

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Richland County
Honorable L. Casey Manning, Circuit Court Judge
Honorable DeAndrea G. Benjamin, Circuit Court Judge
Appellate Case No. 2023-001436

S.C. SUPREME COURT

THE STATE,

Respondent,

vs.

TERRELL DENARD KNIGHTNER,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

“Did the Court of Appeals err in refusing to address the merits of whether the judge abused his discretion in ordering placement on the sex offender registry, after a probation violation but without a showing of good cause, because the conditional order finding that Petitioner was not required to register unless there was a violation of probation, was not appealed?”

COUNTER-STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals somehow err by affirming the circuit court judges’ rulings when both the plea judge and the probation revocation hearing judge correctly enforced the unambiguous and unappealed sentencing order issued by the plea judge, which required Knightner to register as a sex offender if he failed to comply with the terms of the sentencing order, after Knightner violated the conditions of his probation over two years after the sentencing order was issued and had become final?

STATEMENT OF THE CASE

Procedural History

In July of 2016, the Richland County Grand Jury indicted Petitioner Terrell Denard Knightner for one count of third-degree criminal sexual conduct. On December 13, 2016, Knightner appeared in the Richland County Court of General Sessions before the Honorable L. Casey Manning, circuit court judge, and—after waiving presentment—pled guilty to the first-degree assault and battery. At the conclusion of the plea hearing, the plea judge accepted Knightner’s guilty plea, sentenced him to a three-year term of imprisonment, suspended the sentence to a three-year term of probation, and ordered Knightner to participate in sex offender counseling. In addition to that, the plea judge directed defense counsel to prepare an order concerning the probation conditions discussed during the plea hearing. Thereafter, on the following day, the plea judge—consistent with his statements during the plea hearing—filed a written sentencing order setting out a number of conditions for Knightner’s probation, including “[t]hat [Knightner] [wa]s not to be placed on the sex offender registry unless there [wa]s a violation of [the identified] terms” of his probation. Notably, following that, Knightner did not appeal from his guilty plea, his sentence, or the sentencing order.

Thereafter, more than two years later, Knightner violated the conditions of his probation, and an arrest warrant was issued on August 29, 2018, alleging multiple violations, including violations of the standard sex offender conditions. On May 31, 2019, a hearing was conducted before the Honorable DeAndrea G. Benjamin, circuit court judge, in the Richland County Court of General Sessions to address Knightner’s multiple violations of the terms of his probation. At the conclusion of the hearing, the probation revocation judge revoked sixty days of Knightner’s sentence, directed he serve that revoked sentence on weekends, and ordered him to register as a

sex offender based on the language contained in the plea judge’s sentencing order. That ruling was subsequently confirmed through a written order issued on the same date.

Following that, Knightner filed a motion to reconsider on June 7, 2019. In response, a hearing was conducted on June 27, 2019, in the Richland County Court of General Sessions with the plea judge—Judge Manning—presiding. However, no one from the Fifth Circuit Solicitor’s Office was notified of that hearing, and the State was represented during the hearing solely by a probation agent. At the conclusion of the hearing, the plea judge granted Knightner’s motion “without prejudice” and noted the State would be permitted to bring the matter back up if so desired. On the same date, an order was filed confirming Knightner was removed from the sex offender registry “without prejudice.”

Upon learning of the order, the State—through the Fifth Circuit Solicitor’s Office—filed a motion to reconsider on July 3, 2019. In response, the plea judge conducted another hearing in the Richland County Court of General Sessions on January 14, 2020. At the conclusion of the hearing, the plea judge requested both parties submit proposed orders. Thereafter, through an order filed on February 7, 2020, the plea judge rescinded his earlier order and reinstated the probation revocation judge’s order placing Knightner on the sex offender registry. Knightner then filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing—issued an unpublished decision unanimously affirming in Knightner’s case. State v. Knightner, Op. No. 2023-UP-161 (S.C. Ct. App. filed Apr. 26, 2023). Thereafter, Knightner timely filed a petition for rehearing, and the petition was denied. However, the Court of Appeals withdrew its earlier opinion and issued a revised unpublished opinion again affirming. State v. Knightner, Op. No. 2023-UP-161 (S.C. Ct. App. refiled June 28, 2023). Following that, Knightner again timely filed a petition for

rehearing, and that petition was once again denied. Knightner then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

In 2012, Knightner came into contact with his victim (“Victim”) through an internet dating website. (R. pp. 16-17). After that, the two began dating for a brief period of time running from December of 2012 into January of 2013. (R. p. 17). During that month-long span, the two engaged in consensual sexual intercourse as part of their relationship. (R. p. 17). However, not long after it began, the relationship ended. (R. p. 17). Nonetheless, Victim elected to continue her friendship with Knightner. (R. p. 17). Sadly, that decision proved to be a traumatic one for her. (R. p. 17).

