

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENWOOD COUNTY
The Honorable Frank R. Addy, Circuit Court Judge
Appellate Case No. 2021-001465

Appellate Case No.: 2023-001910

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA, ...PETITIONER

v.

JOEY CORVELL REID, ...RESPONDENT

APPENDIX

MATTHEW C. BUCHANAN
General Counsel, Bar#73740

South Carolina Department of Probation
Parole and Pardon Services
Post Office Box 207
Columbia, South Carolina 29202

ATTORNEY FOR THE PETITIONER

Other Counsel of Record:

David Alexander, Esquire
SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia SC 29211-1589

ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Circuit Court
The Honorable Frank R. Addy, Jr.

Appellate Case No. 2021-001465

STATE OF SOUTH CAROLINA APPELLANT

v.

Joey Reid, #1392728, ...RESPONDENT

RECORD ON APPEAL

David Alexander, Appellate Defender
S.C. Commission on Indigent Defense
Post Office Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR RESPONDENT

Matthew C. Buchanan
General Counsel

S. C. Department of Probation,
Parole, and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

ATTORNEY FOR APPELLANT

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STATE OF SOUTH CAROLINA	)	
	)	IN THE FAMILY COURT
COUNTY OF GREENWOOD	)	2012GS2401325
State,	)	
PLAINTIFFS,	)	TRANSCRIPT OF RECORD
vs.	)	October 28, 2021
Joey Reid,	)	Greenwood, South Carolina
DEFENDANT.	)	
	)	
	)	
	)	

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR., Judge

A P P E A R A N C E S:

DAVID STUMBO, Esquire
Attorney for the State

TRISTAN SHAFFER, Esquire
Attorney for the Defendant

MS. WRIGHT,
Department of Probation, Pardon & Parole

Recorded by: DCRP

Transcribed by: MISSY BROWN
Court Reporter

I N D E X

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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No exhibits presented at hearing.

1 P R O C E E D I N G S

2 October 28, 2021

3 (Whereupon, Court was in session with all parties
4 present when the following matters were had:)

5 THE COURT: I don't know what this is or how many
6 times it's been, but we're here to try and finally figure
7 out what's going on with Joey Reid. I've got a probation
8 violation report in front of me wherein the Court back in
9 2014, Judge Early, put him on probation apparently for
10 attempted murder from an indictment from 2012. There has
11 been a lot of discussion previously about the nature of the
12 plea.

13 I know that the Solicitor had previously emailed
14 me indicating that he was wanting to speak to the reasons
15 behind the agreed-upon sentence back in 2014. And I know
16 we have a representative here from triple P. And I think
17 last time we met, Mr. Shaffer, I'd suggested that perhaps
18 you order a transcript or maybe do some research or
19 something like that. I don't know if -- what's been done
20 or anything, if anything has been done from your end as it
21 relates to all of this.

22 MR. SHAFFER: No, Your Honor, I haven't -- and I
23 apologize. I was thinking that for some reason -- I know
24 that there was some communication about that, but I didn't
25 realize that you were relying on me to get it.

1 But basically our position is, is that the, you
2 know, the -- I mean, clearly the statute is -- does not
3 allow for a probationary sentence. There is -- that the
4 probation basically -- the probation warrant should be
5 dismissed based off of that, because it doesn't allow for
6 him to be on probation. There is a little bit of dicta in
7 a case called State v. Lee saying essentially that -- and I
8 know that they're trying -- going to try to argue law of
9 the case, but there is some dicta or there is some
10 statement saying this. And I don't know if it's necessary
11 for the holding of the actual case. But they do comment in
12 State v. Lee, which I suspect they may cite to, that if we
13 wanted to challenge it, he could have challenged it either
14 at his sentencing or at the -- at the -- on appeal or
15 during the probation revocation hearing. That's basically
16 what it says.

17 I think that you have continuing jurisdiction
18 over this, or the Court of General Sessions does, because
19 of the fact that it is a probation matter. I don't think
20 that they're necessarily going to contend that it's not. I
21 think that the original sentence was an illegal sentence.

22 I mean, sometimes we say things in court that are
23 not enforceable. I'll say that I have had several cases
24 over the last couple of years working in the eighth circuit
25 where dealing with Mr. Stumbo's office, where we've said,

1 We're going to agree to banishment. Now we all know that
2 that's completely ridiculous and not enforceable at all. I
3 tell the client that's not enforceable at all, but it makes
4 everyone feel better. And sometimes we do that.

5 It does not mean that the Court actually has the
6 authority to do so. I don't think the Court had the
7 authority to actually issue that probationary sentence.
8 The State wanted him to plea to a charge that does not
9 allow for probation. They made that -- you know, they put
10 themselves in the position of asking for that charge, where
11 they could have asked for a different charge, say, ABHAN or
12 something like that, as opposed to attempted murder.

13 But they asked for attempted murder. They wanted
14 an attempted murder on his record, and they got an
15 attempted murder on his record. And unfortunately, that
16 also means that the sentence that was announced is not a
17 valid sentence, Your Honor. And I don't think we have --
18 we should enforce it, because it's contrary to public
19 policy because it violates the statute. And I think it
20 violates due process whenever you are actually enforcing a
21 punishment on someone that there's no statute to actually
22 back up.

23 THE COURT: All right. If I were to accept your
24 argument -- and I realize that I haven't heard from them,
25 but I'm trying to get ahead of everything here -- if I were

1 to accept your argument, what would be the Court's -- what
2 would the Court do? Vacate the conviction? Set aside the
3 conviction? Dismiss the case? I mean what -- what ---

4 MR. SHAFFER: Dismiss the probation warrant, and
5 if they want to try to do something else, I honestly think
6 that they -- him being under supervision is void because it
7 violates the statute, Your Honor.

8 THE COURT: And that's what I'm trying to --
9 assuming that I agree with you, that it was an illegal
10 sentence and that enforcing it would be something improper
11 for the Court to do, I understand dismiss the warrant, and
12 I assume you would seek, obviously, termination of
13 probation, but where does that leave the parties at the end
14 of the day? If I simply vacate the plea that was entered
15 in 2012 -- there's a big question mark on whether I can
16 even do that -- but that would pretty much put both parties
17 back in the same position that they were in when Judge
18 Early accepted the plea in the first place.

19 MR. SHAFFER: Your Honor, I honestly don't know
20 if you have the authority to vacate the plea as a whole. I
21 do know that it would be improper for the Court to enforce
22 a sentence that's prohibited directly, Black Letter Law
23 prohibited, under the statute. I don't think that it's
24 proper for you to enforce that. But, Your Honor, I don't
25 know exactly where that would leave us. I don't know if

1 the State would want to get involved and bring these
2 charges back or not. I have no idea. I doubt that they --
3 I don't know if they could, you know. They -- they entered
4 a bargain where they entered a bargain where it was --
5 where they were asking for something that was not something
6 that you could ask for. Contract law would say that would
7 be ---

8 THE COURT: It would be a nullity.

9 MR. SHAFFER: Yeah.

10 THE COURT: If it's an illegal contract, it's a
11 nullity.

12 MR. SHAFFER: A nullity, exactly.

13 MR. STUMBO: If I could -- and I know the
14 probation department, Ms. Wright from probation is going to
15 put the State's position as to the probation on the record.
16 Really, my only position here, and I talked to Richie about
17 this, is just so the Court has some clarity on what
18 happened in 2014, just as an Officer of the Court ---

19 THE COURT: Please. Yeah, I was going to ask you
20 for that background.

21 MR. STUMBO: Judge, I don't think we could get a
22 transcript because this plea was not appealed and there was
23 no PCR, so I don't think ---

24 THE COURT: Actually, the last time we had a
25 hearing on this Tara Scott was the court reporter. She was

1 actually the one who took the transcript and she checked
2 her records and said that she could obtain a transcript.

3 MR. STUMBO: Oh, she does? Okay.

4 THE COURT: She does still have that transcript
5 of that. Through some miracle she didn't purge it. But
6 she indicated that it was accessible and she did still have
7 it in electronic form on her laptop.

8 MR. STUMBO: Well that's good news, Judge. I
9 just assumed we would not have it because I know there was
10 no appeal or collateral attack on the conviction.

11 Judge, Mr. Henderson, Carson Henderson,
12 represented Mr. Reid at this -- on this case. I prepared
13 it for trial. I actually inherited this case, because when
14 the incident occurred, it was 2012. It was during the
15 campaign. Mr. Hodges, Andrew Hodges, was the prosecutor on
16 it initially. But I inherited the case when I took office.
17 You know, it's one that I prepared for trial going towards
18 the end of 2013. The only emails I could find yesterday
19 with Mr. Henderson dealt with us exchanging discovery and
20 discussing the trial date, essentially that we were in a
21 trial posture for most of the time.

22 As we approached trial in January of 2014, Mr.
23 Henderson approached me with the offer. The initial plea
24 offer was he'll plead to three counts of assault and
25 battery first, and run all three of those consecutive. So,

1 in other words, you would have a consecutive 10, 10, and
2 10. But what he was looking for was he wanted it to be
3 non-85% type time. I think what he was talking about was
4 doing just a suspended on the last two, maybe.

