

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
Harold Simmons,)
)
Appellant,)
vs.)
City of North Charleston,)
)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO. **2023-CP-10-05002**

**ORDER AFFIRMING RULING OF
THE MUNICIPAL COURT**

The Appellant, Harold Simmons, appealed the decision of the City of North Charleston Municipal Court to the Circuit Court. Thomas R. Goldstein of Belk, Cobb, Infinger & Goldstein, P.A. appeared on behalf of Appellant, and Margie A. Pizarro, city prosecutor for the City of North Charleston, appeared on behalf of Respondent. The parties submitted memoranda and the matter was heard by this Court on August 19, 2024.

For the reasons set forth below, the ruling of the City of North Charleston Municipal Court is hereby **AFFIRMED**, and this appeal is **DISMISSED**.

FACTS

At a hearing before the City of North Charleston Municipal Court on August 9, 2023, the Defendant (hereinafter “Appellant”) pled *nolo contendere* to City of North Charleston violations: (1) a nuisance violation; and (2) and a removal of a notice violation. Pursuant to the plea, Appellant would waive his right to a jury trial on all the charges; and the City agreed to dismiss the thirteen (13) remaining citations against Appellant. At the hearing, Appellant, by and through his chosen counsel, and the city prosecutor for the City of North Charleston came to a negotiated

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sentence for the above-mentioned citations.

As a part of the plea negotiation, Appellant pled "no contest" to both of the citations. The Municipal Court ordered Appellant to pay a \$50.00 fine for one ticket, and Appellant agreed to a thirty-day suspended sentence, conditioned upon full compliance with the City of North Charleston Municipal Codes relating to vehicles and the nuisance provisions. Full compliance was to be achieved within thirty (30) days of August 9, 2023. According to the record, Appellant agreed to the conditions of the plea, and the plea was entered into. *Hearing Transcript* | p. 12-21.

Pursuant to the plea agreement, Appellant was required to remove inoperable vehicles and other nuisance-creating conditions, as described under City of North Charleston Municipal Code Ordinance 9-67(4). Ordinance 9-67(4) pertains to abandoned or inoperable vehicles posing health and safety hazards to the City of North Charleston. During a follow-up inspection, the City observed some vehicles on Appellant's property that remained in non-compliant condition, including a vehicle with a flat tire and another vehicle with missing a bumper.

Consequently, the City filed a motion for a hearing on September 8, 2023. At the hearing on October 6, 2023, the Municipal Court found Appellant violated of the conditions of the suspended sentence, resulting in the imposition of the thirty-day jail sentence. Appellant then filed this Appeal.

ARGUMENTS ON APPEAL

Appellant raises three (3) issues on Appeal: (1) the City failed to provide due process to Appellant by failing to inform him of the allegations the Court was calling upon him to answer; (2) the City failed to present sufficient evidence that Appellant did not conform to the Court's oral order of August 9, 2023; and (3) the Municipal Court lacked subject matter jurisdiction, or in the alternative, failed to provide Appellant a trial by jury and proceeded on a case for which subject matter jurisdiction ended on September 8, 2023.

Respondent opposed the appeal, asserting that Appellant was given notice and an opportunity to be heard, and that the Municipal Court acted within its discretion in revoking the suspended sentence.

STANDARD OF REVIEW

In a criminal appeal from the municipal court, the circuit court does not review the matter de novo; rather, the circuit court reviews the case for preserved errors raised by appropriate exception. S.C. Code Ann. § 14–25–105 (Supp.2012); *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 341, 713 S.E.2d 278, 282 (2011). In criminal appeals from the municipal court, the circuit court is bound by the municipal court's findings of fact if there is any evidence in the record which reasonably supports them. *See Rogers v. State*, 358 S.C. 266, 269 n. 1, 594 S.E.2d 278, 279 n. 1 (Ct.App.2004).

CONCLUSIONS OF LAW

I. Due Process

Appellant argues the City failed to provide due process to Appellant by failing to inform him of the allegations the Court was calling upon him to answer. Appellant contends that the City did not provide notice to Appellant that he faced thirty (30) days in jail because of the *nolo contendere* plea he entered into on August 9, 2023.

The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). Due process is flexible and calls for such procedural protections as the particular situation demands. *S.C. Dep't of Soc. Servs. v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002); *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). In accordance,

the South Carolina Supreme Court determined that the requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. *State v. Binnarr*, 400 S.C. 156, 733 S.E.2d 890 (2012) (citing *S.C. Dep't of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997)).

Here, Appellant contends that he was denied due process because he was not provided with sufficient notice of the allegations that led to his incarceration. However, Respondent's Motion for Hearing states "the City hereby moves for a hearing to determine if the defendant has complied with the court-ordered conditions and take appropriate action if necessary." Appellant was notified of Respondent's Motion for Hearing via email from the City of North Charleston Municipal Court on September 19, 2023, regarding the hearing scheduled for October 6, 2023. The record further indicates that Appellant was notified of the hearing on October 6, 2023, as he was represented by counsel when the case was called. *See e.g., Hearing Transcript*; Appellant's Amended Notice of Appeal Dated October 16, 2023. Furthermore, the record indicates that Appellant had the opportunity to present evidence, question witnesses, and argue his case before the Municipal Court. *See generally, Hearing Transcript*.

Upon reviewing the testimony and evidence presented, this Court finds that Appellant was provided Due Process by Respondent.

II. Trial By Jury

Appellant argues that he was entitled to a jury trial on the issue of whether he complied with the Municipal Court's Order. However, the purpose of the October 6, 2023, hearing was to determine whether Appellant had complied with the terms of the suspended sentence, not to adjudicate a new criminal charge. Therefore, the right to a jury trial was not implicated.