On January 17, 2013, Knightner invited Victim to come over to his residence, and she accepted his invitation. (R. p. 17). The two proceeded to hang out with one another for a while, but, eventually, Victim decided it was time for her to leave. (R. p. 17). However, when she tried to do so, Knightner grabbed her by the arm and asked her to stay. (R. p. 17). Victim responded she had to go. (R. p. 17). At that point, Knightner told her no, physically turned her around, and pushed her onto his bed. (R. p. 17). Victim tried to get up from the bed, and, again, Knightner pushed her down. (R. p. 17). He then removed Victim’s pants, held her down, and proceeded to sexually assault her while ignoring her pleas for him to stop. (R. p. 17).

Following that shocking occurrence, Victim initially did not reveal what had happened to anyone, but, after waiting for a week, she decided to seek help, which resulted in the incident being promptly reported to law enforcement. (R. p. 17). During the ensuing investigation, Knightner was confronted about the incident and he admitted Victim had been in his bedroom on the incident date. (R. p. 18). However, Knightner denied “any sort of sexual conduct” occurred.

(R. p. 18). Subsequently though, Knightner exchanged text messages with Victim, and, during their exchange, he candidly apologized to her when she personally confronted him about what he had done to her. (R. p. 18).

Subsequent to that, Knightner was arrested and indicted for third-degree criminal sexual conduct in connection to his rape of Victim. (R. pp. 1-2). Following his arrest, Knightner—with the assistance of defense counsel—engaged in plea negotiations with the State. (R. pp. 5-6; p. 13). As a result of those negotiations, the State elected to reduce the indicted charge to first-degree assault and battery with the condition Knightner would be required to complete sex offender counseling. (R. pp. 5-6; p. 13). Furthermore, the State reached an agreement Knightner would not have to register as a sex offender *if* he successfully completed that required counseling. (R. pp. 5-6; p. 13).

Ultimately, Knightner, who was thirty-two years old at the time, accepted the agreement and pled guilty to first-degree assault and battery as negotiated. (R. p. 10; p. 19). And, in doing so, Knightner agreed he assaulted Victim in the manner alleged with the only quibble on the part of the defense being with the amount of force used to perpetrate the sexual assault. (R. pp. 8-9; pp. 16-18).

As a result of the guilty plea, the plea judge—Judge Manning—sentenced Knightner to a three-year term of imprisonment that was suspended to a three-year term of probation. (R. pp. 20-21; p. 25). Furthermore, consistent with the conditions discussed during the plea hearing, an order—which defense counsel was directed to prepare—was issued outlining the specific conditions of Knightner’s probation. (R. pp. 21-22; p. 26). Amongst the conditions imposed, Knightner was required to “abide by all sex offender conditions” and “[wa]s not to be placed on

the sex offender registry *unless* there [wa]s a violation” of the terms outlined in the order. (R. p. 26) (emphasis added).

Just over two years after that, an arrest warrant was issued because Knightner had committed multiple violations of the terms of his probation. (R. pp. 27-28). Amongst his violations, Knightner accessed social media, viewed pornography, actively—and unsuccessfully—took steps to prevent his violations from being discovered, and had contacts with minor children without permission.¹ (R. pp. 33-34).

In response to that, a probation revocation hearing was held on the matter with Judge Benjamin—as opposed to Judge Manning—presiding.² (R. p. 33). During the course of the hearing, Judge Benjamin revoked a portion of Knightner’s suspended sentence and directed the matter be brought back before Judge Manning to address whether Knightner should be required to register as a sex offender. (R. p. 38). However, after further review of the conditions specified in Judge Manning’s sentencing order, Judge Benjamin changed her ruling and ordered Knightner to register as a sex offender based on the order’s language. (R. p. 42; p. 45; p. 54).