5 Judge, my response to him consistently was -- and
6 this was an incident where Mr. Reid walks into the S&S Club
7 on Seaboard, opens fire with a pistol, and four human
8 beings were struck with bullets, one of which was hit in
9 the head. Fortunately, it was not a serious head injury.
10 But I believe that was Ms. Tiffany Lane who was hit in the
11 head. I remember talking to her preparing this case for
12 trial, and we had her medical records and so forth.

13 Judge, with that type of incident, my consistent
14 position was that this needed to be a strike. If there was
15 a plea resolution, it needed to involve a strike. It
16 needed to involve 85% time. The counteroffer to me saying
17 -- I think my counteroffer to him was 20 years negotiated
18 on the attempted murder, straight time.

19 What Mr. Henderson -- and I think if he were
20 here, he would back me on all of this -- what he responded
21 to me was that if we can do the non-85% time, negotiated on
22 the front-end, and then suspend the conviction with 85%
23 time hanging over his head, would you do that?

24 And I remember discussing that with law
25 enforcement, Judge. And I believe -- I can't remember if

1 the victims were there that day. But I do remember we
2 ultimately agreed not to try the case and come to an
3 agreement to have 85% time hanging over his head.

4 Judge, I really don't recall whether ABHAN or
5 attempted murder, whether we really dug our heels in on the
6 attempted murder. My recollection was just that my request
7 to him was if we're going to do time hanging over his head,
8 it needs to be a strike and it needs to be 85% time
9 hanging. We agreed to the 20 years. So this was a
10 negotiated plea, Judge, that quite frankly the defense was
11 driving the bargain, so to speak, instead of me. I
12 essentially told him, here's what I'm looking for. But the
13 numbers and so forth we ended up agreeing on. I think the
14 characterization that somehow we demanded that, I was ready
15 to go to trial, Judge, on the attempted murder charges.
16 Quite honestly, I believed Mr. Reid, based on that
17 incident, to be dangerous, and I still do.

18 So, Judge, that's -- that's the context of this.
19 And, of course, I get notice and copied on all appeals and
20 all PCRs, so we didn't see that in this case. This is the
21 first time he's ever challenged this negotiation, which
22 essentially the defense proposed.

23 I -- quite honestly, Judge, if it had been the 20
24 years negotiated to ABHAN hanging over his head, which is
25 suspendable under that statute, I wouldn't have had any

1 problem with that. Quite honestly, we just didn't really
2 have that discussion that I can remember. So with it being
3 20 years, it would have been six one way, half dozen
4 another in terms of the result of the plea. It just wasn't
5 -- you know, honestly, what was written on the sentencing
6 sheet was attempted murder instead of ABHAN, but he
7 essentially tendered a plea to facts that supported the
8 lesser included ABHAN, and was sentenced to the maximum
9 sentence for ABHAN.

10 So that -- that would be just the facts of the
11 case, Judge. I think the transcript, if we're able to get
12 that at some point, would probably bear that out. I don't
13 always go into great detail, as Your Honor knows, during my
14 plea presentations on what the negotiations were. But
15 oftentimes I do inform the Court, you know, give a little
16 bit of background on plea negotiations during a plea. So I
17 can't remember how much detail I went into on that
18 particular day with Judge Early.

19 But ultimately, Judge, the intent of the State
20 was for there to be, you know, whether it was ABHAN or
21 attempted murder, I don't remember making a big stink about
22 that. I just wanted to make sure that there was a
23 substantial amount of 85% time and a strike on the
24 consecutive sentence.

25 THE COURT: Okay. Let me hear from Ms. Wright,

1 in just one second though.

2 (Pause.)

3 THE COURT: Before I hear from you; Ms. Wright,
4 what's triple P's take on all this?

5 MS. WRIGHT: Well, Your Honor, triple P -- triple
6 P's position is that we enforce whatever the Court -- that
7 we adhere to whatever instructions that the Court provides
8 in its sentence. And unfortunately, in this particular
9 case, there were two sentences, as you know; the ABHAN and
10 then there was a consecutive sentence of the attempted
11 murder after the ABHAN. And so probation has to deal with
12 the sentence as is, once given the sentence.

13 And as was mentioned earlier, State v. Lee, the
14 2002 decision there -- just want to clarify some language
15 there, actually reading from that opinion when it talks
16 about the subject-matter jurisdiction, because there was a
17 similar argument there as far as Lee being given an illegal
18 sentence.

19 And the Court stated that, The statutory
20 authority of the sentencing court to issue the underlying
21 sentence could have been challenged in a motion to
22 reconsider the sentence on direct appeal or as a defense to
23 the probation revocation proceedings.

24 So what should have been done at that time when
25 the sentence was -- both of these sentences were issued, I

1 think in 2014, there was a 10-day period that a motion to
2 reconsider could have occurred. There was also the PCR
3 process that was mentioned earlier or just a direct appeal
4 of the sentence. And that was not done in a timely
5 fashion. So, therefore, the sentence ran as it has. And
6 Mr. Reid was released and on probation and he's violated
7 his probation now, multiple times.

8 As I'm aware there was an LWOP previously that
9 was dismissed by the Court or -- excuse me -- or an
10 allegation of pointing that was dismissed previously. And
11 now we're here again on a second violation warrant.

12 So probation essentially has been put in the
13 middle of the situation, but we're here to enforce the
14 sentence. And so because the offender here was given a
15 probationary sentence, we're here to enforce that. And
16 that is -- that's why we're here with this revocation
17 proceeding, as indicated, based upon his violations.

18 I would also like to quickly mention a couple of
19 other cases that are relevant beyond the State v. Lee case,
20 and also a little bit more current. State v. Jacobs,
21 that's a 2011 decision where you had some similar facts
22 here as far as suspension of a sentence and putting someone
23 on probation. And so I would encourage the Court to look
24 at that case, as well as the even more recent State v.
25 Blakney case, particularly because there was also concern

1 by Judge Few as to why a -- or how an illegal sentence was
2 provided in this case to Anthony Blakney as well. This was
3 a situation in his matter of being released on CSP due to
4 the 85% sentence several times.

5 And Judge Few in his dissent really nails on the
6 impact of the illegal sentence being given. And he
7 actually cites back to State v. Lee in that decision or the
8 Court -- the Court that reached the ultimate decision cited
9 to State v. Lee in that decision as well.

10 So that's currently -- that is the position of
11 the Department. The Department is just trying to enforce
12 the sentence that was given by the Court.

13 THE COURT: Do you have the cites for those cases
14 by any chance?

15 MS. WRIGHT: Yes. For the State v. Lee case that
16 is 350 S.C. 125. Again, that's a 2002 case, also noted at
17 564 SE2d 372. The State v. Jacobs case is also a Supreme
18 Court case. It can be found at 393 S.C. 584. That was a
19 2011 decision, also found at 713 SE2d 621. And then the
20 State v. Blakney case a 2014 decision, 410 S.C. 244, also
21 at 763 SE2d 622.

22 THE COURT: Okay. Thanks.

23 MS. WRIGHT: Okay.

24 THE COURT: Okay. Mr. Shaffer, your turn again.

25 MR. SHAFFER: Thank you, Your Honor. Related to

1 the Lee case, I mean, I think that the language that is
2 cited is that you can raise this as a ---

3 THE COURT: Defense to the revocation.

4 MR. SHAFFER: The revocation, which is what I'm
5 doing. Your Honor, related to that, the -- and in part,
6 what I think happened in Lee is essentially the guy tried
7 to change -- tried to argue subject-matter jurisdiction
8 under the -- on direct appeal from, I think the probation
9 revocation, if I remember the procedure correctly. This
10 was a pre-Gentry case, obviously. There was a different
11 concept of subject-matter jurisdiction at the time.

12 However, Your Honor, I mean, I think that Lee
13 actually supports the position that we can actually raise
14 this right now, which is what we're doing. You know, and I
15 understand the Solicitor may not have known that the --
16 that what he was doing is getting an illegal sentence. And
17 maybe if he would have insisted on ABHAN instead, maybe 'it
18 would have been a different argument to make, probably
19 would have been a different argument to make. But the
20 thing is, is that what was actually entered before the
21 Court was a attempted murder. He didn't enter a ABHAN
22 plea. I mean, you know, sometimes people enter things for
23 different reasons. But, you know, the intentions of the
24 parties really don't matter here. What we have here is a,
25 you know, the State trying to enforce or revoke his

1 probation on a statute and an offense that you can't have
2 probation for in the first place. So, I think it's a
3 nullity, Your Honor, and I'll leave it at that.

4 (Pause.)

5 THE COURT: All right. As an initial matter,
6 here's sort of where I am. I understand the probation
7 department's position that, of course, this is the law of
8 the case. And being an arm of the Court, being a statutory
9 arm of the Court, even though they're under the executive
10 branch of government, triple P basically still is, exactly
11 that, an arm of the Court, and they have an obligation to
12 presume that the sentences passed by this Court are valid
13 and otherwise legal, of course, until maybe told otherwise.

