

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENWOOD COUNTY
Frank R. Addy, Circuit Court Judge

Appellate Case No. 2021-001465

STATE OF SOUTH CAROLINA.....PETITIONER
S.C. Department of Probation, Parole and Pardon Services

v.

JOEY REID #1392728.....RESPONDENT

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner hereby certifies that the Petition for Rehearing was timely made on October 2, 2023, and was ruled upon by the Court of Appeals on November 20, 2023.

QUESTIONS PRESENTED

1. Did the Court of Appeals err by determining the circuit court's order that vacated another judge's sentence an interlocutory order and not a matter that is immediately appealable within S.C. Code Section 14-3-330?
2. Did the circuit court overseeing a probation violation hearing err when it vacated the previous sentence and ordered a new sentencing of the underlying conviction?

STATEMENT OF THE CASE

On January 27, 2014, Respondent pleaded guilty to one count of assault and battery in the first degree and one count of attempted murder. The negotiated plea was for Respondent to serve ten years in the Department of Corrections on the assault charge, plus a consecutive twenty-year sentence for attempted murder, suspended upon the service of five years probation. This was accepted by the court, which followed the negotiation and imposed the agreed-upon sentence. No motion to reconsider, notice of appeal, or post-conviction action was submitted by either party involved with the plea.

Respondent served his active ten-year sentence and was released to probation from the Department of Corrections on or about June 29, 2018 and began his term of probation with the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS). He was subsequently arrested for a new and second charge for attempted murder on July 11, 2019. Agents for SCDPPPS issued a warrant for violation of probation on July 12, 2019, citing the allegations underlying the new arrest along with failing to pay monetary obligations and failing to follow the advice and instructions of the agent. The probation violation hearing was not conducted until after Respondent was acquitted in a jury trial of the second attempted murder charge on April 21, 2021. During this time frame, Respondent had been indicted for other charges, and he ultimately pled guilty to unlawful neglect of a child, and domestic violence second degree on December 14, 2021.

The violation of probation hearing was heard on October 28, 2021 before the Honorable Frank R. Addy, Jr. Respondent raised an objection to the probation violation based on the underlying conviction and sentence – arguing that a conviction for attempted murder could not be suspended to probation, regardless of the fact that it was a negotiated plea. See S.C. Code Ann. §

16-3-29 (2010) (“A sentence imposed pursuant to this section may not be suspended nor may probation be granted.”). The court took the matter under advisement.

On December 31, 2021, the trial court issued an “Order Concerning Probation Violation,” vacating the 2014 attempted murder sentence and ordering a new sentencing hearing. Appellant filed notice of appeal on January 11, 2022.

Rather than addressing the Appellant’s appeal on its merits, the Court of Appeals issued a ruling on September 20, 2023, determining that Judge Addy’s order vacating the sentence and requiring a new sentencing was not final “until after Reid has been sentenced” and that no subsection of S.C. Code §14-3-330 was applicable. Petitioner filed its petition for rehearing, which was denied by the Court of Appeals in an order dated November 20, 2023. This Petition for Writ of Certiorari follows.

ARGUMENTS

1. The Court of Appeals erred when it determined that the circuit court’s order vacating another judge’s sentence was an interlocutory order and not reviewable under S.C. Code Section 14-3-330.

Petitioner submits that the circuit court’s order is blatantly outside the scope and authority conferred upon it and would materially prejudice Petitioner, necessitating this Court grant this petition for certiorari to either remand to the Court of Appeals for a ruling on the merits or to address the merits itself.

Granting certiorari is appropriate in this case where the Court of Appeals incorrectly concluded the trial court’s order was not final until Respondent has been resentenced. Petitioner respectfully submits that this matter squarely falls within the requirements of section 14-3-330. In remanding the matter for resentencing, the probation violation court not only overstepped its

statutory authority in issuing its order vacating the sentence and ordering a new sentencing, but the order is final in all practical considerations, thus falling within 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.

It is hard to fathom how an order vacating a sentence imposed ten years ago and ordering a new sentencing is not final given the circumstances surrounding the negotiated plea. A resentencing, presumably following the statutory prohibition on suspending and granting probation for attempted murder convictions, necessarily would require a modification to the original plea agreement. Petitioner submits that, because resentencing cannot be accomplished under the original terms of the negotiated plea, the order is essentially a remand for a new trial. The court's order effectively contemplated that, when it stated, "At the resentencing, Mr. Reid may move to withdraw his plea if he so desires. Should he elect to withdraw his plea and the Court permits him to do so, the State and Mr. Reid are free to renew their negotiations or take the matter to trial." Order, p. 9-10.

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.

