

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to the Court of Appeals  
Appeal from the Circuit Court  
The Honorable Frank R. Addy, Jr.

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Appellate Case No. 2023-001910

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STATE OF SOUTH CAROLINA .....APPELLANT

v.

Joey Reid, #1392728, .....RESPONDENT

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**BRIEF OF APPELLANT**

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## STATEMENT OF ISSUES ON APPEAL

1. Did the Court of Appeals err when it determined a circuit court judge's order vacating a sentence imposed by a different judge and remanding the matter for a new sentence is not a final order and therefore not reviewable?
2. Can a circuit court judge overseeing a probation violation vacate a sentencing order issued by another circuit judge when there was no appeal taken from the original sentence or post-conviction action filed?

## STATEMENT OF THE CASE

On January 27, 2014, Respondent pleaded guilty to one count of assault and battery in the first degree (2012-GS-24-1323) and one count of attempted murder (2012-GS-24-1325). (R.p.52-p.53). At the plea, he was represented by Carson Henderson, Esquire. Solicitor David Stumbo represented the State, and the Honorable Doyet Early, III, presided. Per the sentencing sheets and recollection of the solicitor, the plea was negotiated and agreed to by all parties. (R.p. 11, l. 9-13; 52-53). The negotiated plea was for Respondent to serve ten years in the Department of Corrections on the assault charge, plus a consecutive twenty-year sentence for attempted murder, suspended upon the service of five years' probation. This was accepted by the court, which followed the negotiation and imposed the agreed upon sentence. No appeal or post-conviction action was submitted by either party involved with the plea.

Respondent served his active sentence at the Department of Corrections and was released to probation on or about June 29, 2018 and began his term of probation with the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS). He was subsequently arrested for attempted murder on July 11, 2019. Agents for SCDPPPS issued a warrant for violation of probation on July 12, 2019, citing the allegations underlying the new arrest along with failing to pay monetary obligations and failing to follow the advice and instructions of the agent. A hearing on the probation violation was scheduled on January 30, 2020, before the Honorable Donald B. Hocker but the matter was continued. Ultimately, the probation violation hearing was not conducted until after Respondent was acquitted after trial by a jury of the attempted murder charge on April 21, 2021.

The violation of probation hearing was finally heard on October 28, 2021 before the Honorable Frank R. Addy, Jr. At an earlier hearing in which the matter was continued,

Respondent's counsel, Tristan Shaffer, raised an objection to the probation violation based on the underlying conviction and sentence – that a conviction for attempted murder could not be suspended to probation, regardless of the fact that it was a negotiated plea. See S.C. Code Ann. § 16-3-29 (2010) (“A sentence imposed pursuant to this section may not be suspended nor may probation be granted.”).

During the October hearing, the court considered Respondent's argument and heard from Eighth Circuit Solicitor David Stumbo and Assistant General Counsel for SCDPPPS Octavia Wright. (R.p. 1-p. 24). The court took the matter under advisement. On November 9, 2021, an unlocked placeholder order dismissing probation warrant W-24-20-0153 was issued, though the court stated it would supplement the order at a later time. (R.p.37). SCDPPPS responded in an email to all parties of its intention to file an appeal of the order when it is issued in its final form. (R.p.38-p.51). On November 29, 2021, the court issued a subsequent order dismissing probation violation warrants W-24-20-0116 and -153, and instructing Respondent to be released from the Greenwood County Jail. (R.p.36). In response to the dismissal Appellant filed a Notice of Appeal on December 9, 2021, and served Respondent.

In the intervening months between Respondent's attempted murder charge, his subsequent acquittal, and the October 28, 2021 hearing, Respondent had been indicted with other charges, including: pointing and presenting firearms (21-GS-24-02030); giving false information to law enforcement (2020A2420300197); obstructing justice (21-GS-24-02256); unlawful neglect of a child (21-GS-24-02126); and domestic violence in the second degree (21-GS-24-02125). He pleaded guilty on December 14, 2021 to a negotiated plea of five years on the unlawful neglect and domestic violence charges, with the other two charges dismissed. Mr. Shaffer represented Respondent during this plea before Judge Addy.