14 The code section in this case is quite clear that
15 you cannot receive a suspended sentence for attempted
16 murder. The Solicitor's explanation of how we came to get
17 here is, of course, very reasonable and I certainly
18 understand it as well. The question in the case, though,
19 is to what extent can the Court be involved in the
20 execution of an illegal sentence. And I use the word
21 illegal, of course, as a term of art.

22 The last time that I think we were together on
23 this case this past summer, I likened it to a situation
24 where the Court orders the death penalty for shoplifting
25 and nobody appeals. Well, are we really going to be

1 putting someone to death for shoplifting? Of course not.
2 I give 100 years for shoplifting. I give two years for
3 assault and battery, third degree. Regardless, it's
4 illegal. It can't be executed. It can't be given any
5 effect by the Court because the underlying -- because of
6 the underlying impropriety of the original sentence.

7 And I think that Lee does state clearly that an
8 illegal sentence can be raised as a defense to a violation
9 hearing. So I'm pretty confident and pretty comfortable
10 with that decision.

11 The next question though is a little bit
12 trickier. Where does that leave us? And knowing that it's
13 an illegal sentence, knowing that I cannot enforce an
14 illegal sentence by definition, where does that leave the
15 parties? And that's kind of what I'm struggling with more
16 than anything else. If I simply say, All right, the
17 illegal nature of the sentence is merely a defense to this
18 attempted probationary revocation, but the sentence
19 otherwise stands, then, of course, he logically would
20 remain on probation, but not subject to any potential
21 penalty if he violates his probation.

22 If I say, Okay, it's an illegal sentence ergo I'm
23 going to terminate his probation, then it's potentially res
24 judicata on the question of whether the State -- and to get
25 the benefit of the bargain, whether the defendant got the

1 benefit of the bargain, I mean, I can see situations where
2 it would go both ways.

3 So is it fair to simply terminate the
4 probationary case, saying it was an illegal sentence and,
5 therefore, he's off probation and the State doesn't get the
6 benefit of what they had bargained for, as the Solicitor
7 indicated, at the request of the defense and counsel for
8 the defense at the time the plea was entered? Do I simply
9 vacate it and put it all -- put everyone back at square one
10 where they can renegotiate this as an ABHAN or something
11 else?

12 He's obviously, Mr. Reid has obviously, to use a
13 contract term, he's performed his part of the bargain in
14 the sense that he, I guess, did a good chunk of time in the
15 department of corrections for this particular incident. So
16 to what extent would it be fair and reasonable, seeing as
17 how this was a package deal, to simply vacate it, and then
18 put him in a position where he's looking at either
19 attempted murder with active time or something else?

20 And I thought I asked my law clerk to grab the
21 correct law book, but I asked for the wrong book, because I
22 know the answer is somewhere back there on my bookshelf in
23 a book I have not had to open for 30 years. So, I'll be
24 taking the matter under advisement. And I'll be looking at
25 these cases, and I'll be trying to think about what the

1 most equitable outcome would be. Along those lines, if
2 anyone wants to offer any thoughts, the floor is open.

3 Mr. Shaffer?

4 MR. SHAFFER: Your Honor, I would probably -- if
5 they wanted to continue him on probation at that point, I
6 would probably make a supplemental motion to basically
7 terminate the probation after this matter has been
8 resolved. That's essentially what my point was.

9 THE COURT: Sure.

10 MR. SHAFFER: And, Your Honor, he has been locked
11 up for a long time, for 10 months now, 11 months. And
12 there is -- in my email, I had actually asked for -- and I
13 understand you're taking it under advisement. I'm not
14 asking you to make a decision on the probation case
15 necessarily right now, but I would ask that the Court
16 consider doing -- going ahead and doing the bond
17 reinstatement hearing I asked for in the email, because he
18 does have a pending general sessions charge that needs to
19 get resolved as well.

20 And I'd ask that we go ahead and do that versus
21 waiting and kicking it down the road for another month or
22 more while -- because if you say that the probation's not
23 holding him in anymore, you know, like if you issue an
24 order next week, he's going to have to wait three more
25 weeks at least for me to get to a -- to get him in front of

1 the Court on the general sessions matter. So I'd like to
2 go ahead and do that today if we can.

3 THE COURT: I will tell you right now that if you
4 were to -- if you have a resolution on whatever is pending
5 in the general sessions matter is, the Court is not going
6 to violate his probation as a result of that plea.

7 MR. SHAFFER: We're not in agreement with what
8 it's going to be.

9 THE COURT: Oh.

10 MR. SHAFFER: I think we've had some discussion
11 about it and David's made an offer to me. And I've said --
12 I've made a counteroffer. I don't think we're quite there
13 where we can actually resolve his pending case, unless I
14 may be mistaken. Is that ---

15 MR. STUMBO: No, I don't think we're real close,
16 but I think what's been offered by the defense essentially
17 it would be a turnaround sentence that would put him out.

18 THE COURT: What's he charged with?

19 MR. STUMBO: Pointing and presenting and a
20 domestic violence second degree. And they're both
21 involving a firearm, I think. The one is definitely. But
22 it's the same victim; it's his girlfriend and her child.
23 And so the girlfriend and her child report that he's
24 pointing a gun.

25 THE COURT: All right.

1 MS. SHAFFER: From my standpoint, I don't think
2 it's a very easy triable case for the State because
3 statements that the victim has since made concerning
4 whether or not those -- the actions happened like they are
5 reported to law enforcement, or like law enforcement has
6 it. So I don't think that it's necessarily -- it's not
7 some case that we really want to be trying and actually --
8 I mean, maybe I'm wrong. I'm not speaking for the State.
9 I'm just saying that there's a ---

10 MR. STUMBO: It's not a slam-dunk case.

11 MR. SHAFFER: Yeah.

12 MR. STUMBO: I'll acknowledge that.

13 THE COURT: Okay. Got you.

14 MR. STUMBO: It's triable though.

15 THE COURT: Well, yes.

16 MR. STUMBO: Judge, I think one of the things
17 that I think complicates this is I don't know if there's
18 jurisdiction today to vacate the conviction. Under Lee, I
19 think certainly the sentence could be vacated. But just
20 like if it were on appeal, I mean, if the court of appeals
21 determined that the sentence did not comport with the
22 statutory language and was, therefore, vacated, I think it
23 would have gone back to the Court for re-sentencing, but
24 not challenge or overturn the plea and the conviction.

25 THE COURT: Well, the problem with that is, of

1 course, he thought he was getting probation on this case
2 and he can't. And so if we go back -- if I simply vacate
3 the sentence, we go back to re-sentencing and I'm going to
4 have to give him a straight time sentence, which definitely
5 was not the benefit of the bargain at the time that he
6 entered the plea in 2014. So that's the problem with that.
7 However this plays out, I would recommend that perhaps the
8 Solicitor's office or the defense may want to go ahead and
9 contact Ms. Scott and ask for a copy of that transcript.
10 It couldn't be that expensive. Because as everyone here is
11 well aware, I have no problem with any appeal, especially
12 when I can give a nice little challenging case to the nice
13 people on the Supreme Court, something weird ---

14 MR. STUMBO: I think it would be very ---

15 THE COURT: --- that they have not dealt with
16 yet.

17 MR. STUMBO: -- intellectually stimulating to
18 have that argued on the appellate level.

19 THE COURT: My law clerk here, who actually
20 worked with Judge Few, was reading his dissent. And, of
21 course, he's from Greenwood and he's a great guy. And I
22 don't know, maybe we'll give him another bite at the apple
23 or something on this. We'll have to look at the dissent.
24 I want to try and figure out what the end game is before I
25 take the step off the cliff and just say, you know, yeah,

1 it's an illegal sentence and therefore, there's not going
2 to be any violation. I've got to figure out how this plays
3 out. And I haven't thought yet three moves or four moves
4 into the future. And I have not -- I don't have my right
5 book. I'll find it. And I think the answer may be in
6 there. So it's under advisement.

7 The bad news, Mr. Reid, is you're going to be in
8 jail a little bit longer. The good news is that you're not
9 going to prison for 10 or 20 years, okay? So try and
10 approach this as the glass half-full kind of a thing, all
11 right?

12 I'll take this under advisement and either direct
13 one of y'all to prepare an order or more likely do it
14 myself with my clerk's help.

15 And I would go ahead and ask Ms. Scott for a copy
16 of that transcript before she purges her old stuff, because
17 I'm sure whatever I do is going to end up having to be
18 perhaps considered by somebody else on appeal. And I'm
19 good with that. Thank you.

20 ***END OF TRANSCRIPT OF RECORD***

21

22

23

24

25

CERTIFICATE OF REPORTER

1
2 I, the undersigned Missy Brown, Official Court
3 Reporter for the Fourteenth Judicial Circuit of the State
4 of South Carolina, do hereby certify that the foregoing is
5 a true, accurate, and complete transcript of record to the
6 best of my ability of the proceedings had and evidence
7 introduced in the hearing of the captioned case, relative
8 to appeal, as recorded by DCRP, and transcribed by me, in
9 the Circuit Court for Greenwood County, South Carolina, on
10 the 28th day of October 2021.

