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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of General Sessions

The Honorable Alison Lee, Circuit Court Judge

Appellate Case No. 2024-001118

THE STATERespondent,

v.

CURTIS LEMONAppellant.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

STATEMENTS OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW.....4

ARGUMENT.....5

The Circuit Court incorrectly found that they had no option but to revoke Appellant’s
community supervision probation or to continue Appellant on community supervision
probation even though they were granted statutory authority to continue community
supervision probation under other terms and conditions and to keep Appellant on
community supervision probation.....5

CONCLUSION.....8

STATEMENTS OF ISSUE ON APPEAL

Whether the Circuit Court correctly found that they had no option but to revoke Appellant's community supervision probation or to continue Appellant on community supervision probation even though they were granted statutory authority to continue community supervision probation under other terms and conditions and to keep Appellant on community supervision probation.

STATEMENT OF THE CASE

Appellant Curtis Lemon 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. On March 19, 1999, Appellant was sentenced to thirty years' imprisonment for first-degree criminal sexual conduct and voluntary manslaughter. Appellant appealed his convictions. The appeal was dismissed on April 5, 2002.

Thereafter, Appellant pursued numerous other collateral actions. Included in these actions were at least three PCR actions, two PCR appeals, and two post-conviction DNA testing actions, all of which were denied and dismissed.

Appellant was released from SCDC custody on June 30, 2023. According to his conditions of release, Appellant was required to attend sex offender treatment and counseling with Dr. Burke. Dr. Burke issued a letter dated September 28, 2023, stating that Appellant was terminated from sex offender treatment for non-compliance. Appellant was then accused of violating the terms of his community supervision probation based on his failure to complete sex offender treatment.

On November 13, 2023, Appellant had his first CSP violation hearing before the Honorable Deadra Jefferson, who gave Appellant thirty days to get re-enrolled in treatment and to take a polygraph test. Appellant did not reenroll in treatment. On December 18, 2023, Appellant 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, Appellant refused to comply with the

conditions. Appellant's third CSP violation hearing was held on February 12, 2024, before the Honorable Alison Lee. At this hearing, this Court revoked Appellant's supervised release for one year. Appellant filed a motion for reconsideration, which was denied by written order on June 25, 2024. This appeal follows.

STANDARD OF REVIEW

“The determination of whether to revoke probation in whole or in part tests within the sounds discretion of the trial court.” *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006) (citing *State v. Miller*, 122 S.C. 468, 474-75, 115 S.E. 742, 745 (1923); *State v. Proctor*, 345 S.C. 299, 301, 546 S.E. 2d 673, 674 (Ct. App. 2001)); *See State v. Garrard*, 390 S.C. 146, 151, 700 S.E.2d 269, 272 (Ct. App. 2010) (applying the standard of review in *Allen* to a community supervision probation violation appeal). “The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation.” *Id.* (citing *State v. King*, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); *State v. White*, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); *State v. Hamilton*, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct. App. 1999)).

“An appellate court will not reverse the trial court’s decision unless the court abused its discretion.” *Allen*, 370 S.C. at 94, 634 S.E.2d at 656 (citing *White*, 218 S.C. at 135, 61 S.E.2d at 756; *Hamilton*, 333 S.C. at 647, 511 S.E.2d at 96). “An abuse of discretion occurs when the trial court’s ruling is based upon an error of law, which as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.” *Id.*

ARGUMENT

The Circuit Court incorrectly found that they had no option but to revoke Appellant's community supervision probation or to continue Appellant on community supervision probation even though they were granted statutory authority to continue community supervision probation under other terms and conditions and to keep Appellant on community supervision probation.

On appeal, Appellant argues the court erred in finding that they had no decision but to revoke Appellant's probation due to his termination and failure to re-enroll in counseling along with his failure to take a polygraph examination as a part of the counseling condition. However, the controlling statute states that the Court had the authority to keep Appellant on probation with other terms and conditions they deemed appropriate. Thus, Appellant submits that the Court erroneously found they had no discretion over the matter. The ruling of the lower court should be reversed accordingly.

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.

Appellant submits that he should have been permitted to remain on community supervision probation. The controlling statute states that when an individual has been found to commit a community supervision probation violation, the Court may impose other terms and conditions it deems appropriate and may continue the individual on community supervision probation. *Id.* However, the Court erroneously held in this case that they had no choice but to accept PPP's conditions and had no choice but to revoke Appellant for one year. The statute does not reflect the stringent boundaries around the Court's discretion concerning a CSP violation, which the Court erroneously found existed.

Here, Appellant's only violation was his termination from sex offender counseling for failure to take a polygraph or inform his counselor of the specific facts surrounding the sex offense he was charged with and convicted of. He complied with every other condition, including GPS monitoring, payment of fees, and even willingly attending counseling before his termination based on a failure to admit guilt and take a polygraph examination.

Appellant's expulsion from counseling is rooted solely in his decision to maintain his innocence. Appellant has maintained his innocence since he was initially charged in 1998 and maintains his innocence today. Forcing him to undergo counseling that, in part, requires he take responsibility over the alleged actions leading to his conviction and to take a polygraph test puts him in an impossible situation; either admit to a crime he has consistently claimed he did not commit for nearly three decades or go back to prison for asserting his innocence. This condition places undue hardship on individuals who maintain their innocence specifically, requiring they

abandon their right to maintain their innocence and potentially lie throughout counseling by admitting to something they maintain they did not commit, simply to avoid additional punishment. Such a duality is ripe with public policy concerns, as those who admit guilt are permitted to remain on release while those that adamantly contend that they are innocent are given no option but to face additional incarceration time.

The Court had the opportunity and option to continue Appellant on community supervision probation even with his termination from counseling services. Exercising such discretion would have atoned for the additional punishment Appellant was exposed to for failing to admit guilt to a crime he has maintained he is innocent of since the 1990's. However, the Court erroneously held that they lacked such discretion and because they lacked such discretion, they had no choice but to revoke Appellant for up to one year. Accordingly, the ruling of the lower court should be reversed.

CONCLUSION

For the reasons stated above, this Court should reverse the ruling of the lower court.

Respectfully submitted,

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