III. Jurisdiction of The Municipal Court

Appellant argues that the Municipal Court's subject matter jurisdiction expired on September 9, 2023, thirty (30) days after his original sentencing on August 9, 2023.

South Carolina law permits municipal courts to impose suspended sentences conditioned on compliance with specific terms. S.C.Code Ann. § 14–25–75 (Supp.1990) (power to suspend sentences imposed by him upon such terms and conditions as he deems proper, including, without limitation, restitution or public service employment); S.C.Code Ann. § 14–25–65 (Supp.1990) (may impose fines or imprisonment, or both, not exceeding two hundred dollars or thirty days). These statutes allow municipal judges a great degree of discretion to impose appropriate punishment and to suspend sentences. *City of North Charleston v. Harper*, 306 S.C. 153, 157, 410 S.E.2d 569, 571 (1991).

Here, the Municipal Court Judge imposed a suspended sentence conditioned on compliance with specific terms. Pursuant to South Carolina Code § 17-25-110, the Municipal Court retained jurisdiction to ensure that Appellant complied with the conditions of the suspended sentence.¹ Furthermore, the Municipal Court revoked Appellant's suspended sentence because he failed to meet the conditions set forth during sentencing.

Upon reviewing the testimony and evidence presented, this Court finds that the Municipal Court retained subject matter jurisdiction over Appellant pursuant to the *nolo contendere* plea entered into on August 9, 2023.

¹ *Suspension of sentence shall run for period of time prescribed by judge.* "When the sentence of any person who has been sentenced by a court of competent jurisdiction of this State shall be suspended by a judge of such court such suspension shall run for the period of time prescribed by such judge in the sentence or order of suspension and no person who has had a sentence so suspended shall be called back and required to do service under such sentence beyond and after the expiration of such period." S.C.Code Ann. § 17–25–110.

IV. Sufficiency of The Evidence

Lastly, Appellant argues that, at the hearing on October 6, 2023, the City failed to present sufficient evidence that Appellant did not conform to the Court's oral order of August 9, 2023. Specifically, Appellant contends that the City's evidence—consisting primarily of photographs of vehicles on his property showing minor defects—did not prove non-compliance with the nuisance ordinance or the terms of the suspended sentence. Appellant further argues that this evidence deviated from the terms discussed during the plea negotiations, thus violating his rights.

A circuit court, sitting in an appellate capacity over a municipal court order, sits to review errors of law only, and the circuit court is bound by the municipal court's factual findings, unless they are clearly erroneous. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *State v. Blackwell*, 420 S.C. 127, 140, 801 S.E.2d 713, 720 (2017) (citing *State v. Kelly*, 331 S.C. 132, 149, 502 S.E.2d 99, 108 (1998)).

At the hearing on October 6, 2023, the City presented photographs taken of Appellant's property after the thirty-day compliance period had passed. These images depicted vehicles in a state that suggested non-compliance with the Municipal Code, such as the vehicle with a flat tire or the vehicle missing a bumper. Additionally, witnesses, including a code enforcement officer, testified that based on their observations, Appellant had not brought the property into full compliance with Ordinance 9.67(4), as ordered on August 9, 2023. City of North Charleston Municipal Code Municipal Code Ordinance 9.67(4) states:

Without limitation upon and in addition to any conditions which may constitute common nuisances under section 9-66, the following are declared to be unhealthy and unsightly conditions constituting public nuisances and endangering the life, health, safety, welfare and property of the entire community: conditions which afford a breeding place for and/or attract insects, rodents or reptiles or otherwise

create a substantial risk of danger to health and/or safety through disease, fire, safety hazards or other means, including, but not limited to:

...
(4) (a) Trucks, cars, trailers, boats, and similar items that (i) fail to comply with state or federal safety regulations or are incapable of self-propulsion (if the item in question is normally self-propelled), or are dismantled; and (ii) which are left in such state or condition for more than seventy-two (72) hours.

While Appellant argues that minor defects, such as a flat tire, do not render a vehicle "inoperable" under the terms of the Ordinance, the Municipal Court found that these conditions violated the safety and nuisance standards defined by Ordinance 9-67(4). The Ordinance's language is broad, encompassing any condition that creates a risk to health or safety, not solely vehicles that are entirely incapable of operation. The Municipal Court was clear that compliance with the Ordinance required that all vehicles on the property be in safe, operable condition, and not merely hidden from view. Therefore, even relatively minor issues, like flat tires or missing bumpers, can be interpreted as rendering the vehicles unsafe or unfit for operation.

In revoking the suspended sentence, relying on the photographic and testimonial evidence provided by the City, the Municipal Court found that Appellant failed to comply with the conditions of the suspended sentence. The Court's role in this situation was to determine whether the vehicles on Appellant's property posed a violation of the Ordinance. Given the broad discretion afforded to trial courts in interpreting factual matters, and considering the Ordinance's intent to prevent unsightly and potentially hazardous conditions, the Municipal Court's finding that the vehicles were not in compliance was within its discretion.

CONCLUSION

Upon reviewing the testimony and evidence presented, this Court must defer to the Municipal Court's determinations.

IT IS THEREFORE ORDERED that the ruling of the Municipal Court is **AFFIRMED**, and Appellant Harold Simmons' Motion to Appeal the Decision of the Municipal Court is **DENIED**.
SO ORDERED.

[ELECTRONIC SIGNATURE FOLLOWS]



Charleston Common Pleas

Case Caption: Harold Simmons VS North Charleston City Of

Case Number: 2023CP1005002

Type: Appeal/Affirmed

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134