11 I do further certify that I am neither of kin,
12 counsel, nor interest to any party hereto.

13 May 14, 2022

14
15 *s/Missy Brown*

16
17 _____
18 Court Reporter
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

STATE of SOUTH
CAROLINA,

IN THE COURT OF GENERAL SESSIONS
WARRANT No. W-24-20-0153
INDICTMENT No. 2012-GS-24-1325

-v-

JOEY CORVELL
REID,¹
Defendant.

ORDER CONCERNING PROBATION
VIOLATION

Addy, J.

THIS MATTER CAME BEFORE THE COURT on October 28, 2021 on a probation violation.² Mr. Reid was represented by Tristan Shaffer, Esq., the Department of Probation, Pardon, and Parole (hereinafter "PPP") was represented by Octavia Wright, Esq., and the 8th Circuit Solicitor's Office was represented by Solicitor David Stumbo. Having considered the applicable law, the argument of counsel, and the particular facts of this case, the Court finds as follows.

On January 27, 2014, Mr. Reid pled guilty to one (1) count of Assault and Battery, 1st degree, and one (1) count of Attempted Murder. At the plea, he was represented by Carson Henderson, Esq., Solicitor Stumbo represented the State, and Judge Doyet Early presided.³ Per the sentencing sheets and the recollection of the Solicitor, the plea was negotiated and agreed to by all concerned. The negotiations contemplated Mr. Reid serving a ten (10) year sentence on the assault charge. On the

¹ A.K.A. Joey Corvell Sanders. "Sanders" is how Mr. Reid's name is indexed on the Greenwood public index.

² This matter was first scheduled before this jurist on May 24, 2021 and again on July 29, 2021. At those hearings, the Court continued the matter so that Mr. Shaffer could conduct additional research on the effect and nature of an illegal sentence as it relates to a subsequent probation violation. The hearing of May 24, 2021 was very brief because my notes reflect only that I continued the case and retained jurisdiction; in fact, that may have even been handled by way of a bench conference.

³ Tara Scott was the court reporter for the plea, and coincidentally, she was the court reporter assigned to this judge when the matter came before the Court on both May 24, 2021 and July 29, 2021. Ms. Scott indicated at the July hearing that she may still have record of this plea and could potentially furnish a transcript. The Court suggested that the parties make a request and obtain a transcript in the hopes that it might shed some light on the events surrounding the plea. For whatever reason, no one has done so; therefore, the Court authors this order without the benefit of the January 27, 2014 plea transcript.

attempted murder charge which is the subject of the violation hearing, it was agreed that Mr. Reid would receive a sentence of twenty (20) years consecutive to the ten (10) years active, but the twenty (20) years would be suspended to probation for five (5) years.⁴ The Court accepted Mr. Reid's plea, followed the negotiation, and imposed the agreed upon sentence.

Mr. Reid subsequently served his active sentence and was released from SCDC on probation on or about June 29, 2018. Mr. Reid was arrested for attempted murder on July 11, 2019. A subsequent probable cause violation before Judge Hocker resulted in the probation case being ordered continued. Mr. Reid was subsequently acquitted by the trial jury on the attempted murder charge on April 21, 2021.⁵ The violation report detailed that Mr. Reid was in violation for changing his address without notifying his agent, failure to pay monetary obligations, and failing to follow the advice and instructions of his agent. The agent recommended a ten (10) year revocation.⁶

No appeal was taken from the plea, no action for post-conviction relief was pursued, and apparently no objection to the suspended nature of the attempted murder sentence was ever made. At the hearing of October 28, 2021, the Solicitor indicated that, at the time of the initial plea, the defense was driving this bargain and that the Solicitor wanted active time of some sort, a strike against Mr. Reid, and the potential for 85% time should a violation subsequently occur, hence the plea to attempted

⁴ At the October 28, 2021 hearing, Solicitor Stumbo indicated that Mr. Reid actually pled to three consecutive assault and battery 1st degree charges and received a thirty (30) year sentence on those charges. The Solicitor's recollection must be in error since no record of a plea to the other two A&B 1st charges can be located although two (2) additional counts of attempted murder were *not* pressed by the State. Again, a transcript of the proceedings from January 27, 2014 would have been quite helpful.

⁵ Ivan Toney, Esq. represented Mr. Reid at trial, and this jurist was the trial judge. On December 14, 2021, Mr. Reid pled guilty after jury selection to a negotiated plea of five (5) years active to Obstruction of Justice, DV 2nd Degree, and Unlawful Neglect of Child. This jurist was also the sentencing judge on these cases. Between the time of the October 28, 2021 hearing and the trial, the Court issued an interim order dismissing the warrant and indicating that this formal order would be forthcoming. As a result, Mr. Reid was released from confinement at the Greenwood Detention Center since he had already made bond on the pending charges to which he pled on December 14, 2021.

⁶ The Court notes 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.

murder.⁷

Counsel for PPP took the position that it is not appropriate for PPP to pass upon the legality or validity of a sentence imposed and further stated that PPP will accept a sentence imposed by the circuit court as valid. The Court agrees with Ms. Wright that PPP does not have an independent duty to verify the propriety of a particular sentence; as an extension of the court, probation agents are tasked with merely supervising an offender pursuant to the court's direction and PPP's internal guidelines.

Counsel for Mr. Reid argued that the sentence is illegal, and pursuant to language in State v. Lee,⁸ the fact that a particular sentence was illegal may be used as a defense to a probation violation. Although Mr. Shaffer essentially conceded that Mr. Reid certainly benefitted from the suspended sentence, he argued that the illegal nature of the sentence should still result in a dismissal of the probation violation *per Lee*.

ISSUES PRESENTED

To what extent may or should a trial court enforce a negotiated sentence, which was illegal at its inception but which inured to the defendant's benefit, by way of a probation violation? And, to the extent that a court should not enforce an illegal sentence as a matter of public policy, what is the remedy?

LEGAL ANALYSIS

Section 16-3-29 defines the offense of Attempted Murder; it clearly and unambiguously states "A sentence imposed pursuant to this section may not be suspended nor may probation be granted." Ergo, the sentence which the parties agreed to and which the court imposed is contrary to statute, but it clearly benefits Mr. Reid in that he served no active, 85% time on this charge as a result of the plea.

⁷ The same result could have been achieved had the parties agreed to a guilty plea to ABHAN, an offense which can be suspended under the law; however, attempted murder and ABHAN are obviously treated differently under the recidivist provisions of Section 17-25-45. The Court also notes that Carson Henderson, Mr. Reid's attorney for the plea, was not present at the hearing of October 28, 2021 to offer his recollection of the events surrounding the plea.

⁸ 350 S.C. 125, 564 S.E. 2d 372 (S.C. App. 2002).

Plea bargains and enforcement of any negotiated pleas are governed by contract law. *See Reed v. Becka*, 333 S.C. 676, 686, 511 S.E.2d 396, 401 (Ct. App. 1999); *United States v. Ringling*, 988 F.2d 504, 505 (4th Cir. 1993). That a court is without power to enforce an illegal contract is axiomatic, as such contracts are void as against public policy. *See Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866-67 (Ct. App. 2002); *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 277, 437 S.E.2d 168, 170 (Ct. App. 1993). The power of a court to impose a particular sentence is wholly controlled by the statutory penalty provisions as enacted by the South Carolina General Assembly, and the trial court has broad discretion to sentence within the statutory limits enacted. *In re M.B.H.*, 387 S.C. 323, 692 S.E.2d 541 (2010). It is not the providence of a court to question the wisdom of the General Assembly when it has spoken unequivocally. *See State v. Jacobs*, 393 S.C. 584, 713 S.E.2d 621 (2011). The Circuit Court may be a court of general jurisdiction, but its authority is limited by the South Carolina Constitution and the powers granted to it by the General Assembly. *State v. De La Cruz*, 302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990).

South Carolina case law offers some degree of guidance on this issue. In *State v. Lee*, 350 S.C. 125, 132-33, 564 S.E.2d 372, 376 (S.C. App. 2002), Lee maintained that the legality of his sentence implicated the court's subject matter jurisdiction. In rejecting his assertion, the Court held "[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." (emphasis supplied) *Id.* The Court in *Lee* further held that, because no motion to reconsider was filed by any party and no appeal was taken, the underlying sentence was the law of the case. *Id.*

Justice Few's dissent in *State v. Blakney*, 410 S.C. 244, 254, 763 S.E.2d 622, 628 (Ct. App. 2014) is also instructive. In discussing Justice Pleicones' dissent in *Talley v. State*, 371 S.C. 535, 640

S.E.2d 878 (2007), Justice Few states "[T]he suspension of a sentence is not effective when the law forbids the suspension." In footnote 11, Justice Few correctly states "Our supreme court has not held that a trial court's partial suspension of a sentence is effective even when the court has no power to suspend the sentence." Of course, the majority in *Blakney* held that, "because the State never sought to correct [the] error," the suspension of Blakney's sentence was the law of the case. 410 S.C. at 251, 763 S.E.2d at 626.

