

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County Circuit Court
The Honorable Roger M. Young

Opinion No. 2025-UP-010
Appellate Case No. 2022-001018

RECEIVED
FEB 03 2025
SC Court of Appeals

STATE OF SOUTH CAROLINARESPONDENT

v.

BOWEN GRAY TURNER.....PETITIONER

RETURN TO PETITION FOR REHEARING

The Respondent, the South Carolina Department of Probation, Parole and Pardon Services, submits this Return to Appellant’s Petition for Rehearing. Respondent would submit that this Court has not overlooked or misapprehended the law or the facts underlying the probation revocation order to register as a sex offender and therefore a rehearing is not warranted.

Petitioner argues that the Court misapprehended the requirement of good cause that must be shown by the solicitor to the sentencing court for the sex offender registry to be ordered. S.C. Code Ann. § 23-3-430(D). However, the solicitor placed facts on the record at the original plea and recommended the sex offender registry. (R. p. 13-14). This aligns with the requirements of § 23-3-430(D). The sentencing court ordered the registry and made it clear that it would only be imposed upon the violation of the sex offender conditions. This order was imposed at sentencing

and was not appealed by either party, thus becoming the law of the case. *State v. Lee*, 350 S.C. 125, 132-33, 564 S.E.2d 372, 376 (Ct. App. 2002).

For his definition of “good cause,” Petitioner uses *In the Interest of Christopher H.*, 432 S.C. 600, 854 S.E.2d 853, (Ct. App. 2021). However, in that case the juvenile defendant presented evidence showing extensive counseling and completion of four levels of treatment. In Petitioner’s case, he presented no information at the sentencing court to oppose the State’s and victims’ rendition of facts that referred to two additional alleged sexual assaults in other jurisdictions.

The State offered Petitioner the opportunity to avoid the sex offender registry by abiding by the sex offender conditions of probation, a condition he accepted at sentencing. Instead of complying, he promptly violated those conditions which added further good cause to the original sentencing court’s decision. Petitioner’s reductive argument that he would have to register if he merely took a sip of beer ignores the totality of the circumstances before the probation court, such as consuming multiple drinks and becoming so intoxicated that he was charged with other misdemeanor offenses such as disorderly conduct and threatening public officials.

Petitioner relies on *State v. Davis*, 375 S.C. 12, 649 S.E.2d 178 (Ct. App. 2007) in his request for a rehearing, which was a key argument in his case in chief. He argues that *Davis* prohibits a probation court to impose the sex offender registry. As this Court correctly noted, *Davis* holds that the probation judge does not have the authority to “modify, change or amend” the sentence handed down. *Id.* at 16, 649 S.E.2d at 180 (Quoting *State v. Best*, 257 S.C. 361, 373-74, 186 S.E.2d 272, 277-78 (1972)).

Petitioner incorrectly reads *Davis* as holding that the sex offender registry can never be imposed during a probation violation hearing. That surface-level reading ignores the facts of that

case, wherein the sentencing court and the solicitor agreed that the registry would not be imposed. In that context, a court hearing a probation violation is without authority to impose the registry.

As this Court correctly determined, because the sentencing court ordered the sex offender registry as a consequence should he violate the sex offender conditions, the probation court operated fully within its authority, which was derived from the sentencing court. Therefore, when it determined that Petitioner violated the sex offender conditions by consuming alcohol (and demonstrated other alarming behavior), the probation court was following the sentencing court's directive. This Court's ruling affirming the probation court's order is correct, and Respondent respectfully submits that a rehearing is not necessary.

Petitioner also attempts to transfer the requirement of finding good cause for the sex offender registry found within § 23-3-430(D) to the probation revocation court. This Court rightly determined that the sentencing court found good cause to order the sex offender registry at sentencing in accordance with the statute. The revocation court was not required to find good cause, because that role is strictly limited to the sentencing court.

Petitioner further argues that the probation revocation court abused its discretion for denying the request for continuance to present expert testimony regarding his risk of reoffending. As this Court has already held, "[t]he denial of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion resulting in prejudice." *State v. Meggett*, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012).

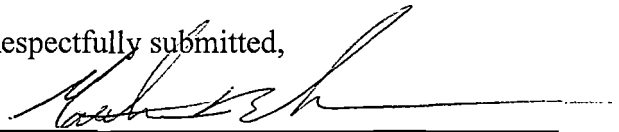
Petitioner states that it is illogical to expect a defendant to go through the expense of retaining a psychological expert to fight the imposition of the registry at a plea where the registry was not being imposed. Respondent would submit that Petitioner's argument distracts from the reality that the State's generosity in recommending the registry be held in abeyance to allow a

defendant to prove his commitment to rehabilitation is being abused when the same defendant falls short of his promise. Considering the charges he was facing, Petitioner received a generous plea offer in which he was allowed to plea to an offense that did not mandate the sex offender registry. He accepted that plea and the State's recommendation that the registry only be imposed if he failed to abide by the sex offender conditions of probation. When he promptly violated those conditions, the imposition of the sex offender registry was a natural consequence. This Court's reasoning was sound in upholding the order of the probation revocation court.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits that this Court has not misapprehended or overlooked any relevant issues and therefore a rehearing is not warranted.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

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Columbia, South Carolina
January 30, 2025

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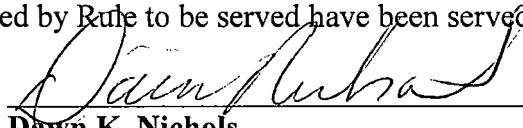
BOWEN GRAY TURNER.....PETITIONER

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, certify that I have served the within Return to *Petition for Rehearing*, dated January 30, 2025, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, this 30th day of January, 2025, addressed to:

Robert Dudek, Esquire
Lara Caudy, Esquire
PO Box 11589
Columbia, SC 29211-1589

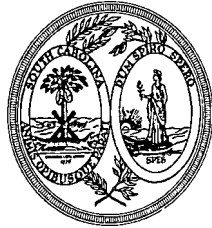
I further certify that all parties required by Rule to be served have been served.



Dawn K. Nichols
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January 30, 2025

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

RE: State v. Bowen Turner

Dear Ms. Kitchings:

Enclosed please find the original of the *Return to Petition for Rehearing*, dated January 30, 2025, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Matthew C. Buchanan
General Counsel

Enclosures

cc: Robert Dudek, Esquire
Lara Caudy, Esquire

State of South Carolina

Department of Probation, Parole, and Pardon Services

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