

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**RECEIVED**

APPEAL FROM RICHLAND COUNTY  
Court of General Sessions

FEB 02 2024  
SC Court of Appeals

Jocelyn Newman, Circuit Court Judge

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Case No. 2023-001547

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SCDPPPS,

Respondent,

v.

David Minor Lambert,

Appellant.

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INITIAL BRIEF OF APPELLANT

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Makenzie Thomas  
SC Bar 105337

Constantine Pournaras  
SC Bar 80872

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**STATEMENT OF ISSUE ON APPEAL**

1. DID THE CIRCUIT COURT ERR IN CONCLUDING THAT THE DEPARTMENT CAN CLOSE A COMMUNITY SUPERVISION CASE AS UNSUCCESSFUL AND IMPOSE RESIDUAL PROBATION?

## STATEMENT OF THE CASE

On September 20, 2012 Mr. Lambert was arrested and charged with Murder. He pleaded to Voluntary Manslaughter on October 1, 2015 before the Honorable Robert E. Hood and was sentenced to twelve (12) years provided upon the service of seven (7) years active, balance suspended to five (5) years of probation with special conditions of \$9,400 restitution and no contact with the victims. (Sentencing sheet, October 1, 2015).

Mr. Lambert was released on community supervision (hereinafter CSP) on August 1, 2018, after serving 85% of his active seven (7) year sentence. (Community Supervision Program Certificate, July 30, 2018). On April 23, 2020, Mr. Lambert was served with a CSP citation alleging only financial arrearages by South Carolina Department of Probation, Parole, and Pardon Services (hereinafter the "Department"). (Probation Citation, April 23, 2020). This citation was heard before the Honorable DeAndrea G. Benjamin on May 15, 2020, during which the court ordered Mr. Lambert be continued on CSP and for his case to close on its original close date of July 31, 2020. (Continuation Supervision Continuation Order, May 15, 2020).

The Department unilaterally closed Mr. Lambert's CSP case on July 31, 2020 as an "unsuccessful completion" of CSP and began a five (5) year term of probation supervision on August 1, 2020. No citation or warrant was issued prior to the expiration of Mr. Lambert's CSP and no hearing was held in the court of General Sessions. On April 27, 2021, Mr. Lambert was served with a probation citation alleging only financial arrearages by the Department. (Financial Probation Citation, April 27, 2021). This citation was heard by the Honorable Jocelyn Newman on August 13, 2021 during which she ordered Mr. Lambert be continued on probation. (DPPS Form 9, August 13, 2021).

On October 24, 2021 a probation warrant was issued. (Probation Arrest Warrant, October 27, 2021). A violation hearing was brought before the Honorable Clifton Newman on December 5, 2022. The court took the matter under advisement and issued an order denying the Appellant's arguments on June 8, 2023. (Order Denying Defendants Motion, June 8, 2023). A second violation hearing was conducted on September 22, 2023 before the Honorable Jocelyn Newman who adopted the previous court's ruling and ordered Mr. Lambert be continued on probation. (T2, p. 9, lines 3-8; DPPS Form 9, September 22, 2023). A timely notice of intent to appeal was served on October 2, 2023. This appeal follows.

## STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. Id.

## ARGUMENT

### I. THE DEPARTMENT CANNOT CLOSE A COMMUNITY SUPERVISION CASE AS UNSUCCESSFUL AND IMPOSE RESIDUAL PROBATION.

The Department contends that Mr. Lambert was unsuccessful in completing his term of CSP, as he failed to pay the entirety of his court ordered restitution by July 31, 2020. (T1, p. 6, lines 10-12). The Department further believes that his CSP ended *unsuccessfully*, without a determination by the court, triggering the imposition of a five-year term of residual probation, beginning on August 1, 2020 and ending July 31, 2025. (T1, p. 6, lines 15-20). Mr. Lambert argued this position is neither supported by statute nor by case law interpreting the CSP statutes. (T1, p. 4, 10-13). Mr. Lambert further argued that having completed two full years of CSP without violation of its terms is successful completion as defined by S.C. Code Ann. § 21-24-560 and State v. Picklesimer and therefore the entire criminal sentence is satisfied. (T1, p. 4, lines 15-25; T1 p. 5, lines 1-5, 14-16).

Although Mr. Lambert's sentence was a "split sentence," with an active portion as well as a suspended portion including probation, our courts have deemed the residual probationary period to be wholly subsumed by the term of CSP:

**[B]ecause the Court finds that the original sentence encompasses both the suspended and unsuspended portions of the sentence, coupled with our pronouncement in Dawkins that CSP and normal probation run concurrently, then a defendant will either successfully complete his CSP, or continue in CSP due to violation revocations until the end of the original sentence, at which time the sentence will have been fulfilled.**

State v. Picklesimer, 695 S.E.2d 845, 849 (2010) (emphasis added).