Although instructive, *Lee* and *Blakney* are not particularly helpful. *Lee* concerned the issue of whether the sentencing judge could legally order that probationary supervision coincide with supervision while on parole. *Blakney* concerned the extent to which community supervision violations are chargeable against the original unsuspended portion of his sentence.⁹ Other cases decided by our court offer similarly limited guidance. In *State v. Plumer*, 433 S.C. 300, 857 S.E.2d 796 (2021), the Supreme Court vacated the "erroneous" sentence imposed on the firearm charge because the defendant received a life sentence on the attempted murder charge. 433 S.C. at 351, 857 S.E.2d at 803. However, the Court's basis for doing so centered upon judicial economy and had no ultimate effect on Plumer's actual sentence. Similarly, in *State v. Jones*,¹⁰ the Court of Appeals found that the trial court lacked authority to suspend the mandatory minimum period of incarceration for trafficking and remanded the matter back to the trial court for resentencing. Again, however, none of these cases address the precise issue of the extent to which a trial court may, or should, activate a suspended sentence for an offense, the penalty for which cannot be suspended.

Furthermore, to the extent that *Lee* stands for the proposition that the underlying illegality of a sentence may be argued as a defense to a probation revocation, it leaves unanswered the obvious question: What next? If such a defense is successful in preventing a probation violation, should the

⁹ Unlike the dissent, the majority in *Blakney* never truly addressed the impropriety of the sentencing court's suspension of the mandatory minimum fifteen (15) year sentence for Burglary, 1st degree.

¹⁰ 2018 WL 2979790, 2018-UP-264 (S.C. App., June 13, 2018)

defendant remain on probation despite the fact that he would suffer no penalty for any subsequent violations? If an illegal sentence benefits a defendant and becomes the law of the case absent direct appeal, to what extent would our courts be parties to a direct contravention of the law?¹⁰ If the Court merely accepts Mr. Reid's sentence as the law of the case, to what extent is this Court encouraging similar, improper negotiations to take place in the future? Because South Carolina law is silent on these questions, the Court has looked to our sister states for guidance.

Alabama treats such an error as jurisdictional, and a sentence which is unauthorized by statute is void. Ex parte McGowan, 2021 WL 1805703 (Ala. 2021). At first blush, the facts in McGowan closely track the present case. McGowan received a split sentence which was not authorized by statute. The State subsequently sought to revoke the probationary portion of the sentence due to his being charged with new felonies. Following precedent holding that a trial court lacked subject matter jurisdiction to revoke probation where the underlying sentence benefiting the defendant was contrary to law, the Alabama Supreme Court found that the proper procedure was for the trial court to conduct another sentencing hearing. Although the facts in *McGowan* are similar to Mr. Reid's situation, Alabama law differs in that an illegal sentence implicates subject matter jurisdiction. Per South Carolina jurisprudence, an illegally excessive sentence does not implicate subject matter jurisdiction, and such cases are properly addressed through PCR. State v. Johnson, 333 S.C. 459, 510 S.E.2d 423 (1999).¹¹

The courts of Texas would likely apply estoppel by judgment to the present case. In Deen v. State, 509 S.W.3d 345 (Tex. 2019), Deen received a sentence which was more lenient than permitted by statute. After serving that sentence, he was subsequently convicted of a new charge which was enhanced due to his prior conviction. In dismissing his challenge to the legality of the prior conviction

¹⁰ Obviously, direct appeal is the only avenue by which such an error could be corrected. PCR would not present an option since a court is unlikely to find that a defendant was prejudiced by his attorney obtaining a suspended sentence for a crime which called for mandatory incarceration. See e.g. State v. Graves, 822 So.2d 1089 (Miss. 2002)

¹¹ Again, as discussed in the previous footnote, PCR would not constitute a means by which to remedy an illegally permissive sentence.

for enhancement purposes, the Texas court found that Deen was equitably estopped from accepting the benefits of the prior illegally lenient sentence and then arguing that the underlying offense could not be used to enhance a subsequent crime. From a review of Justice Few's dissent in *Blakney*, perhaps judicial estoppel should be applied in Mr. Reid's case. Clearly, Mr. Reid enjoyed the benefits of an illegal probationary sentence on the Attempted Murder charge. However, Mr. Reid only accepted that benefit after also agreeing to serve ten (10) years active as part of a quintessential, negotiated (and illegal) "package deal." More to the point, to say that Mr. Reid benefited from probation and is judicially estopped from arguing application of *Lee* would constitute the Court enforcing a contract which violates South Carolina law. Put bluntly, to apply judicial estoppel, or a "law of the case" analysis for that matter, would condone and encourage wholesale disregard for what statutory law plainly mandates; essentially and as a practical matter, the Court would be saying, "Meh...so the justice system ignored the law...big, hairy deal."

Finally, Florida appears to take a slightly different approach. Although they follow the rule that a person may not contest their conviction if they benefit from an illegal sentence, they may challenge an illegal sentence that exceeds the statutory maximum, essentially applying a theory of estoppel. White v. State, 828 So.2d 491 (2002). In situations where the plea was negotiated and the illegal sentence was to the defendant's detriment, the case is remanded, and the State may either agree to resentencing or withdraw from the negotiated agreement and proceed to trial.¹² *Id.* at 492. Because Mr. Reid's negotiated sentence represented a "package deal" whereby he was incarcerated for a period of time on a legal sentence prior to beginning his illegal probationary sentence, if Florida's rule were applied and the State agreed to resentencing, PCR would then become an available remedy. If the State opted for trial, then any prejudice to Reid would be lessened since he would still have the option of

¹² *White* does not explain exactly why the State gets to control the relief afforded in an illegally negotiated plea situation, especially when the State is a party to the initial, improper sentence. As explained below, the better rule would be to permit a defendant to move to withdraw his plea.

7


presenting a defense or attempting further negotiations.¹⁴

SO, WHAT NEXT?

That probation constitutes a matter of grace by the sentencing court is axiomatic. State v. White, 218 S.C. 130, 136, 61 S.E.2d 754, 756 (1950). Similarly, revocation of a probationary sentence is left to the sound discretion of the judge. State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006); S.C. Code Ann. § 24-21-460 (1989). This Court is faced with a situation where the active part of Mr. Reid's negotiated deal was legal, but the suspended portion was illegal. Again, the Court does not have the benefit of the transcript of the initial plea; however, the sentencing court was simply without power to do what it did regardless of the reason for doing it.¹⁵

Therefore, as it relates to Mr. Reid's probation violation, the Court finds that, pursuant to *Lee* and because the sentence was illegal, Mr. Reid's probation should not be revoked.¹⁶

Having elected not to revoke his probation, this Court still has the obligation to clarify where Mr. Reid's probationary status stands. At present, Mr. Reid remains convicted of attempted murder. However, if this Court is correct in its analysis that *Lee* constitutes a means by which Mr. Reid may avoid any ramifications for future probation violations, his sentence is illusory and of no practical effect.

The Court is also genuinely concerned with the fact that the court of general sessions, implicitly or mistakenly, endorsed and imposed a sentence which violates the law. As Justice Few correctly observed, a court is without power to do that which the law prohibits it from doing. More troubling,

¹⁴ Presuming that a defendant in Mr. Reid's situation was ultimately convicted, the sentencing court could, of course, take into account the fact that he had previously served a ten (10) year sentence as part of the initial package deal.

¹⁵ Nothing in this Order should be read as suggesting anything nefarious on behalf of any party to the plea or the sentencing judge. Regardless, the fact remains that the sentence was not permitted under the law.

¹⁶ As an additional sustaining ground for this ruling, even if this Court were to apply an estoppel or law of the case analysis, the Court would still not revoke Mr. Reid's probation. Again, he was acquitted on the underlying charges which precipitated issuance of the probable cause warrant. At most, the Court would allow for, and does so find, the substantial time Mr. Reid served in jail satisfies the stated violations of moving without notifying his agent and being behind on his monetary obligations.

per the analysis of the South Carolina cases above, only in those situations where the state undertakes to appeal an illegal sentence could such an impermissibly lenient sentence be corrected. To entrust the state with sole responsibility to *enforce* the law vigorously and correctly is to ignore the court's inherent obligation to *apply* the law decorously and properly. Put simply, to afford the state sole power, by rule of procedure or preservation, to correct an illegal sentence under a law of the case theory is to invite the very mischief which threatens the integrity of the bench and erodes public trust in our judiciary.¹⁷

Similarly, under the facts as presented here, applying an estoppel theory is improper and invites the same mischief regardless of whether the sentence was of benefit to a defendant. Rather than estoppel, the Court is inclined to borrow from another equitable maxim: *In pari delicto potior est condition defendentis*. South Carolina jurisprudence certainly supports this maxim's public policy rationales in the civil context, and this Court sees every reason the same rule should apply in the criminal context especially because society's protection and citizens' liberty interests are both implicated by a court doing what it simply may not. See Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 437 S.E.2d 168 (Ct. App. 1993); Bateman Eichler, Hill Richards, Inc. v. Berner, 472 U.S. 299, 306 (1985).