On December 31, 2021, Judge Addy issued an “Order Concerning Probation Violation,” remanding Indictment 2012-GS-24-1325 (attempted murder) for a new sentencing. (R.p.26-p.35). Appellant renewed its previously served and filed notice of appeal on January 11, 2022.

Rather than addressing the Appellant’s appeal on its merits, the Court of Appeals issued a ruling on September 20, 2023, determining that Judge Addy’s order vacating the sentence and requiring a new sentencing was not final “until after Reid has been sentenced” and that no subsection of S.C. Code §14-3-330 was applicable. Appellant filed its petition for rehearing, which was denied by the Court of Appeals in an order dated November 20, 2023. Appellant then submitted a petition for a writ of certiorari on December 12, 2023. This Court granted the petition on January 15, 2025.

Appellant’s brief follows.

### **Standard of Review**

An appellate court will not disturb the Circuit Court's decision to revoke probation unless the decision was influenced by an error of law, was without evidentiary support, or constituted an abuse of discretion. State v. Archie, 322 S.C. 135, 470 S.E.2d 380 (Ct.App.1996); *see also* State v. White, 218 S.C. 130, 135, 61 S.E.2d 754 (1950) (stating that upon review of revocation of probation, question is not one of formal procedure respecting either notice, specifications of charges or trial thereon, but is simply whether trial court abused its discretion; review therefore must be determined in accordance with principles governing exercise of judicial discretion). The decision to revoke probation is addressed to the discretion of the circuit judge. White, 218 S.C. at 134–35, 61 S.E.2d at 756; State v. Proctor, 345 S.C. 299, 546 S.E.2d 673 (Ct.App.2001); State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct.App.1999). A reviewing court will only reverse this

determination when it is based on an error of law or a lack of supporting evidence renders it arbitrary or capricious. Proctor, 345 S.C. at 301, 546 S.E.2d at 674. The court has much discretionary authority in dealing with guilty persons who are in a probationary status. Shannon v. Young, 272 S.C. 61, 248 S.E.2d 914 (1978).

### Arguments

1. **The Court of Appeals erred when it determined that the probation court's order vacating the sentence and remanding the matter for a new sentencing was not a final order and therefore reviewable under S.C. Code Section 14-3-330.**

Appellant respectfully submits that this matter squarely falls within the requirements of section 14-3-330. In remanding the matter for resentencing, the probation violation court not only overstepped its statutory authority in issuing its order vacating the sentence and ordering a new sentencing, but the order is final in all practical considerations, thus falling within subsection (2)(a) of section 14-3-330. The probation violation court's remand for resentencing clearly "determines the action and prevents a judgment from which an appeal might be taken," as contemplated by the statute.

It is hard to fathom how an order vacating a sentence imposed ten years prior and ordering a new sentencing is not final given the circumstances surrounding the negotiated plea. A resentencing, presumably following the statutory prohibition on suspending and granting probation for attempted murder convictions, necessarily would require a modification to the original plea agreement. Petitioner submits that, because resentencing cannot be accomplished under the original terms of the negotiated plea, the order is essentially a remand for a new trial. The court's order effectively contemplated that, when it stated, "At the resentencing, Mr. Reid

may move to withdraw his plea if he so desires. Should he elect to withdraw his plea and the Court permits him to do so, the State and Mr. Reid are free to renew their negotiations or take the matter to trial.” (R.p. 34-35).