¹ More specifically, the arrest warrant alleged Knightner “failed to follow the advice and instructions of his agent in that he failed to refrain from accessing the social media site ‘Snapchat’; failed to refrain from accessing pornographic websites having admitted to watching porn and masturbating as a result; failed to refrain from deleting incriminating information from his phone having admitted to ‘erasing’ things so his agent would not find it; failed to actively participate in Sex Offender Counseling having been terminated on 08/13/2018; failed to refrain from having contact with minors, having confessed on a polygraph examination to having contact with his two minor aged nieces and nephew without prior permission from his supervising agent; failed to comply with the Computer/Internet Use Agreement for Sex Offenders by accessing pornography, using social media and deleting material from his phone; failed to make truthful reports to agents prior to his polygraph examination; failed to pay supervision fees being \$640 in arrears, failed to pay Court Ordered Fines being \$400 in arrears, and has failed to pay his DNA fee being \$230 in arrears.” (R. p. 27).

² By that point, a different attorney was representing Knightner from the one who represented him at the time he entered his guilty plea. (R. p. 3; p. 31).

Subsequent to that, defense counsel filed a motion seeking reconsideration of the order requiring Knightner to register as a sex offender. (R. pp. 55-59). As support for the motion, defense counsel claimed Judge Manning's sentencing order was ambiguous.³ (R. p. 56). Furthermore, defense counsel alleged: (1) the probation revocation judge had no authority to order sex offender registration; (2) no good cause for such registration had been shown; and (3) Judge Manning's sentencing order was invalid because a determination of whether Knightner would be placed on the sex offender registry purportedly had to be made at the time of conviction. (R. pp. 56-59).

In response to that motion, a hearing was conducted before Judge Manning. (R. p. 61). During that hearing, defense counsel argued Judge Benjamin's order should be rescinded because good cause had not been shown. (R. p. 61). Ultimately, upon considering the matter, Judge Manning granted the motion "without prejudice" due to the "technicality" of Judge Benjamin ordering sex offender registry despite not being the original sentencing judge. (R. p. 61). However, Judge Manning expressly noted the State could bring the matter back before him if it wished to do so. (R. p. 61).

Consistent with Judge Manning's directive, the State filed a motion for reconsideration upon the solicitor learning of the order. (R. pp. 65-66; p. 71). Once again, Judge Manning conducted a hearing on the matter. (R. p. 69). During that hearing, Judge Manning expressed confusion about what had happened up to that point and noted he felt "misled" by defense counsel's actions. (R. pp. 69-70). He further affirmed his sentencing order specified Knightner was to be placed on the sex offender registry if he did not successfully complete the specified

³ Earlier, during the probation revocation hearing, defense counsel appeared to agree Judge Manning's order indicated Knightner would be required to register as a sex offender if he violated the conditions of his probation. (R. pp. 39-40).

conditions of his probation, and he pointed out that order was what Judge Benjamin relied upon when issuing her ruling. (R. pp. 70-71).

Upon considering the matter once again with participation from both sides, Judge Manning granted the State's motion to reconsider. (R. pp. 80-81; pp. 84-85). As a result, he rescinded his earlier order and reinstated Judge Benjamin's order that placed Knightner on the sex offender registry in a manner consistent with his sentencing order. (R. p. 26; p. 54; p. 85).

Following that, Knightner—for the first time in this matter—appealed, arguing Judge Manning erred by granting the motion to reconsider because no good cause purportedly existed to justify placing him on the sex offender registry. (App'x p. 14). On appeal, the Court of Appeals affirmed. (App'x pp. 13-14). In affirming, the Court of Appeals found Judge Manning's sentencing order—including its condition Knightner would not be placed on the sex offender registry *unless* he violated the conditions of his probation—was the law of the case because it had not been appealed. (App'x p. 14). Furthermore, the Court of Appeals determined Judge Benjamin as a probation revocation judge did not have the authority to alter the provisions of Judge Manning's sentencing order as only the plea judge had authority to do so pursuant to established South Carolina law. (App'x p. 14). As a result, the Court of Appeals concluded Judge Manning correctly reinstated Judge Benjamin's order requiring Knightner to register as a sex offender since the unappealed sentencing order required Knightner to register as a sex offender if and when he violated the conditions of his probation.⁴ (App'x p. 14).