Accordingly, the Court finds and orders as follows.¹⁸ Because the sentencing court was within its jurisdiction and authority to accept Mr. Reid's plea, Mr. Reid's underlying plea to and conviction for attempted murder stands. However, Mr. Reid's sentence is vacated, and it is ordered that he be resentenced. 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

¹⁷ This constitutes both a real and a practical concern. This jurist has been asked on numerous occasions to accept a plea to the offense of false imprisonment. Of course, such an offense no longer exists. State v. Bernsten, 295 S.C. 52, 367 S.E.2d 152 (1988). However, that has not stopped the parties from judge shopping in the hopes of finding someone who will accept such a plea. Just as a court may not accept a plea for conduct which does not violate the law, a court may not impose a sentence which is in contravention of the law.

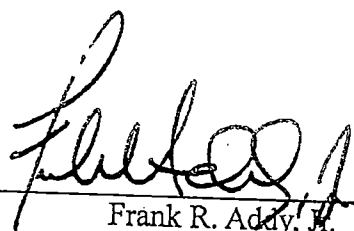
¹⁸ The Court is well aware that none of the parties involved in this matter requested the relief which the Court is ordering. Additionally, this jurist is not attempting to overrule another judge. Rather, the Court is simply doing what this Court feels must be done due to the above concerns and trusts that the appellate courts will provide further guidance on these issues.

their negotiations or take the matter to trial.¹⁹ Clearly, any future sentencing judge may take into account the fact that the prior negotiations involved Mr. Reid serving an active period of incarceration on an otherwise legally imposed sentence.

WHEREFORE, it is ordered that Mr. Reid's underlying conviction for attempted murder remains valid and a new sentencing hearing shall take place pursuant to the terms and conditions of this Order.

IT IS SO ORDERED.

December 31, 2021
Greenwood, South Carolina



Frank R. Addy, Jr.
Resident Judge

¹⁹ The Court is also aware that PPP intends to appeal the Court's order, and as explained previously, Mr. Reid is currently serving an active five (5) year sentence. Should Mr. Reid be released prior to any appeal being decided, the Court orders that he shall remain under the supervision of PPP and abide by all the terms and conditions of his prior probation case. Any violation of the terms of his probation may be addressed by a citation, and the Court may find him in contempt for any willful failure to abide by said provisions. The remainder of Mr. Reid's probationary period is ordered tolled while he serves his five (5) year sentence.

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

State of South Carolina,

VS.

Joey Corvell Reid,

Defendant.

IN THE COURT OF GENERAL SESSIONS

ORDER DISMISSING PROBATION
VIOLATION

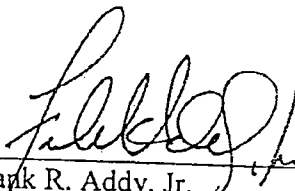
Warrant: W-24-20-0116, 0153

Addy, J.

This matter came before the Court on October 28, 2021 on a probation violation. Mr. Reid was represented by Tristan Shaffer, Esq. The State was represented by Solicitor David Stumbo.

In 2014, Mr. Reid was placed on probation for an attempted murder with indictment number 12-GS-24-01325. The Court is hereby dismissing the probation violation because the initial sentence was illegal. The Court will supplement this order at a later time.

IT IS SO ORDERED.


Frank R. Addy, Jr.
Eighth Judicial Circuit

November 29, 2021
Greenwood, SC

N.P.T. 11-9-21

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

State of South Carolina,

VS.

Joey Corvell Reid,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
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**ORDER DISMISSING PROBATION
VIOLATION**

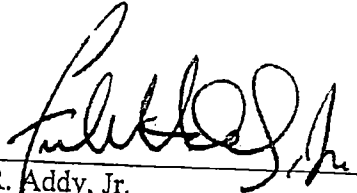
Warrant: W-24-20-0153

Addy, J.

This matter came before the Court on October 28, 2021 on a probation violation. Mr. Reid was represented by Tristan Shaffer, Esq. The State was represented by Solicitor David Stumbo.

In 2014, Mr. Reid was placed on probation for an attempted murder with indictment number 12-GS-24-01325. The Court is hereby dismissing the probation violation because the initial sentence was illegal. The Court will supplement this order at a later time.

IT IS SO ORDERED.


Frank R. Addy, Jr.
Eighth Judicial Circuit

November 9, 2021
Greenwood, SC

Matthew Buchanan

From: Matthew Buchanan
Sent: Friday, November 12, 2021 12:28 PM
To: Addy, Frank R.; Stumbo, David M.; Addy, Frank R. Secretary (Freda Sartin); Tristan Shaffer; Addy, Frank R. Law Clerk (Sydney Case)
Cc: Richard Williams; Octavia Wright
Subject: RE: State v. Joey Carvell Reid

Judge Addy,

Thank you for including Octavia and I on the email chain. In light of the Court's decision in the placeholder order, I anticipate PPP will be filing a motion to reconsider. Because the order as issued indicates the Court will supplement the order at a later time, I am happy to wait until you file the final order but I want to make sure the State's rights are protected regarding the timing we have to file a notice of appeal or motion to reconsider of the final order. I appreciate your acknowledgment that PPP will be included on any future final order.

Sincerely,
Matt

Matthew C. Buchanan

General Counsel

SC Department of Probation, Parole and Pardon Services

(803) 734-9012

(803) 734-9324 (fax)

From: Addy, Frank R. <faddyj@sccourts.org>
Sent: Wednesday, November 10, 2021 10:06 AM
To: Stumbo, David M. <dstumbo@greenwoodsc.gov>; Addy, Frank R. Secretary (Freda Sartin) <faddysc@sccourts.org>; Tristan Shaffer <tshaffer@8thcircuitpublicdefender.org>; Addy, Frank R. Law Clerk (Sydney Case) <faddyjc@sccourts.org>
Cc: Richard Williams <Richard.Williams@ppp.sc.gov>; Octavia Wright <Octavia.Wright@ppp.sc.gov>; Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>
Subject: RE: State v. Joey Carvell Reid

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thanks. Very valid point.

That order is essentially a "place holder" order – not a final order; I intend to do something more detailed once I have the time to figure out what the end result of all this has to be.
We'll be sure to cc PPP on any future orders.

Frank R. Addy, Jr.
Resident Judge, 8th Judicial Circuit
Greenwood County Courthouse

528 Monument Street, Ste. 210
Greenwood, South Carolina 29646
Office: (864) 943-8020

Fax: (864) 942-8581

Email: faddyj@sccourts.org

Secretary: Freda Sartin (faddyjc@sccourts.org)

Law Clerk: Sydney Case (faddyjc@sccourts.org)

(***Please note that I do not receive email on my cell phone.***)

From: Stumbo, David M.

Sent: Wednesday, November 10, 2021 10:03 AM

To: Addy, Frank R. Secretary (Freda Sartin) <faddyjc@sccourts.org>; Addy, Frank R. <faddyj@sccourts.org>; Tristan Shaffer <tshaffer@8thcircuitpublicdefender.org>; Addy, Frank R. Law Clerk (Sydney Case) <faddyjc@sccourts.org>

Cc: Richard Williams <richard.williams@ppp.sc.gov>; Octavia Wright <Octavia.Wright@ppp.sc.gov>; Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>

Subject: Re: State v. Joey Carvell Reid

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge,

Not trying to be nit-picky, but technically the State was represented by DPPPS at the Reid probation revocation hearing. I have no problem being noted in your Order "as making an appearance on behalf of the State along with the DPPPS representatives, Agent-in-Charge Richie Williams and Assistant General Counsel Octavia Wright," or something to that effect. But the record needs to be clear on the roles of everyone involved if the Department chooses to appeal your decision to dismiss their revocation motion.

I will also forward the DPPPS folks your Order, it does not look like they were copied on the initial email.

David M. Stumbo
Solicitor

On Tue, Nov 9, 2021 at 1:41 PM Addy, Frank R. Secretary (Freda Sartin) <faddyjc@sccourts.org> wrote:

Good afternoon,

I have attached a copy of an Order that has been signed by Judge Addy and the original will be taken to the Clerk of Court's office.

Please contact me if you have any problems viewing the attachment.

Have a great day!

Freda E. Sartin

Administrative Assistant

Honorable Frank R. Addy, Jr.