A resentencing puts the State in the worst possible position: the current plea arrangement of ten years’ imprisonment has already been served on the first-degree assault, and the remainder of the agreement, twenty years’ imprisonment suspended to probation, is prohibited by statute. The terms of the negotiation would necessitate the withdrawal or vacation of the plea to the attempted murder and although a new plea to a lesser included offense such as assault and battery of a high and aggravated nature could be tendered, nothing forces Respondent to accept such a plea. The State would then be required to bring a more than ten-year-old case to trial after it had already negotiated a resolution in 2014. Regardless of how the resentencing order is resolved, it stretches the imagination to envision a scenario in which the result would not be rendered moot or where the probation court’s improper order would otherwise be eligible for proper review.

Considering this reality, Appellant submits that the order for “resentencing” is, for all practical purposes, an order for a new trial and thus meeting the requirements of section 14-3-330(2)(b). As stated earlier, the probation violation court’s order vacating the sentence and ordering a resentencing cannot be accomplished because of the negotiated nature of the sentence and the statutory prohibition of the probationary sentence all sides had agreed to. Consequently, the very real likelihood of a withdrawal of the attempted murder plea will be followed by a refusal to plea to any other sentence – forcing the State to call the case to trial. Regardless of the result of such a trial, the order vacating the original sentence will never have an opportunity to be reviewed by an appellate court.

A third alternative would be to consider section 14-3-330(3) as applicable to the situation. A probation violation hearing is a proceeding that follows a judgment – that being conviction and sentencing. A ruling not objected to becomes the law of the case. *State v. Lee*, 350 S.C. 125, 132-33, 564 S.E.2d 372, 376 (Ct.App. 2002). It is uncontroverted that neither side appealed the plea, conviction, and sentencing, so the judgment of the matter stands. The probation violation court's remand clearly affects substantial rights in this case – that being the State's interest in the finality of a plea bargain and sentencing and its expectations that Respondent be held to the terms of its contractual agreement in the negotiated sentence. It cannot be understated how devastating such a ruling by the probation violation court will be; the finality of all future probationary sentences will no longer be certain if a circuit judge hearing an alleged violation can simply remand the matter for a new sentencing without that order being subject to appellate review. If a judge presiding over a probation violation hearing dislikes the amount of time he or she can revoke based on the original sentence, that judge cannot vacate the sentence and order a new sentencing in the hopes that a greater suspended sentence would be ordered. Were a judge to take such a prohibited action, Petitioner anticipates the appellate courts would rightly leap to overturn that order and ensure no other circuit judge does the same.

The present scenario, while ostensibly operating in the favor of the Respondent, should require the same response. Just as defendants have the right to expect the State to uphold its bargains, the State has an equal interest in ensuring defendants are held to their end. Respondent should not be allowed to negotiate a beneficial sentence from which neither side appealed making it final, and then undo that finality by having the sentence vacated when he clearly violated the terms of his supervision.

2. **A circuit court judge may not vacate a sentencing order issued by another circuit judge when there was no appeal taken from the original sentence, therefore the probation court erred by vacating the sentence and ordering a new sentencing hearing.**

The law of South Carolina is well-settled that one circuit court judge may not reverse an order of another circuit court judge. Cook v. Taylor, 272 S.C. 536, 538, 252 S.E.2d 923, 924 (1979). While Appellant appreciates Judge Addy's thoughtful and thorough discourse on the matter that was before him, it respectfully submits that the court overstepped its authority by vacating Respondent's sentence. Furthermore, Appellant appreciates the situation before the revocation court in that the original offense was contrary to statute. However, Appellant submits that the evidence presented to the court did not show a deliberate attempt to achieve an illegal sentence.

Respondent entered into a negotiated plea where he derived a significant benefit. He agreed to a suspended sentence and a term of probation in lieu of an active sentence on the indictment at issue. Judge Early accepted the negotiated plea and sentenced him according to the negotiations. Although the sentencing court lacked the authority to suspend the sentence for attempted murder and to place Respondent on probation for that offense, at no point did either the State or Respondent appeal or object to the sentence. Only after Respondent was facing a revocation did he raise the issue, and only then to escape the potential ramifications of his further bad actions.

