

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lancaster County Circuit Court
The Honorable Brian M. Gibbons, Judge

Appellate Case No. 2023-00897

STATE OF SOUTH CAROLINARESPONDENT

v.

JARIUS SANDERS,.....APPELLANT

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of authorities ii

Statement of issues on appeal iii

Statement of the case 1

Standard of review 1

Argument

 1. The circuit judge did not err when he revoked one year for a violation of CSP, because Appellant's total sentence was ten years.2

Conclusion4

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Shannon v. Young</i> , 272 S.C. 61, 248 S.E.2d 914 (1978).....	2
<i>State v. Archie</i> , 322 S.C. 135, 470 S.E.2d 380 (Ct. App. 1996).....	1
<i>State v. Hamilton</i> , 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999).....	2
<i>State v. Picklesimer</i> , 388 S.C. 264, 695 S.E.2d 845 (2020).....	3 - 4
<i>State v. Proctor</i> , 345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001).....	2
<i>State v. White</i> , 218 S.C. 130, 61 S.E.2d 754 (1950).....	1, 2
 Statutes	
S.C. Code § 16-1-90	2
S.C. Code § 24-13-100.....	2
S.C. Code § 24-13-150.....	2
S.C. Code § 24-21-460.....	3
S.C. Code § 24-21-560.....	1, 2, 3

STATEMENT OF ISSUE ON APPEAL

1. The circuit court judge did not err in revoking one year for a violation of Appellant's community supervision program, because the remainder of a sentence remains in full force and effect after a partial revocation of a suspended sentence.

STATEMENT OF THE CASE

On July 6, 2015, Appellant fired several shots into an occupied vehicle. He was initially charged with attempted murder, but on February 23, 2016 he pled guilty before the Honorable Brian M. Gibbons to assault and batter of a high and aggravated nature. Judge Gibbons sentenced him to ten years suspended to three years probation.

Appellant subsequently violated his probation and was brought before the Honorable Perry H. Gravely on September 19, 2016 for a hearing. Judge Gravely partially revoked eight years of Appellant's suspended sentence, and thereafter terminated probation. (R.p.18).

Upon his release from incarceration, Appellant began a period of community supervision pursuant to S.C. Code 24-21-560. On March 20, agents issued and served an arrest warrant for violation of community supervision, alleging that Appellant possessed firearms and ammunition, possessed illegal drugs, and was also arrested for those offenses. Appellant appeared before Judge Gibbons on May 24, 2023, who revoked Appellant one year. (R.p.19). Appellant through his counsel filed a notice of appeal that same day.

Respondent's brief follows.

Standard of Review

An appellate court will not disturb the Circuit Court's decision to revoke probation unless the decision was influenced by an error of law, was without evidentiary support, or constituted an abuse of discretion. *State v. Archie*, 322 S.C. 135, 470 S.E.2d 380 (Ct. App. 1996); *see also State v. White*, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950) (stating that upon review of revocation of probation, the question is not one of formal procedure respecting either notice, specifications of charges or trial thereon, but is simply whether the trial court abused its discretion; review therefore

must be determined in accordance with principles governing exercise of judicial discretion). The decision to revoke probation is addressed to the discretion of the circuit judge. *White*, 218 S.C. at 134–35, 61 S.E.2d at 756; *State v. Proctor*, 345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001); *State v. Hamilton*, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999). A reviewing court will only reverse this determination when it is based on an error of law or a lack of supporting evidence renders it arbitrary or capricious. *Proctor*, 345 S.C. at 301, 546 S.E.2d at 674. The court has much discretionary authority in dealing with guilty persons who are in a probationary status. *Shannon v. Young*, 272 S.C. 61, 248 S.E.2d 914 (1978).

Argument

1. **The circuit judge did not err when he revoked one year for a violation of CSP, because Appellant's total sentence was ten years.**

Appellant was originally sentenced to ten years suspended upon three years probation. Upon his violations of the terms and conditions of that probation, the circuit judge revoked eight of those ten years and terminated probation. Because the original offense, assault and battery of a high and aggravated nature (ABHAN) is a Class-C felony pursuant to S.C Code 16-1-90(C), Appellant was required to serve eighty-five percent of the eight years. See S.C. Code 24-13-100 and S.C. Code 24-13-150(A). Upon his release, he was required to complete a community supervision program (CSP) pursuant to 24-21-560(A).

Appellant argues that the eight-year revocation of probation became a new eight-year sentence that controls the amount of time that can be served on community supervision. This is incorrect. The sentence of ten years, as ordered by the sentencing court, remains the total sentence despite the probation revocation court only revoking a portion of that ten years.

A partial revocation of a suspended sentence for a violation of probation does not affect the original sentence. “[T]he circuit court 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. Should only a portion of the sentence imposed be put into effect, *the remainder of such sentence shall remain in full force and effect* and the defendant may again, from time to time, be brought before the circuit court so long as all of his sentence has not been served and the period of probation has not expired.” S.C. Code 24-21-460 (emphasis added). Clearly, a circuit court judge presiding over a probation violation who revokes only a portion of a suspended sentence has not re-sentenced the defendant.

In this case, when eight years of the suspended sentence became active as a result of the probation revocation, the status of Appellant’s conviction as a no-parole offense triggered. Thus, upon the completion of eighty-five percent of the revocation, he was released to CSP by operation of Section 24-21-560(A).

When Appellant was brought before the circuit court for a violation of CSP, the court not only could consider the remaining fifteen percent of the active eight years, but also the two remaining years of the suspended sentence that had not been revoked.

Appellant cites to *State v. Picklesimer*, 388 S.C. 264, 695 S.E.2d 845 (2010), in his argument that the circuit court should have been limited to only the remaining fifteen percent of his eight year revocation. However, *Picklesimer* also holds that the service and revocations of CSP incorporate both the active *and* suspended portions of the original sentence. “We now definitively state that the “original sentence,” as referenced in section 24-21-560(D), includes both the suspended and unsuspended portions of a circuit court’s sentence; it is, in fact, the total sentence

handed down by the court.” *Id.* at 268, 848. A revocation of either CSP or probation cannot extend a defendant’s incarceration longer than the “original sentence,” but that has not been done here.

Appellant argues he had only 166 days left that could be revoked, but the Department’s agent correctly reported he had 894 days of time left of his original sentence which incorporates the two suspended years remaining from the suspended sentence. Consequently, the circuit court judge did not err by revoking one year of Appellant’s CSP.

Conclusion

For the foregoing reasons, Respondent respectfully requests this Court sustain the one-year revocation of CSP and dismiss this appeal.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent filed June 5, 2023, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 9th day of January, 2024.



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