

RECEIVED

Nov 13 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JARIUS SANDERS,

APPELLANT

APPELLATE CASE NO. 2023-000897

INITIAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The circuit court judge erred in revoking one-year of appellant’s
community service time because the revocation resulted in an
increased sentence that extended beyond the parameters of the
prior sentence handed down in the case.....4

CONCLUSION.....6

TABLE OF AUTHORITIES

Cases

Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987) 3

State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (S.C. Ct. App. 1999)..... 3

State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010) 5, 6

Other Authorities

S.C. Code Ann. §24-21-560..... 5

STATEMENT OF ISSUE ON APPEAL

The circuit court judge erred in revoking one-year of appellant's community service time because the revocation resulted in an increased sentence that extended beyond the parameters of the prior sentence handed down in the case.

STATEMENT OF THE CASE

Appellant Jarius Sanders was convicted of assault and battery of a high and aggravated nature during the February 2016 term of the Chester County General Sessions Court and was sentenced to imprisonment for a period of ten years, suspended on the service of three years probation. On September 19, 2016, appellant's probation was revoked whereinafter an eight-year sentenced was imposed and his probation was terminated. On May 24, 2023, a probation revocation hearing was held at the Lancaster County before Judge Brian Gibbons who issued a one-year revocation of appellant's community supervision in the case. Ryan Payne, Esquire, appeared on behalf of appellant at the hearing and SCDPPP Probation Agent Chapman appeared on behalf of the state.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

The appellate court's authority to review a decision revoking probation is confined to correcting errors of law if there is a lack of a legal or evidentiary proof indicating that the circuit court judge's decision was arbitrary and capricious. State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (S.C. Ct. App. 1999) An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as the application of the wrong legal principle, or when based upon factual conclusions, the ruling is without evidentiary support, or when the ruling does not fall within the range of permissible decisions application in a particular case such that it may be deemed arbitrary and capricious. Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987).

ARGUMENT

The circuit court judge erred in revoking one-year of appellant's community service time because the revocation resulted in an increased sentence that extended beyond the parameters of the prior sentence handed down in the case.

In the case at bar, appellant's prior ten-year sentence, suspended upon probation for three years, ended up as an eight-year sentence along with an accompanying termination of probation. At appellant's first probation revocation hearing held on September 19, 2016, the circuit court judge sentenced appellant to eight years and terminated his probation. Therefore, after appellant's second probation revocation hearing, which has become the instant appeal, the issue raised was whether the circuit court judge erred in calculating the matter of probation based on a ten-year sentence rather than the eight-year sentence. Clearly, the eight-year sentence was controlling in this case, which meant that it was error to revoke appellant's probation based on the ten-year sentence.

The circuit judge found that appellant violated his probation (drug use and firearm possession) in the instant case and issued a one-year revocation of his community supervision term. However, the instant revocation in the case at bar enlarged appellant's overall sentence to exceed his eight-year sentence. This increased sentence beyond eight years was the result of the probation revocation and violated S.C. Code Ann. §24-21-560. Since appellant's eight-year sentence was the operational sentence that was controlling in the case, the one-year revocation exceeded his eight-year sentence because at the time of the hearing in question, he had only 166 days of service time that remained on the eight-year sentence. Therefore, it was error for the circuit court to issue the one-year revocation based on the ten-year sentence under the misinterpretation that appellant had 894 days left to serve on a ten-year sentence. The prejudice and unlawfulness of the increased the sentencing time was brought to the circuit court judge by trial counsel as follows:

Defense Counsel: This is the Form 4 from the original violation that happened in 2016 I believe. The judge, at that time, revoked 8 years and terminated Mr. Sander's sentence. Mr. Sanders went to prison on or about, I guess, September 19, 2016. His start date was eventually backdated to 11/6/15. He was released from SCDC on 11/29/22, after he served 5 or 6 months longer than he should have actually served on an 85 percent crime. So according to the community supervision tab, the original sentence should be 10 years and the Court can revoke him up to one year for that violation. However, the SCDC tab of the probation file says that Mr. Sanders only has 163 days left, that I guess SCDC will actually incarcerate him. If the Court does revoke the full year that probation is asking for, that puts him serving longer than the 8 years sentence that he was actually revoked on. Tr. 3, lines 6-22.

Defense Counsel: He's got a lot of things going on. But our position is, if the Court is inclined to side with probation, you end up extending his sentence longer than the 8 years that he was initially revoked and terminated on. I just don't think that the Court can supersede that 8 years sentence. Tr. 4, lines 11-16.

Agent Chapman: Yes, sir. The CSP he received or introduced to the CSP program by the way of the violation of the original sentence, which was 10 years suspended to 3 years, I think—yes, 3 years probation. That was in 2024—check that February of 2016, 2/24/16, on an AB Hand sentenced to 10 years, suspended to 3 years probation. On 9/19/16 probation was revoked and terminated. He was sentenced to 8 of the 10 years was ordered to be served.

Agent Chapman: CSP release was 11/29/22. Also, according to our release program coordinator who coordinates between South Carolina Probation, Parole, and Pardon Services and SCDC, Ms. Katherine Moore, our release program coordinator, she shared with me that he was originally placed on probation and received 10 years suspended to 3 years probation. He violated probation, the judge revoked 8 years or 8—revoked—8 years revocation, with a start date of 11/6/2015. The CSP calculation was calculated on the total 10-year sentence, not the time the offender received on revocation. They do not get credit for the time on probation and CSP calculation of 10 years, incarceration date starting 11/6/2015 with his projected max-out date of 11/3/2025. So she assures me this is correct. Any further questions to Matt Beaucan in legal. So the days that he has left calculated from the 10-year sentence is 894 days. Tr. 4, l.21-p. 5, l.24.

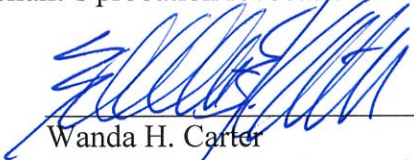
In State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010), the Court addressed this issue in relation to S.C. Code Ann. §24-21-560 as follows:

A prisoner who is sentenced for successive revocations of the community supervision program may be required to serve terms of incarceration for successive revocations and may be required to serve additional periods of community supervision for successive revocations; [however], the maximum aggregate amount of time a prisoner may be required to serve when sentenced for successive revocations may not exceed an amount of time equal to the length of incarceration imposed for the original...offense...

In Picklesimer, the Court explained that the total sentence would include suspended and unsuspended portions of the sentences. In the case at bar, appellant had only one suspended sentence, which was ultimately terminated before the instant revocation. Hence, there was no suspended sentence on the eight-year sentence that existed at the time of the instant probation revocation. As a result, the one-year revocation in the present case exceeded the length of appellant's eight-year sentence as he had only 166 days left to serve before the revocation. The circuit court judge erred in revoking one-year of appellant's community service in the case.

CONCLUSION

Based on the foregoing argument, appellant's probation revocation should be vacated.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of November, 2023.