Resident Judge, Eighth Judicial Circuit Greenwood County Courthouse

528 Monument Street, Suite 210

Greenwood, South Carolina 29646

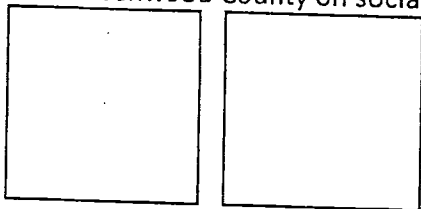
Phone : (864) 943-8020

Fax : (864) 942-8581

Email : faddysc@sccourts.org

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## Matthew Buchanan

---

**From:** Addy, Frank R. <faddyj@sccourts.org>  
**Sent:** Friday, November 12, 2021 3:42 PM  
**To:** Matthew Buchanan; Stumbo, David M.; Addy, Frank R. Secretary (Freda Sartin); Tristan Shaffer; Addy, Frank R. Law Clerk (Sydney Case)  
**Cc:** Richard Williams; Octavia Wright  
**Subject:** RE: State v. Joey Carvell Reid

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Frank R. Addy, Jr.  
Resident Judge, 8<sup>th</sup> Judicial Circuit  
Greenwood County Courthouse  
528 Monument Street, Ste. 210  
Greenwood, South Carolina 29646  
Office: (864) 943-8020  
Fax: (864) 942-8581  
Email: [faddyj@sccourts.org](mailto:faddyj@sccourts.org)  
Secretary: Freda Sartin ([faddysc@sccourts.org](mailto:faddysc@sccourts.org))  
Law Clerk: Sydney Case ([faddylc@sccourts.org](mailto:faddylc@sccourts.org))  
(\*\*\*Please note that I do not receive email on my cell phone.\*\*\*)

**From:** Matthew Buchanan [mailto:Matthew.Buchanan@ppp.sc.gov]  
**Sent:** Friday, November 12, 2021 12:28 PM  
**To:** Addy, Frank R. <faddyj@sccourts.org>; Stumbo, David M. <dstumbo@greenwoodsc.gov>; Addy, Frank R. Secretary (Freda Sartin) <faddysc@sccourts.org>; Tristan Shaffer <tshaffer@8thcircuitpublicdefender.org>; Addy, Frank R. Law Clerk (Sydney Case) <faddylc@sccourts.org>  
**Cc:** Richard Williams <Richard.Williams@ppp.sc.gov>; Octavia Wright <Octavia.Wright@ppp.sc.gov>  
**Subject:** RE: State v. Joey Carvell Reid

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Judge Addy,

Thank you for including Octavia and I on the email chain. In light of the Court's decision in the placeholder order, I anticipate PPP will be filing a motion to reconsider. Because the order as issued indicates the Court will supplement the order at a later time, I am happy to wait until you file the final order but I want to make sure the State's rights are protected regarding the timing we have to file a notice of appeal or motion to reconsider of the final order. I appreciate your acknowledgment that PPP will be included on any future final order.

Sincerely,  
Matt

**Matthew C. Buchanan**

General Counsel

SC Department of Probation, Parole and Pardon Services

(803) 734-9012

(803) 734-9324 (fax)

**From:** Addy, Frank R. <[faddyj@sccourts.org](mailto:faddyj@sccourts.org)>

**Sent:** Wednesday, November 10, 2021 10:06 AM

**To:** Stumbo, David M. <[dstumbo@greenwoodsc.gov](mailto:dstumbo@greenwoodsc.gov)>; Addy, Frank R. Secretary (Freda Sartin) <[faddysc@sccourts.org](mailto:faddysc@sccourts.org)>; Tristan Shaffer <[tshaffer@8thcircuitpublicdefender.org](mailto:tshaffer@8thcircuitpublicdefender.org)>; Addy, Frank R. Law Clerk (Sydney Case) <[faddyjc@sccourts.org](mailto:faddyjc@sccourts.org)>

**Cc:** Richard Williams <[Richard.Williams@ppp.sc.gov](mailto:Richard.Williams@ppp.sc.gov)>; Octavia Wright <[Octavia.Wright@ppp.sc.gov](mailto:Octavia.Wright@ppp.sc.gov)>; Matthew Buchanan <[Matthew.Buchanan@ppp.sc.gov](mailto:Matthew.Buchanan@ppp.sc.gov)>

**Subject:** RE: State v. Joey Carvell Reid

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Thanks. Very valid point.

That order is essentially a "place holder" order – not a final order; I intend to do something more detailed once I have the time to figure out what the end result of all this has to be.

We'll be sure to cc PPP on any future orders.

Frank R. Addy, Jr.

Resident Judge, 8<sup>th</sup> Judicial Circuit

Greenwood County Courthouse

528 Monument Street, Ste. 210

Greenwood, South Carolina 29646

Office: (864) 943-8020

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Secretary: Freda Sartin ([faddysc@sccourts.org](mailto:faddysc@sccourts.org))

Law Clerk: Sydney Case ([faddyjc@sccourts.org](mailto:faddyjc@sccourts.org))

(\*\*\*Please note that I do not receive email on my cell phone.\*\*\*)

**From:** Stumbo, David M.

**Sent:** Wednesday, November 10, 2021 10:03 AM

**To:** Addy, Frank R. Secretary (Freda Sartin) <[faddysc@sccourts.org](mailto:faddysc@sccourts.org)>; Addy, Frank R. <[faddyj@sccourts.org](mailto:faddyj@sccourts.org)>; Tristan Shaffer <[tshaffer@8thcircuitpublicdefender.org](mailto:tshaffer@8thcircuitpublicdefender.org)>; Addy, Frank R. Law Clerk (Sydney Case) <[faddyjc@sccourts.org](mailto:faddyjc@sccourts.org)>

**Cc:** Richard Williams <[richard.williams@ppp.sc.gov](mailto:richard.williams@ppp.sc.gov)>; Octavia Wright <[Octavia.Wright@ppp.sc.gov](mailto:Octavia.Wright@ppp.sc.gov)>; Matthew Buchanan <[Matthew.Buchanan@ppp.sc.gov](mailto:Matthew.Buchanan@ppp.sc.gov)>

**Subject:** Re: State v. Joey Carvell Reid

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Judge,

Not trying to be nit-picky, but technically the State was represented by DPPPS at the Reid probation revocation hearing. I have no problem being noted in your Order "as making an appearance on behalf of the State along with the DPPPS representatives, Agent-in-Charge Richie Williams and Assistant General Counsel Octavia Wright," or something to that effect. But the record needs to be clear on the roles of everyone involved if the Department chooses to appeal your decision to dismiss their revocation motion.

I will also forward the DPPPS folks your Order, it does not look like they were copied on the initial email.

David M. Stumbo  
Solicitor

On Tue, Nov 9, 2021 at 1:41 PM Addy, Frank R. Secretary (Freda Sartin) <[faddysc@sccourts.org](mailto:faddysc@sccourts.org)> wrote:

Good afternoon,

I have attached a copy of an Order that has been signed by Judge Addy and the original will be taken to the Clerk of Court's office.

Please contact me if you have any problems viewing the attachment.

Have a great day!

*Freda E. Sartin*

*Administrative Assistant*

*Honorable Frank R. Addy, Jr.*

*Resident Judge, Eighth Judicial Circuit Greenwood County Courthouse*

528 Monument Street, Suite 210

Greenwood, South Carolina 29646

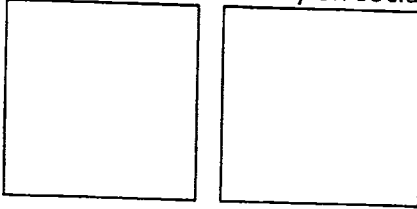
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Matthew Buchanan

From: Addy, Frank R. <faddyj@sccourts.org>
Sent: Tuesday, November 30, 2021 5:18 PM
To: Tristan Shaffer; Matthew Buchanan
Cc: Stumbo, David M.; Addy, Frank R. Secretary (Freda Sartin); Addy, Frank R. Law Clerk (Sydney Case); Richard Williams; Octavia Wright
Subject: RE: State v. Joey Carvell Reid

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Because I previously issued an order on November 9th dismissing the probation warrant, I'm a little surprised by the sudden interest in all this since dismissal of the warrant results in him getting out of jail. I only became aware yesterday that the probation warrant was the only thing keeping him in jail. Regardless, the order I issued yesterday is identical except that it included an additional probation warrant.

The temporary order only dismissed the warrant. The final order will have him still being on probation, so he does need to report.

Essentially, the final order I'm working on will address the validity of two things: the plea and the sentence. The plea remains valid. The sentence, however, is not legal. All, please understand that asking the court to enforce a sentence which was illegal at its inception is a big ask – one that I am not inclined to do. Regardless of which side benefits from an illegal sentence, it still does not change the underlying impropriety and unenforceability of a sentence. Simply put, just as a judge may not impose an illegal sentence, the parties may not agree to an illegal sentence. (See generally as to the first point State v. Jones, 2018-UP-264 (2018))

I was not the architect of the current situation, and I'm a little surprised that no one has ordered the transcript from the initial plea which Tara Scott still (luckily) has. It may shed more light on how we came to be here.

Tristan, he needs to report to probation and he should be on notice for trial on the 13th. If he's that dangerous to the public, I'm sure the Solicitor will call his case that week. The order I'm drafting will also reflect that he could be held in contempt for failing to abide by his probationary terms. Much less of a penalty than the 20 he was looking at, but still a means of enforcement.