Considering this reality, Petitioner suggests that in the alternative the order for "resentencing" is, for all practical purposes, an order for a new trial, meeting the requirements of section 14-3-330(2)(b). As stated earlier, the probation violation court's order vacating the sentence and ordering a resentencing cannot be accomplished 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 and its expectations that Respondent be held to the terms of its contractual agreement in the negotiated sentence. 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. If a judge presiding over a probation violation hearing dislikes the amount of time he or she can revoke based on the original

sentence, that judge cannot vacate the sentence and order a new sentencing in the hopes that a greater suspended sentence would be ordered. Were a judge to take such a prohibited action, Petitioner anticipates the appellate courts would rightly leap to overturn that order and ensure no other circuit judge does the same.

The present scenario, while ostensibly operating in the favor of the Respondent, should require the same response. Just as defendants have the right to expect the State to uphold its bargains, the State has an equal interest in ensuring defendants are held to their end. Respondent should not be allowed to negotiate a beneficial sentence from which neither side appealed making it final, and then undo that finality by having the sentence vacated when he clearly violated the terms of his supervision.

2. A circuit court judge may not vacate a sentencing order issued by another circuit judge, therefore the probation court erred by vacating the sentence and requiring another sentencing hearing.

The Petitioner submits that in accordance with rule 242(b), SCACR there are special and important reasons for this court to exercise its discretion to grant review so that the merits of the case can be appropriately addressed. These same grounds would also support this Court entertaining this matter in its original jurisdiction pursuant to Rule 245, SCACR, as well as issuance of a writ of prohibition enjoining the resentencing from taking place.

Petitioner submits that error of the circuit court is clear and apparent on its face. When confronted with a routine probation violation matter, the court vacated the underlying sentence in an action contrary to well-settled South Carolina law that one circuit court judge may not reverse an order of another circuit court judge. Cook v. Taylor, 272 S.C. 536, 538, 252 S.E.2d 923, 924 (1979).

The actions permitted by the court overseeing a probation violation hearing is limited to revoking all or a portion of the suspended sentence, or continuing the individual's probation. S.C. Code § 24-21-460. Instead, the circuit court vacated the sentence and ordered a new sentencing for the Respondent. Petitioner asserts that the circuit court clearly committed an error of law by issuing an order outside of its authority to make.

Certainly, the circuit court presiding over the violation hearing had clear misgivings over the original sentence, in that it involved a sentence suspended to probation when the statute clearly prohibited just that. However, not only was the plea agreement freely entered into as a negotiated sentence, neither side objected to the sentence or appealed it within the appropriate time frame.

South Carolina law states that a ruling that is not objected to becomes the law of the case. See, State v. Lee, 350 S.C. 125, 132-33, 564 S.E.2d 372, 376 (Ct.App. 2002), citing State v. Sampson, 317 S.C. 423, 545 S.E.2d 721 (1995). Quite simply, because the judge suspended the sentence and placed Respondent on probation and neither side objected, Respondent was subject to the rules and requirements of – and consequences for violating – probation.

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. Petitioner 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)).

Considering that the order vacating the sentence and ordering a resentencing is a nullity, any circuit court judge considering the resentencing would be obligated to treat it as such and should refuse to follow the order. If the resentencing court properly declines to follow the null order and refuse to resentence Respondent, the procedural limbo that would result could only be resolved by the appellate courts. Granting certiorari is appropriate at this stage to immediately rule upon the improper order and resolve the issue in a more timely manner.

Furthermore, Petitioner urges this Court to consider that the Respondent received a great bargain at the plea. He received a probationary sentence – albeit improperly, although neither side appealed the sentence – which therefore afforded him the opportunity to abide by the conditions of probation, successfully complete the term of supervision, and thus satisfy his sentence without

facing the suspended twenty years of incarceration. Importantly, Respondent agreed to these terms. Had he successfully completed probation, the State would be powerless to impose the suspended sentence by arguing the original sentence could not have been suspended in the first place.

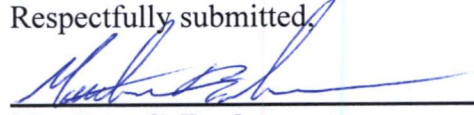
Instead, Respondent was convicted of several new crimes that he committed while on supervision, clearly a violation of S.C. Code Section 24-21-430(1), to say nothing of the other violations alleged by the Department. The State was merely relying upon the terms of the negotiated plea to which Respondent had agreed. However, once facing a possible revocation of those twenty years, he cried foul that he never should have received that bargain in the first place. Petitioner submits that this Court should not reward such an action and therefore should grant certiorari to address the merits of this case or choose to review the probation court's ruling in its original jurisdiction, before material prejudice is suffered by the parties.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant certiorari so that the probation court's improper order can be corrected or vacated either by the Court of Appeals or this Court. The order was clearly outside the court's authority because one circuit court judge cannot reverse another's, and the original sentence was unappealed and therefore final. Furthermore, the order falls within several categories of section 14-3-330 that make it immediately appealable. By allowing such an improper order to stand on a hyper-technical reading of section 14-3-330, judges presiding over probation revocation hearings would have unchecked authority to undo sentences they do not like. For these reasons, Petitioner urges this Court to grant certiorari.

(Signature on following page)

Respectfully submitted,



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Columbia, South Carolina
December 12, 2023