the sentence before it as a fully legitimate sentence to which both Respondent and the State had agreed. Respondent's objections to the sentence came only *after* he failed to abide by the conditions of supervision. He should not be rewarded and the State should not be forced into a far worse position as a consequence of his actions. The only fault of the State was committing the same mistake that Respondent and the sentencing court also shared. To throw the burden of that mistake years after the fact solely upon the State should not be the solution. The circuit court can and should be authorized to proceed with the violation of probation, where it can exercise its sound discretion – including revocation of the suspended sentence.

Respectfully submitted,

Matthew C. Buchanan #73740
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CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant to counsel for Appellant, certify that I have served a copy of the *Reply Brief*, dated December 6, 2022 on Respondent by depositing the same in the United States mail, postage prepaid, this 6th day of December, 2022, addressed to:

David Alexander, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, S.C. 29211-1589

I further certify that all parties required by Rule to be served have been served.

Dawn K. Nichols,
Executive Assistant

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December 6, 2022

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street- 5th Floor
Columbia, South Carolina 29201

RE: State v Joey Corvell Reid
Case No.: 21-001465

Dear Ms. Kitchings:

Please find enclosed Appellant's Reply Brief December 6, 2022, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures

cc: David Alexander, Appellate Defender

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