The court first ruled on Mr. Lambert's alleged violations on May 15, 2020. The court, having heard the allegations, ordered that Mr. Lambert be continued on CSP and allowed "case

to close on original close date of 7/31/2020.” (Continuation Supervision Continuation Order, May 15, 2020). Had the court found Mr. Lambert in willful violation of his financial obligations, it could have returned him to the Department of Corrections for a term not to exceed one year, triggering an additional two-year term of CSP upon his release. S.C. Code Ann. § 24-21-560(D). Further, if the Department believed he committed violations after May 15, 2020, they would have been required to issue new process prior to the expiration of his term of supervision on July 31, 2020:

If the department determines that a prisoner has violated a term of the community supervision program and the community supervision should be revoked, a probation agent *must* initiate a proceeding in General Sessions Court. The proceeding must be initiated pursuant to a warrant or citation issued by a probation agent setting forth the violations of the community supervision program.

S.C. Code Ann § 24-21-560(C) (emphasis added).

Rather than issue a new warrant or citation for the failure to satisfy his entire financial obligations, the Department allowed Mr. Lambert’s case to expire “on original close date” as per the court’s order. The closure of this case without the issuance of process thereby satisfied his entire sentence per S.C. Code Ann. § 24-21-560 and as interpreted by Picklesimer as no alleged violations were brought before the court.

The Department focuses its argument on the term “successful.” (Department’s Memorandum, p. 2). It is the Department’s position that Mr. Lambert’s failure to pay his ordered restitution in full by the end of his CSP made his completion of CSP “unsuccessful.” Id. While the court in Dawkins did emphasize the word “successful” when it said, “[a]ccordingly, Dawkins’s sentence, including probation, is discharged upon *successful* completion of the CSP,” State v. Dawkins, 352 S.C. 162, 167 (2002) (emphasis in original), the

Department fails to note that the court later defined “successful completion” in regards to CSP in Picklesimer, stating: “[w]e now hold ‘successful completion’ of CSP connotes the completion of a maximum of two continuous years of CSP, as mandated by section 24-21-560(B), without any violations or revocations, or a determination by the Department that a defendant has fulfilled his CSP responsibilities prior to two years’ service in the program.” Picklesimer at 848.

The Department acknowledges that Mr. Lambert did not violate the conditions of his CSP by not satisfying his financial obligations, including restitution, in full before his CSP case closed. (Department’s Memorandum of Law, p. 2). The Department further acknowledged that Mr. Lambert’s failure to pay towards his financial obligations was not willful and therefore could not result in a revocation and new term of supervision per Hamilton. (State v. Hamilton, 333 S.C. 627 (1999) (stating that supervision “may not be revoked solely for failure to make required payments of fines or restitution without the circuit judge first determining on the record that the probationer has failed to make a bona fide effort to pay”)). Further, the Department believed that because Mr. Lambert committed no revocable violations but still had outstanding financial obligations, the residual probation was *required* to begin. (Department’s Memorandum of Law, p. 3).

This position ignores the existence of the administrative monitoring, which provides:

(A) Notwithstanding the provisions of Section 24-19-120, 24-21-440, 24-21-560(B), or **24-21-670**, when an individual has not fulfilled the individual's obligations for payment of financial obligations by the end of the individual's term of supervision, then the individual *shall* be placed under quarterly administrative monitoring, as defined in Section 24-21-5, by the department until such time as those financial obligations are paid in full or a consent order of judgment is filed. If the individual under administrative monitoring fails to make reasonable progress toward the payment of such financial obligations, as determined by the department,

the department may petition the court to hold an individual in civil contempt for failure to pay the financial obligations.

S.C. Code Ann. § 24-21-10 (A).

Neither S.C. Code Ann. § 24-21-560, Dawkins nor Picklesimer allow the closing of a CSP case as “unsuccessful.” The Department provides no legal justification for their position that it can. Again, per Picklesimer, “a defendant will *either* successfully complete his CSP, *or* continue in CSP due to violation revocations until the end of the original sentence, at which time the sentence will have been fulfilled.” Picklesimer at 849.

Finally, the Department’s calculated supervision end date now exceeds the maximum allowed supervision. “[U]nder no circumstances shall a defendant be incarcerated, or forced to participate in mandatory CSP *or residual probation*, stemming from the same conviction, outside of the time given by the trial judge in the original sentence, which encompasses both the suspended and unsuspended portions of the sentence.” Picklesimer at 848-49 (emphasis added). Per Picklesimer Mr. Lambert’s “original sentence” would set the outside limit at 12 years after the effective sentence start date (August 25, 2012 + 12 years = August 25, 2024). (Community Supervision Program Certificate, July 30, 2018). The Department’s current supervision date of the imposed residual probation is July 31, 2025. (Probation Violation Report, October 19, 2022). This date is beyond the maximum supervision contemplated by Picklesimer.

## CONCLUSION

At the close of Mr. Lambert’s initial two-year CSP case, the Department had no evidence of violations of the terms and conditions of his supervision. While Mr. Lambert did not satisfy his

financial obligations, the Department did not believe this failure was willful as defined by Hamilton and therefore did not issue a violation warrant or citation to bring before the court. Absent any justification for a revocation, the Department's only option was to place Mr. Lambert on administrative monitoring per S.C. Code Ann. § 24-21-100 and close his supervision. Despite the outstanding financial obligations, Mr. Lambert's completion "of two continuous years of CSP, as mandated by section 24-21-560(B), without any violations or revocations" would therefore constitute a "successful" completion and discharge of his imposed sentence while he would continue to be civilly liable for the outstanding financial obligations on administrative monitoring.

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

February 2, 2024

  
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