⁴ The Court of Appeals's opinion mistakenly indicates Knightner violated "his parole" instead of the terms of his probation. (App'x p. 14).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). When reviewing a sentencing issue on appeal, an appellate court will only interfere with a trial judge’s sentencing decisions in rare and unusual circumstances in light of the broad discretion afforded to trial judges on such matters. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952); see State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974) (“A broad discretion is allowed the trial judge in imposing sentence within the legal limits.”). Relatedly, an appellate court will not interfere with a trial judge’s discretionary decision to order a criminal defendant to register as a sex offender absent an abuse of discretion. In re M.B.H., 387 S.C. 323, 327, 692 S.E.2d 541, 542-543 (2010); see State v. Fuller, 425 S.C. 468, 479, 822 S.E.2d 910, 916 (Ct. App. 2019) (recognizing an appellate court reviewing a discretionary decision regarding sex offender registration must apply a “deferential” standard of review). Likewise, “[t]he determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court[,]” and, thus, such a ruling will only be reversed on appeal for an abuse of discretion. State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. Patterson, 425 S.C. 500, 507, 823 S.E.2d 217, 221 (Ct. App. 2019) (citation and internal quotations omitted); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge’s ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

The Court of Appeals correctly affirmed the circuit court judges' rulings because both the plea judge and the probation revocation hearing judge correctly enforced the unambiguous and unappealed sentencing order issued by the plea judge, which required Knightner to register as a sex offender if he failed to comply with the terms of the sentencing order, after Knightner violated the conditions of his probation over two years after the sentencing order was issued and had become final.

Knightner contends the Court of Appeals erred by affirming the circuit court judges' ruling requiring him to register as a sex offender. As support for that contention, Knightner maintains Judge Manning's sentencing order requiring him to register as a sex offender if and when he violated the conditions of his probation could not be challenged at the time it was issued and, instead, was only ripe for challenge and review once a probation violation occurred.⁵ Knightner further maintains he should not have been ordered to register as sex offender because good cause was never shown while contending the violation of probation was not sufficient to constitute the necessary good cause. Contrary to Knightner's contentions, Judge Manning heard and accepted Knightner's guilty plea in connection to his sexual assault of his victim and, as the sentencing judge, validly ordered Knightner to register as a sex offender if he failed to comply with the conditions of his probation. And, just as the Court of Appeals correctly recognized, that sentencing order was not appealed and, as a result, was final and became the law of the case. Based on that, Judge Benjamin correctly enforced that unappealed final order when Knightner

⁵ Although Knightner now appears to maintain there was no basis to challenge the sentencing order's registration requirement until he actually violated the terms of his probation, defense counsel—in the motion for reconsideration filed in response to Judge Benjamin's order—took the position Judge Manning's sentencing order was invalid *from the outset* because Judge Manning elected not to place Knightner on the sex offender registry at the time of sentencing. (R. p. 59). Thus, defense counsel believed and argued there were flaws with the sentencing order that—from the moment it was issued—rendered it invalid and prevented it from *ever* being enforced. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (explaining an issue conceded at trial cannot be asserted later on appeal); see also State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) (“[A] party cannot argue one theory at trial and a different theory on appeal.”).

violated the conditions of his probation over two years after the sentencing order was issued and—just as the Court of Appeals correctly recognized—properly required him to register as a sex offender in a manner consistent with the order’s mandates. For the same reasons, Judge Manning correctly reinstated Judge Benjamin’s order after initially incorrectly rescinding it. Accordingly, the Court of Appeals committed no error by affirming circuit court judges’ rulings on appeal. Knightner’s petition for a writ of certiorari should be denied.

A. The Court of Appeals correctly concluded Judge Manning’s unappealed sentencing order had become final and was the law of the case.

Pursuant to South Carolina law, 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.”). Significantly, that general rule is inapplicable *only* 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); see State v. Pfeiffer, 427 S.C. 10, 13, 828 S.E.2d 764, 766 (2019) (“In a criminal case, once the term of court ends, the trial court lacks jurisdiction to consider additional matters unless a party files a timely post-trial motion.”). Thus, absent the filing of a timely post-trial motion or a specific type of new trial motion, a circuit court judge lacks the authority to act in a particular matter once the term of court has ended. Campbell, 376 S.C. at 215, 656 S.E.2d at 373; 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.”). Meanwhile, pursuant to the law-of-the-case doctrine, a ruling becomes the law of the case

regardless of whether it is right or wrong *when it is not appealed*. State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012).

