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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE 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

PETITION FOR REHEARING

The Appellant, the South Carolina Department of Probation, Parole and Pardon Services (the Department), respectfully petitions this Court for rehearing pursuant to Rule 221(a), SCACR. Respondent hereby seeks a rehearing on the grounds that this Court may have misapprehended or overlooked several crucial points in its determination that the order of the probation revocation court was interlocutory and no subsection of section 14-3-330 was applicable.

Specifically, Respondent submits this Court did not acknowledge the impropriety of the probation revocation court's order. This Court's determination that the order being appealed was interlocutory fails to address the fact the court simply lacked the authority to issue it. The Department brought revocation of probation procedures before the court pursuant to section 24-21-460, which outlines the actions a court may take in the context of a probation violation hearing. The court "may revoke the probation or suspension of sentence and shall proceed to deal with the

case as if there had been no probation or suspension of sentence except that the circuit judge before whom such defendant may be so brought shall have the right, in his discretion, to require the defendant to serve all or a portion only of the sentence imposed." Essentially, the probation revocation court's options are to revoke the suspended sentence, revoke a portion of the suspended sentence and continue. Certainly, the court may also continue the probation with the same or modified conditions of supervision. S.C. Code Section 24-21-430. However, vacating the original sentence is not – nor should it be – an option for circuit judges presiding over probation violation hearings. The appellate court may correct errors of law in its authority to review the decisions of circuit courts presiding over probation violations. *State v. White*, 218 S.C. 130, 135, 61 S.E.2d 754, 756. Appellant submits that the circuit court clearly committed an error of law by issuing an order outside of its authority to make.

A circuit court judge generally "is without authority to consider a criminal matter once the term of court during which judgment was entered expires." *State v. Warren*, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011); *see State v. Hinson*, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) ("It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires."). And, that rule is only inapplicable when either: (1) a timely post-trial motion is filed; or (2) a motion for a new trial based on after-discovered evidence is filed. *State v. Campbell*, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008). In light of that, a circuit court judge lacks the authority to act in a particular matter once the term of court has ended absent the filing of a timely post-trial motion or a specific type of new trial motion. *Id.*; see Rule 29(a), SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.").

In vacating a final sentence and ordering the resentencing, the probation violation court clearly overstepped its authority. Appellant submits that the remand is a nullity, striking down a sentence the circuit court had no authority to strike down. *See Blanton v. Stathos*, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002) ("A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on."); cf. *Tant v. South Carolina Dep't of Corr.*, 408 S.C. 334, 342-343, 759 S.E.2d 398, 402 (2014) ("The judge sent the letter two-and-a-half years after sentencing and at that point no longer had jurisdiction over the case. Therefore, Judge Saunders was without jurisdiction to make any subsequent pronouncement concerning Tant's sentence." (citation omitted)).

Appellant respectfully submits that if null orders issued by judges without authority over the matter may not be appealed because they are "interlocutory," then no order can ever be considered final. Every order could be subject to a remand by judges without authority and any party relying on the order would be without recourse to appeal except to let the remand run its course. Clearly, this Court should grant this Petition for Reconsideration and address the merits of this appeal.

Furthermore, Appellant submits that this matter falls within the section 14-3-330. In remanding the matter for resentencing, the probation violation court not only overstepped its statutory authority in issuing such an order, but the order is final in all practical considerations, thus falling squarely under subsection (2)(a) of section 14-3-330. The probation violation court's remand for resentencing clearly "determines the action and prevents a judgment from which an appeal might be taken," as contemplated by the statute.

A resentencing puts the State in the worst possible position: the current plea arrangement of ten years' imprisonment has already been served on the first-degree assault, so the remainder of the agreement, twenty years' imprisonment suspended to probation, is prohibited by statute. The terms of the negotiation would necessitate the withdrawal or vacation of the plea to the attempted murder and although a new plea to a lesser included offense such as assault and battery of a high and aggravated nature could be tendered, nothing forces Respondent to accept such a plea. The State would then be required to bring a ten-year-old case to trial after it had already negotiated a resolution nine years ago. Regardless of the resolution of the resentencing order, it stretches the imagination to envision a scenario in which the result would not be rendered moot or where the probation court's improper order would otherwise be eligible for proper review. Consequently, this Court should consider the probation court's order remanding the matter for resentencing as a final order under section 14-3-330(2)(a), and consider the merits of the State's appeal.

In the alternative, Appellant submits that the order for "resentencing" is effectively an order for a new trial in light of the fact that the sentence was negotiated, meeting the requirements of section 14-3-330(2)(b). As stated earlier, the probation violation court's order remanding the matter for a resentencing will not result in a new sentence because of the negotiated nature of the sentence and the statutory prohibition of the probationary sentence all sides had agreed to. Consequently, the very real likelihood of a withdrawal of the attempted murder plea will be followed by a refusal to plea to any other sentence – forcing the State to call the case to trial. Regardless of the result of such a trial, the order vacating the original sentence will never be reviewed.

A third alternative would be to consider section 14-3-330(3) as applicable to the situation. A probation violation hearing is a proceeding that follows a judgment – that being conviction and

sentencing. A ruling not objected to becomes the law of the case. *State v. Lee*, 350 S.C. 125, 132-33, 564 S.E.2d 372, 376 (Ct.App. 2002). It is uncontroverted that neither side appealed the plea, conviction, and sentencing, so the judgment of the matter stands. The probation violation court's remand clearly affects substantial rights in this case – that being the State's interest in the finality of a plea bargain and sentencing. It cannot be understated how devastating such a ruling by the probation violation court will be; the finality of all future probationary sentences will no longer be certain if a circuit judge hearing an alleged violation can simply remand the matter for a new sentencing without that order being subject to appellate review.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court reconsider its ruling that the probation court's remand for resentencing is not an appealable order. Not only was the order clearly outside the court's authority, but the order falls within several categories of section 14-3-330 that make it immediately appealable. Otherwise, a judge presiding over a probation revocation would have unchecked authority to reach back and vacate, alter, or even extend a criminal sentence. Such a result would be absurd. Therefore, this Court should grant this motion to reconsider and address the appeal on its merits.

Respectfully submitted,

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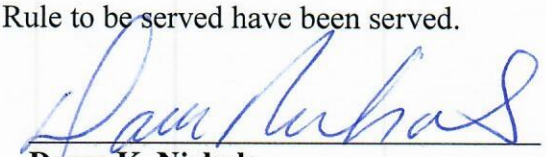
CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant to counsel for Appellant, certify that I have served the Petition for Rehearing dated September 29, 2023, on Respondent this 2nd day of October, 2023, by placing a copy in first class United States mail, postage prepaid, upon the following:

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

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



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