

Jul 03 2024

F 576997

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS)
FOR THE NINTH JUDICIAL CIRCUIT)

SC Court of Appeals

State of South Carolina,)

Case No.: 1998-GS-10-1814

v.)

Curtis Lemon.)

**ORDER DENYING MOTION
FOR RECONSIDERATION**

2024 JUN 25 PM 2:57
JULIE J. ARMSTRONG
CLERK OF COURTS
BY [Signature]

FILED

This matter comes before this Court by way of Defendant Curtis Lemon's community supervision probation violation matter. A violation hearing was held on February 12, 2024, at the Charleston County Courthouse. This Court revoked Defendant's release by one year on February 13, 2024. Defendant submitted a motion to reconsider on February 15, 2024, filed on February 20, 2024, requesting he remain on release or, in the alternative, get credit for time served. This Court issued an amended order giving Defendant credit for time served on February 16, 2024. Defendant requested a formal order reflecting the Court's decision concerning all issues raised in the motion to reconsider. This Order follows.

Procedural History

Defendant was charged with first degree criminal sexual conduct and murder. He was found guilty at a jury trial of the lesser-included offense of voluntary manslaughter and as indicted of first degree criminal sexual conduct. He was represented by Juan Tolly and Melissa Gay, Esquires. The Honorable Gerald C. Smoak, Sr., circuit court judge, presided over the trial. Defendant was sentenced to thirty years' imprisonment for first degree criminal sexual conduct and voluntary manslaughter on March 19, 1999. Defendant appealed his convictions, which were dismissed April 5, 2002.

Thereafter, Defendant pursued numerous other collateral actions. Included in these actions

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were at least three PCR actions, two PCR appeals, and two post-conviction DNA testing actions, all of which were dismissed and relief denied.

CSP Procedural History

Defendant was released from SCDC custody on June 30, 2023. According to his conditions of release, Defendant was required to attend sex offender treatment and counseling with Dr. Burke. Dr. Burke issued a letter dated September 28, 2023, stating that Defendant was terminated from sex offender treatment for non-compliance. This violation initiated the proceedings.

On November 13, 2023, Defendant had his first CSP violation hearing before the Honorable Deadra Jefferson, who gave Defendant thirty days to get re-enrolled in treatment and to take a polygraph test. Defendant refused to comply with the conditions. On December 18, 2023, Defendant had his second CSP violation hearing before the Honorable Jennifer McCoy, who produced a written order allowing him to remain on release but requiring him to go to sex offender treatment and to take a polygraph. Again, Defendant refused to comply with the conditions. Defendant's third CSP violation hearing was held on February 12, 2024, before this Court. At this hearing, this Court revoked Defendant's supervised release for one year.

Summary of the Arguments

At the third and final CSP hearing, PPP argued that Defendant was non-compliant with the initial conditions and subsequent orders from the Court requiring him to take a polygraph and submit to sex offender treatment and counseling. They requested this Court revoke Defendant's bond for up to one year, which is the statutory maximum. Defense Counsel argued that the Defendant felt like he did not need to submit to counseling or submit to a polygraph, given his repeated insistence upon his innocence since he was initially charged. Defense Counsel confirmed that the Defendant was found guilty at trial and pursued repeated post-conviction actions with no

success.

After repeated back and forth with this Court, the Defendant made clear that he would potentially entertain taking a polygraph but refused to do counseling. He stated that he could not participate in counseling because part of counseling required him to admit to commission of a crime that he has maintained his innocence on. He also stated that he did not think he was required to participate in counseling because it was not notated on his sentencing sheet. As such, this Court revoked his release for one year.

Findings of Fact and Conclusions of Law

Defendant, through Counsel, requested in their motion to reconsider that this Court continue the Defendant on community supervision with modified conditions not to include counseling or taking of a polygraph test. Defendant also requested credit for time served if the Court elected not to continue his release. This Court issued an amended order on February 16, 2024, affording Defendant credit for time served. Thus, this secondary request is now moot.

Concerning the request to remain on community supervision on modified conditions, this Court denies Defendant's request. The Department of Probation, Pardon, and Parole ("PPP") is given discretion over "[t]he period of time a prisoner is required to participate in a community supervision program" as well as the "terms and conditions of a prisoner's participation." S.C. Code 24-21-560(B) (2010). Though the General Sessions Court has the ultimate authority to revoke community supervision, PPP has the sole authority to set the actual terms and conditions in a community supervision probationary term. *Id.*; S.C. Code 24-21-560(C) (2010). Further, "the prisoner's participation shall be at the discretion of the department based upon guidelines developed by the director . . ." S.C. Code 24-21-560(B).

When PPP determines that a violation of the terms of the release occurred, a probation

agent must initiate proceedings against the defendant in General Sessions Court. S.C. Code 24-21-560(C). At the CSP violation proceeding, the Court shall determine whether:

- (1) the terms of the community supervision program are fair and reasonable;
- (2) the prisoner has complied with the terms of the community supervision program;
- (3) the prisoner should continue in the community supervision program under the current terms;
- (4) the prisoner should continue in the community supervision program under other terms and conditions as the court considers appropriate;
- (5) the prisoner has willfully violated a term of the community supervision program.