In the case sub judice, Judge Manning—as part of the sentence he imposed upon Knightner after Knightner pled guilty to first-degree assault and battery in connection to his sexual assault of his victim—ordered Knightner would not be required to register as a sex offender *unless* he violated the conditions of his probation. Following that, Knightner did not appeal—timely or otherwise—any aspect of Judge Manning’s sentencing order, including the portion of it that Knightner now contends was invalid because no expressly-articulated finding of good cause was made. As a result, that order became final, was controlling in Knightner’s case going forward, and could not validly be changed or ignored, including when Knightner violated the conditions of his probation over two years later. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”); see also State v. Best, 257 S.C. 361, 368, 186 S.E.2d 272, 275 (1972) (“Under our judicial system the presiding judge in the Circuit Court loses jurisdiction with the adjournment of the term. It follows that after the adjournment of the term of court at which sentence is imposed the judge is without authority to change, amend or modify it.” (citations omitted)); 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)). Accordingly, the Court of Appeals committed no error whatsoever in finding Judge Manning’s unappealed sentencing order was the law of the case under the circumstances involved. See Black, 400 S.C. at 28, 732 S.E.2d at 890 (instructing an unappealed ruling—

regardless of whether it is right or wrong—becomes the law of the case). Knightner’s petition for a writ of certiorari should be denied.

B. The Court of Appeals correctly determined Judge Benjamin had no authority to alter Judge Manning’s unappealed sentencing order and, therefore, properly ordered Knightner to register as a sex offender in a manner consistent with the sentencing order after he violated the conditions of his probation.

One potential consequence of a criminal conviction in South Carolina is the offender may be ordered to register as a sex offender. S.C. Code Ann. § 23-3-430(A). If an offender is convicted of certain specified offenses, a trial judge must order that offender to so register. S.C. Code Ann. § 23-3-430(C). Meanwhile, if an offender is convicted of a crime not automatically mandating registration, a trial judge has discretionary authority to order that offender “as a condition of sentencing” to register as a sex offender “if good cause is shown by the solicitor.” S.C. Code Ann. § 23-3-430(D); see M.B.H., 387 S.C. at 327, 692 S.E.2d at 542 (“[A] finding of good cause in this context means only that the judge must consider the facts and circumstances of the case to make the determination of whether or not the evidence indicates a risk to reoffend sexually.”).

At the time of sentencing in the case at bar, Judge Manning issued a sentencing order requiring Knightner to register as a sex offender if and only if he subsequently violated the conditions of his probation. And, as previously noted, that sentencing order was not appealed and, thus, became the law of Knightner’s case. See Smith v. State, 413 S.C. 194, 196, 775 S.E.2d 696, 697 (2015) (recognizing an unappealed ruling becomes the law of the case regardless of whether it was right or wrong).

Under such circumstances, Judge Benjamin was bound to enforce that unappealed sentencing order and was wholly without authority to alter or ignore its terms. See Tisdale v. Am. Life Ins. Co., 216 S.C. 10, 13, 56 S.E.2d 580, 581 (1949) (“It is *axiomatic* (1) that an order

not appealed from is the law of the case, and (2) a Circuit Judge does not have the power to reverse the ruling of another Circuit Judge.” (emphasis added)); see also Dinkins v. Robbins, 203 S.C. 199, 26 S.E.2d 689, 690 (1943) (“The rule is well settled that the prior order of one Circuit Judge may not be modified by the subsequent order of another Circuit Judge, except in cases when the right to do so has been reserved to the succeeding Judge, when it is allowed by rule of court or statute, or when the subsequent order does not alter or substantially affect the ruling or decision represented by the previous order.”). Accordingly, just as the Court of Appeals correctly concluded, Judge Benjamin did not abuse her discretion or commit any other error of law by faithfully complying with the terms of the sentencing order and by validly ordering Knightner to register as a sex offender as was required by the order when he violated the conditions of his probation, and Judge Manning likewise did not commit any error by correctly reinstating Judge Benjamin’s proper order after he initially incorrectly rescinded it. Cf. State v. Davis, 375 S.C. 12, 16, 649 S.E.2d 178, 180 (Ct. App. 2007) (“[O]nce the Sentencing Judge’s order became final, neither he, nor the Probation Judge would be permitted to alter the sentence he had handed down.”). Knightner’s petition for a writ of certiorari should be denied.

CONCLUSION


For all the foregoing reasons, it is respectfully submitted Petitioner's petition for a writ of certiorari should be denied.

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