South Carolina law states that a ruling that is not objected to becomes the law of the case. See, State v. Lee, 350 S.C. 125, 132-33, 564 S.E.2d 372, 376 (Ct.App. 2002), citing State v. Sampson, 317 S.C. 423, 545 S.E.2d 721 (1995). Quite simply, because the judge suspended the sentence and placed Respondent on probation and neither side objected, Respondent was subject to the rules and requirements of – and consequences for violating – probation.

SCDPPPS's duties are to execute the sentence by supervising Respondent and enforcing the conditions of probation. Its duties also involve bringing allegations of violations of the conditions to a circuit court judge, who has the authority to revoke all or part of the suspended sentence. "[R]evocation is the means to enforce the conditions of probation." Hamilton, 333 S.C. at 648, 511 S.E.2d at 97. See also: S.C. Code Ann. § 24-21-410 (2010), S.C. Code Ann. § 24-21-450 (1991), and S.C. Code Ann. § 24-21-460 (1976).

Consequently, Appellant submits that the trial court was fully within its authority to proceed with the violation hearing, consider the facts presented and exercise its discretion in determining the appropriate response – which includes a revocation up to the full suspended sentence. An appellate court "will not disturb the Circuit Court's decision to revoke probation unless the decision was influenced by an error of law, was without evidentiary support, or constituted an abuse of discretion." Lee at 129, 564 S.E.2d at 374, citing State v. Archie, 322 S.C. 135, 470 S.E.2d 380 (Ct.App. 1996).

In his objection to the probation revocation hearing, Respondent cites to dicta within Lee that suggests the matter of an illegal sentence may be raised at a probation violation hearing. "[T]he statutory authority of the sentencing court to issue the underlying sentence could have been challenged in a motion to reconsider the sentence, on direct appeal, or as a defense to the probation revocation proceedings." Id. at 132-133, 564 S.E.2d at 376.

Appellant submits that this current dilemma suggests that the court in Lee did not foresee how problematic such an objection can be. As the trial court acknowledged, SCDPPPS is not in a position to consider the validity of a probationary sentence. Its duties are to enforce the conditions

of probation pursuant to its statutory authority. Therefore, a violation of probation hearing should not be considered an appropriate time to submit an objection to the legality of the sentence.<sup>1</sup>

The trial court also considered Justice (then Appellate Court Judge) Few's dissent in State v. Blakney, 410 S.C. 244, 254, 763 S.E.2d 622, 628 (2014). In Blakney, the sentencing judge suspended part of the mandatory fifteen-year minimum sentence for first degree burglary. The underlying issue in that case involved the duration of community supervision, though Justice Few's dissent is instructive here. "I would hold the State may not argue to a sentencing court that the court has the power to suspend a sentence, and after the court accepts the State's argument and suspends the sentence, turn around and argue, as it has done in this appeal, the sentence may not be suspended."

In light of Justice Few's objection, Appellant submits Respondent has done something similar – argue to the sentencing court that he should receive probation, and then when faced with a violation of that probation, argue that he never should have been on probation in the first place.

Furthermore, Justice Few's dissent notes that the State was not aggrieved by the error; Blakney was. Id. at 258, 763 S.E.2d at 630. Yet in this matter, the roles are reversed – Appellant is now trying to enforce a sentence that Respondent claims cannot be enforced, leaving the State's end of the bargain empty.

Testimony by Solicitor Stumbo indicates the original plea negotiations between the defense and prosecution failed to recall the statutory prohibition of probation for attempted murder. As the trial court points out, the sentence could very easily have been accomplished with a plea to assault

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<sup>1</sup> A possible exception to this would be to address a sentence truly detrimental to the defendant. For example, a suspension of ten years to probation for the crime of third degree burglary is not permitted because third degree burglary carries a maximum of five years. That improper sentence could be raised at a violation hearing so that the judge only considers a revocation of five years or less.

and battery of a high and aggravated nature (ABHAN) – it carries up to twenty years, adds a strike, and can be suspended to probation. Therefore, the oversight does not appear to be through the operation of bad faith by the State. The plea negotiations resulted in both sides getting what they wanted – at least until Respondent failed to comply with the terms of probation and was about to face the consequences.

