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OCT 29 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
The Honorable Brooks Goldsmith

OCT 29 2012

SC Court of Appeals

Case No.: 08-GS-40-02974

THE STATE, APPELLANT

v.

ANTHONY KINARD BLAKNEY AKA
DERRICK JENKINS, RESPONDENT

INITIAL BRIEF OF APPELLANT

Tommy Evans, Jr.
Legal Counsel

**South Carolina Department of Probation,
Parole, and Pardon Services
P.O. Box 50666
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(803)734-9220**

Attorney for the Appellant

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STATEMENT OF ISSUE ON APPEAL

1. **HAS THE COURT ERRED IN DETERMINING THAT THE RESPONDENT HAS SATISFIED HIS SENTENCE UPON HIS SECOND VIOLATION OF COMMUNITY SUPERVISION AND CAN NO LONGER HAVE ANY TIME REVOKED PURSUANT TO PICKLESIMER?**

STATEMENT OF THE CASE

On April 30, 2010, the Respondent appeared before the Honorable J. Michelle Childs for the offense of Burglary in the First Degree (Burglary 1st). At the conclusion of this appearance Judge Childs sentenced the Respondent to a fifteen year term of imprisonment suspended to the service of thirty (30) months incarceration. Pursuant to South Carolina law the Respondent began Community Supervision on May 13, 2011.

On December 9, 2011, the Respondent appeared before the Honorable Thomas G. Cooper for a violation of community supervision. The Respondent was accused of violating of community supervision by, failing to report; failing to pay his supervision fees; failing to comply with electronic monitoring; and, failing to follow the advise and instructions of his agent. Upon conclusion of this hearing Judge Cooper decided to revoke community supervision and give him credit for the amount of pre-detention time served. Upon release the Respondent was still obligated to successfully complete community supervision. Later another warrant was issued for the violation of community supervision. Within this warrant the Respondent was accused of violating supervision by failing to report; providing an invalid address thereby failing to allow his agent to visit his home; and, failing to pay his supervision fee. On August 17, 2012, the Respondent appeared before the Honorable Brooks P. Goldsmith for a hearing regarding his violation of community supervision. During this hearing the Respondent argued that he has already satisfied his sentence pursuant to State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010). The Respondent argued that in Picklesimer the Court of Appeals were referring to split sentences where it was suspended upon the completion of probation. In this case Judge Childs sentenced the Respondent to fifteen years suspended to the service of thirty months, with no

probation to follow so he has satisfied his incarcerated, sentence; an, no further time can be revoked. The Appellant argued that Picklesimer never distinguished between probationary and non-probationary sentences. His total aggregate sentence is fifteen years, so the Respondent should continue to be responsible for community supervision . Judge Goldsmith took both arguments under advisement and decided to make a determination at a later date.

On September 7, 2012, Judge Goldsmith issued his order, determining that the Respondent's case is distinguishable from Picklesimer. The Court determined that the Respondent's sentence did not include a term of probation; therefore, he satisfied the terms of his original sentence. Judge Goldsmith ruled that there exist no additional revocable time to serve on community supervision so it is unnecessary to address any violation, the warrant was ordered quashed. Upon receipt of this order the Appellant filed a notice of appeal. Within this appeal the Appellant will argue that Picklesimer never distinguished between probationary or non-probationary split sentences. The Court in Picklesimer, only ruled that in a no parole sentence the offender is responsible for the entire sentence upon the violation of community supervision. The Respondent has not completed his entire fifteen years sentence, so he continues to be responsible for community supervision, or be subject to further incarceration. The initial brief of the Appellant follows.

ARGUMENT

The Court erred in determining that the Respondent has satisfied his sentence and can no longer be revoked pursuant to Picklesimer.

The Respondent was convicted of committing a Burglary 1st, and given a sentence of fifteen years suspended upon the service of thirty months. Burglary 1st is classified as an A-felony which makes this a “no parole” offense.¹ According to South Carolina law:

Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, a prisoner convicted of a “no parole offense” as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the prisoner has served at least eighty-five percent of the actual term of imprisonment imposed.

S.C. Code Ann. §24-13-150 (Supp. 2011).

Pursuant to South Carolina law the Respondent served eighty-five (85%) percent of his sentence or twenty-six (26) months. Pursuant to South Carolina law the Respondent was placed on community supervision upon his release from incarceration.² Once on community supervision the Respondent violated requiring him to appear before a Circuit Court Judge for revocation. This

¹For purposes of definition under South Carolina law a “no parole offense” means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more. S.C. Code Ann. §24-21-100 (Supp. 2011).