If the Court determines that a prisoner has willfully violated a term or condition of the community supervision program, the court may impose other terms and conditions considered appropriate and may continue prisoner on community supervision, or the court may revoke the prisoner's community supervision and impose a sentence of up to one year for violation of the community supervision program.

Id.

Here, Defendant was released on standard conditions enforced on all sex offenders being released on community supervision probation. These conditions were reasonable, and Defendant stated he would comply with the conditions prior to release. Defendant willfully violated these conditions both initially and after being ordered to comply by two different judges. Defendant also informed this Court that he had no intention of complying with the counseling requirement when asked. Thus, this Court finds that Defendant willfully violated the terms of the community supervision program.

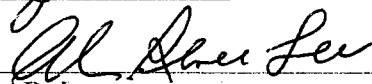
Once the Court determines that a defendant has violated the terms of his release, the Court may revoke or impose other terms and conditions on the defendant that the Court deems

appropriate. No part of the statute permits this Court to undermine PPP's jurisdiction over setting the conditions or otherwise delete or modify the conditions set by PPP because of non-compliance. Defendant's consistent defense of his innocence is not grounds for this Court to inappropriately modify the conditions of his release to only include conditions the Defendant is satisfied with and is willing to comply with. Accordingly, Defendant's request to continue him on community supervision is denied.

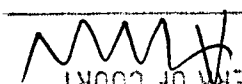
Conclusion

WHEREFORE, this Court finds that Defendant's request to remain on community supervision is denied and request for credit for time served moot.

AND IT IS SO ORDERED this 4th day of June, 2024.



ALISON R. LEE
Presiding Judge
Ninth Judicial Circuit

BY 
JULIE J. ARMSTRONG
CLERK OF COURT
2024 JUN 25 PM 2:37

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The Law Office of Chelsey F. Marto

June 20, 2024

Charleston County Clerk of Court
Attn: General Sessions
100 Broad St., Ste 106
Charleston, SC, 29401

Curtis Lemon, v. State of South Carolina – 1998-GS-10-1814

Dear Sir/Madam,

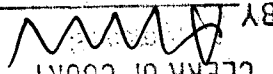
Attached please find the signed order denying Defendant's Motion to Reconsider in the above-captioned case.

If you have any questions or concerns, please do not hesitate to contact my office. My mailing address is PO Box 8795, Columbia, SC, 29201, email is info@chelseymarto.com, and my phone number is (864)-404-5583.

Sincerely,



Chelsey Marto

BY 
JULIE J. ARMSTRONG
CLERK OF COURT

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FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

2024 FEB 13 PM 1:35

IN THE COURT OF GENERAL SESSIONS
No. 98 -GS- 10 - 01814
Count

Community Supervision
REVOCATION ORDER

STATE

-vs-

CURTIS LEMON

Defendant

00160348

SID #

10/24/195

SCDC# or DOB

JULIE J. ARMSTRONG
CLERK OF COURT
BY MSS

FILED
2024 FEB 16 PM 2:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY MSS

This matter was brought before me on the 12 day of FEB, 24, pursuant to a [warrant or citation] charging the Defendant with violating the Defendant's Community Supervision Program and asking the Court to revoke the Defendant's community supervision. I find:

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Jul 03 2024
SC Court of Appeals

1. The terms of the Community Supervision Program are fair and reasonable;
2. The Defendant has not complied with all terms of the Community Supervision Program;
3. The Defendant has willfully violated terms of the Community Supervision Program;
4. The Defendant should not be continued in the Community Supervision Program under its current terms or under other terms and conditions;

IT IS ORDERED that the Defendant be in the custody of the South Carolina Department of Corrections for a term of ___ days ___ months 10 year (total may not exceed one (1) year).

*Modified to provide credit for time served. SCDC to calculate the credit time.
Also Renee fee 2/16/2024.*

This 12 day of FEB, 2024
Chas. S. C. Renee Fee
Presiding Judge
9th Judicial Circuit

This is to certify that I have received this order.

Offender's
Signature

12 Unavailable to sign
FEB 2024

Witnessed by

Chas.

F576997

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

2024 FEB 13 PM 1:35

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SC Court of Appeals

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-vs-

CURTIS LEMON

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00160348

SID #

10/24/195

SCDC# or DOB

JULIE J. ARMSTRONG
CLERK OF COURT
BY MSS

This matter was brought before me on the 12 day of Feb, 24, pursuant to a [warrant or citation] charging the Defendant with violating the Defendant's Community Supervision Program and asking the Court to revoke the Defendant's community supervision. I find:

1. The terms of the Community Supervision Program are fair and reasonable;
2. The Defendant has not complied with all terms of the Community Supervision Program;
3. The Defendant has willfully violated terms of the Community Supervision Program;
4. The Defendant should not be continued in the Community Supervision Program under its current terms or under other terms and conditions;

IT IS ORDERED that the Defendant be in the custody of the South Carolina Department of Corrections for a term of ___ days ___ months 1 0 year (total may not exceed one (1) year).

This 12 day of Feb, 2024
Chas.

Al. Snee Lee
Presiding Judge
gm
Judicial Circuit

This is to certify that I have received this order.

Offender's
Signature

12 Unavailable to sign
Feb 2024

Witnessed by

Chas.