The reality that a simple change to the offense to which Respondent pled would have solved the issue also addresses another of the trial court's misgivings – that of the enforceability of the negotiated plea bargain. While the trial court correctly acknowledges that a court is without power to enforce an illegal contract, the negotiated plea does not reflect an impossibility or an unthinkable sentence under the totality of the circumstances. While extreme examples such as ordering the death penalty for shoplifting were raised by the trial court,<sup>2</sup> nothing so extreme actually took place. The Respondent did not agree to an unconscionable sentence far exceeding his crime; he instead received a far *lessened* sentence than contemplated by statute.<sup>3</sup> Furthermore, it is a bargain that could have been accomplished by reducing the offense to that of ABHAN.

Appellant is keenly aware of the broad authority already given to the circuit court when hearing probation violations. Appellant acknowledges that the court could have declined to revoke Respondent, continued him on probation, or even terminated his supervision. S.C. Code § 24-21-460. It was only when the circuit court elected to vacate the original sentence and order a new sentencing that it overstepped its bounds. For that reason, Appellant respectfully requests this

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<sup>2</sup> R.p. 17, l. 23 – p. 18, l. 4.

<sup>3</sup> A far more apt analogy would be the enforceability of a judge imposing a sentence of three years for armed robbery instead of the mandatory minimum of ten years if the sentence was not appealed by either side.

Court to overturn its order and remand the case for a new probation violation hearing, wherein the circuit court is free to exercise its broad, but not unlimited, authority.<sup>4</sup>

### Conclusion

While Appellant understands the dilemma before the trial court, South Carolina law is clear that one circuit court judge cannot set aside another circuit judge's order or sentence.

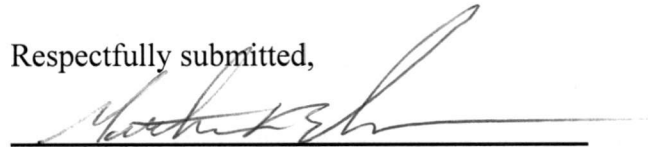
Furthermore, while the appellate courts *do* have the authority to reverse and remand an order or sentence from a lower tribunal, the rules strictly state that notice of appeal must be raised within ten days of the order. Rule 203(b)(2), SCACR. Clearly, this was not done, so the sentence imposed became the law of the case. Therefore, the violation court could only address the matter that lay before it – the violation(s) of probation alleged. For these reasons, Appellant respectfully requests that the probation court's order vacating the sentence and ordering a new sentencing be overturned with instructions for the circuit court to consider the violation of probation.

(Signature appears on the following page)

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<sup>4</sup> SCDPPPS's recommendation for revocation was for ten years. In the underlying order, Judge Addy stated that "a recommended revocation of this magnitude is unusual for the violations alleged. The Court is inclined to believe and does find that the impetus for the initial ten (10) year partial revocation recommendation stems from the attempted murder charges for which Mr. Reid was acquitted on April 21, 2021." (R.p.27, FN 6). This comment, however, fails to take into consideration the fact that Respondent had also pled guilty to obstructing justice, pointing and presenting, a firearm, domestic violence, and unlawful neglect of a child – the convictions of which are wholly separate violations of probation that the court may yet address. Furthermore, the order fails to take into consideration that the acquittal of Respondent's second attempted murder charge in no way precludes the violation court from considering evidence from the attempted murder charge that could show the Respondent violated one or more conditions of probation by a preponderance of the evidence. See State v. Williamson, 356 S.C. 507, 589 S.E2d 787 (Ct. App. 2003).

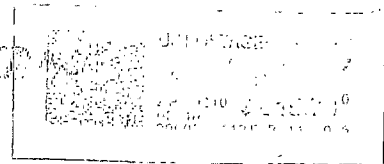
Respectfully submitted,



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