²Notwithstanding any other provision of law, except in a case in which the death penalty or a term or life imprisonment is imposed, any sentence for a “no parole offense” as defined in Section 24-13-100 must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole and Pardon Services. S.C. Code Ann. §24-21-560 (Supp. 2011).

resulted in the revocation for time served, he was released and responsible to complete two continuous years on community supervision. He once again violated and at the revocation hearing argued that due to the sentencing court not ordering probation he was only responsible for the thirty month, and not the fifteen year portion of his sentence. The Appellant argued that the Respondent is responsible for serving the his entire sentence, which is fifteen years. He continues to be eligible for community supervision, and possibly incarceration upon a violation.

South Carolina law specifically states:

The maximum aggregate amount of time the 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 “no parole offense.”

S.C. Code Ann. §24-21-560(D)(Supp. 2011).

The Respondent was convicted of the offense of burglary 1st. Pursuant to South Carolina law burglary 1st “is a felony punishable by life imprisonment . . . The court, in its discretion may sentence the defendant to a term of not less than fifteen years.” S.C. Code Ann. §16-11-311 (Supp. 2011). The Respondent received a sentence of fifteen years suspended to thirty months. He argues that according to Picklesimer, the thirty month portion was the only part he was responsible for serving since he was never placed on probation. However Picklesimer never mentions a mandatory probationary sentence must exist for the aggregate sentence to apply. According to Picklesimer and “original sentence” is defined as, “the total aggregate suspended and unsuspended portions of a circuit court’s sentence.” Picklesimer, at 268.

The Court never mentions that the suspended portion must be followed by probation. The minimum sentence a person can receive for the offense the Respondent committed is fifteen

years, he received that sentence suspended upon the service of thirty months. The only difference between this and receiving a suspended probationary sentence is the probation obligation was not ordered upon completion of the incarcerated portion.

The Appellant argues that the Respondent was not given a thirty month sentence but a fifteen year sentence. For a person to be sentenced to burglary 1st you cannot receive less than fifteen years. The court is obligated to impose the sentence established by the General Assembly. It is clear by the statute the General Assembly did not wish a criminal defendant to receive a sentence less than fifteen years for the offense of burglary 1st. The Court should give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008). So it is safe to assume Judge Childs wished to follow the statute which clearly had a fifteen year limitation on a sentence upon conviction. The Respondent was sentenced to fifteen years suspended to the service of thirty months, with any split sentence the total sentence is the entire sentence including the incarceration and non-incarcerated portions regardless if probation was or was not ordered. We think that the word 'term' used in the 1963 amendment refers to the whole term for which the prisoner is sentenced. It includes that portion of the sentence suspended. Picklesimer v. State, 254 S.C. 596, 176 S.E.2d 536 (1970). No case differentiates as whether probation is needed to determine that the full sentence includes the suspended portion. Due to the statute requiring a fifteen year minimum, the sentence given to the Respondent is the entire aggregate sentence of fifteen years; therefore, the court could have revoked up to a year and then return the Respondent to community supervision. He should remain on community supervision, until he has completed two continuous years successfully or completed his fifteen year sentence.

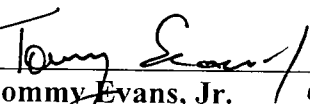
CONCLUSION

For all of the foregoing reasons, the State respectfully requests this court reverse the prior decision of the lower court.

Respectfully submitted,

Tommy Evans, Jr.
Legal Counsel

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BY: 

Tommy Evans, Jr.
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Columbia, South Carolina
October 26, 2012

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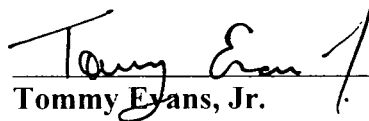
ANTHONY KINARD BLAKNEY AKA
DERRICK JENKINS, RESPONDENT

DESIGNATION OF MATTER

The Appellant proposes that the following items be included in the Record on Appeal;

1. Transcript Dated August 17, 2012; and
2. Order Dated September 7, 2012

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.



Tommy Evans, Jr.
Legal Counsel

October 26, 2012

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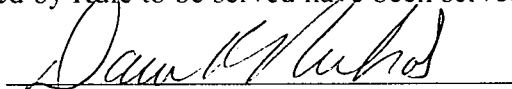
ANTHONY KINARD BLAKNEY AKA
DERRICK JENKINS, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Initial Brief of Appellant* and *Designation of Matter* and *Motion to Consolidate* both dated October 26, 2012, on Appellant this 26th day of October, 2012, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Robert Dudek, Chief Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, S.C. 29211-1589

I further certify that all parties required by Rule to be served have been served.



Dawn K. Nichols
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October 26, 2012

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211


RE: State v. Anthony Blakney

Dear Ms. Kitchings:

Enclosed please find the original of the *Initial Brief of Appellant* and Designation of Matter and Motion to Consolidate dated October 26, 2012, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,


Tommy Evans, Jr.
Legal Counsel

TE:dkn
Enclosures

cc: Robert Dudek, Chief Appellate Defender

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