That's all for now. If Mr. Reid does not appear for trial on the 13th, we can do a TIA.

Thanks for your patience concerning the final order, but the court is not going to leave someone in jail on a violation warrant which will not be enforced by this court under State v. Lee, 350 SC 125, 132 (App. 2002). To the extent Judge Griffith's order should have referenced other pending charges, again, I don't know what to say other than I neither drafted nor signed that order, and apparently that matter is not before me at this point.

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Secretary: Freda Sartin (faddysc@sccourts.org)
Law Clerk: Sydney Case (faddyjc@sccourts.org)
(***Please note that I do not receive email on my cell phone.***)

From: Tristan Shaffer [mailto:tshaffer@8thcircuitpublicdefender.org]

Sent: Tuesday, November 30, 2021 2:02 PM

To: Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>

Cc: Stumbo, David M. <dstumbo@greenwoodsc.gov>; Addy, Frank R. <faddyj@sccourts.org>; Addy, Frank R. Secretary (Freda Sartin) <faddyjc@sccourts.org>; Addy, Frank R. Law Clerk (Sydney Case) <faddyjc@sccourts.org>; Richard Williams <Richard.Williams@ppp.sc.gov>; Octavia Wright <Octavia.Wright@ppp.sc.gov>

Subject: Re: State v. Joey Carvell Reid

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Actually, I may be wrong in that rule involving stays.

If you want my guy to report I'm fine with it. However, If the state decides to appeal I would ask for an appeal bond to stay the probationary sentence.

On Tue, Nov 30, 2021, 1:58 PM Tristan Shaffer <tshaffer@8thcircuitpublicdefender.org> wrote:

Also it is my understanding that the states notice of appeal would not stay the execution of order from the court of general sessions.

Otherwise I would have a whole bunch of people not in prison awaiting their sentence to become final after an appeal.

On Tue, Nov 30, 2021, 1:56 PM Tristan Shaffer <tshaffer@8thcircuitpublicdefender.org> wrote:

It is our position that Mr Reid is not on probation.

However, if you guys want him to report until such a time as we get a final order I don't think that'll be an issue.

On Tue, Nov 30, 2021, 1:54 PM Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov> wrote:

Thank you, Solicitor Stumbo.

Judge, I echo and agree with all of the concerns laid out by the solicitor. I have every intention to file a motion for reconsideration, or based on your final order a notice of appeal. At this stage with Mr. Reid out of jail and ostensibly still on probation I would greatly appreciate clarification regarding the status of your final order. Thank you in advance.

Matt

-----Original Message-----

From: Solicitor David M. Stumbo <dstumbo@greenwoodsc.gov>

Sent: Tuesday, November 30, 2021 12:45 PM

To: Addy, Frank R. <faddyj@sccourts.org>

Cc: Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>; Addy, Frank R. Secretary (Freda Sartin) <faddyjc@sccourts.org>; Tristan Shaffer <tshaffer@8thcircuitpublicdefender.org>; Addy, Frank R. Law

Clerk (Sydney Case) <faddyjc@sccourts.org>; Richard Williams <Richard.Williams@ppp.sc.gov>; Octavia Wright <Octavia.Wright@ppp.sc.gov>

Subject: Re: State v. Joey Carvell Reid

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Judge- Just to keep the DPPPS attorneys in the loop, my understanding from what I was told this morning is that the jail released Joey Reid from the detention center yesterday on your request based on the non-final order that you issued a couple weeks ago.

I assumed your clarification via this email thread that this was not your final order would have stayed Richie's probation revocation action until a final order was issued. Furthermore, DPPPS made clear in this thread that they intend to move for reconsideration and potentially file a notice of appeal of your order if and when there is a final order issued which dismisses the revocation warrant. Again, I would assume that their intent to appeal and should stay the execution of your order and keep the revocation warrant pending until the matter reaches final resolution as well.

When Josh Thomas of our office moved for the bond revocation last year, he clearly included as part of his revocation motion all of Reid's pending bonds, which included the newer 2020 Pointing and presenting and DV incidents that are still pending trial today. Unfortunately, it appears that Judge Griffith's order only included the attempted murder charges that he was tried and acquitted on in April, as well as Richie's probation revocation warrant numbers, in the caption of his order. I believe this omission of the newer charges in the revocation order caption to be unintentional, but cannot represent that with any certainty without talking to Josh and Judge Griffith.

We also have Reid on the Greenwood GS trial docket for the week of December 13 term for the Pointing and presenting and DV 2nd incidents, primarily at the informal request of Mr. Shaffer for a speedy trial. The Detention Center told me a few minutes ago that they told Reid yesterday afternoon when he was released to be at the probation office at 9:00 AM this morning for further instruction, and according to Richie he has yet to show up at their office today. Which does not surprise me in the least, if Reid's understanding is that probation has no enforceable authority over him.

Based on all of the above, I believe the release of Reid from the detention center to be premature and I object to it - for whatever that is worth at this point. I would have moved (again) for the revocation Reid's bond of his pending charges until trial if I had known this was to be the Court's position on Reid's custody status this week. If he shows up for his trial(s) on December 13, I will be shocked. I'll be asking to try Reid in abstentia if that is the case, assuming my reluctant/scared victims show up.

Also, DPPPS may need some guidance from the court as to their motion to reconsider if your first order dismissing the revocation action is now being enforced as a final order. Thanks and let us know if there is any further guidance or clarification that the court would like to give on this.

DMS

> On Nov 12, 2021, at 3:42 PM, Addy, Frank R. <faddyj@sccourts.org> wrote:

>
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> Office: (864) 943-8020
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> Subject: RE: State v. Joey Carvell Reid
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> Matt
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> Matthew C. Buchanan
> General Counsel
> SC Department of Probation, Parole and Pardon Services
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> <cdefender.org>>; Addy, Frank R. Law Clerk (Sydney Case)
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> Cc: Richard Williams
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> Octavia Wright
> <Octavia.Wright@ppp.sc.gov<<mailto:Octavia.Wright@ppp.sc.gov>>>; Matthew
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> <cdefender.org>>; Addy, Frank R. Law Clerk (Sydney Case)
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> Cc: Richard Williams
> <richard.williams@ppp.sc.gov<<mailto:richard.williams@ppp.sc.gov>>>;
> Octavia Wright
> <Octavia.Wright@ppp.sc.gov<<mailto:Octavia.Wright@ppp.sc.gov>>>; Matthew
> Buchanan
> <Matthew.Buchanan@ppp.sc.gov<<mailto:Matthew.Buchanan@ppp.sc.gov>>>
> Subject: Re: State v. Joey Carvell Reid
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> David M. Stumbo
> Solicitor
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> Have a great day!
>
> Freda E. Sartin
> Administrative Assistant
> Honorable Frank R. Addy, Jr.
> Resident Judge, Eighth Judicial Circuit Greenwood County Courthouse
> 528 Monument Street, Suite 210
> Greenwood, South Carolina 29646
> Phone : (864) 943-8020
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MrH5w9FIzmIZy0xqUBUDjiIUYTHx9-XrLATVrwbGirTau7EMPrf2aVMPXjdNuFjlj_g-AJEZlcg/https%3A%2F%2Fwww.facebook.com%2Fpages%2FGREENWOOD-COUNTY-SOUTH-CAROLINA%2F296656564326> [Image removed by sender.] <https://secure-web.cisco.com/1QVfu89R7o2x71q7OrPcyzJd7vW39gCnRD1EIWm-10vfBbODnAUuvSPyXdroXSfQdF6Av5VcY0HM4sAx_4Zf-pBMblC1jJtNu3fOgFGJJq-j-kGYedNExRi-5MKMiPH5CQyRxc_BGDYZi7cei2VMHQtwrdCPydp_DoQSEV1EZeRjW-IhVdOzYuA4OrL20iKUffDraQLonw4vqkpf5b7xgeVEqrgvpJgy2McHp27w01xC8G7XG4AASSt3itQOrSbWE0gG4kCtXha64ooKnOREjvtYK_o9rrlfVIWCrul1VpcHUGlJDvucXQMlLLMxgdVenGfZ2hDTVZCrAkHnwzmrZGG2WXPkGvad53mUTZm9_VXDaZUHsqF7BFC0qOcNUv6rNjBbNnE4oTfkME3HMC3RSWFnlItTd_Jk6Bmc9t7YWZx5gffcfa9AIYXpaRlSq7fr5XLBaiaC5QB81oL9lt14JBA/https%3A%2F%2Ftwitter.com%2FScGwd>

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STATE OF SOUTH CAROLINA

COUNTY OF Greenwood
STATE VS.

AKA: Joey Corvell (Joey Sanders) Reid Jr.

Race: BLK Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]
City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: 01392728

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault & Battery, 1st degree (0-10 yrs.)

in violation of § 16-03-0600

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS of the S.C. Code of Laws, bearing CDR Code # 3412

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, ☐ Mandatory GPS(CSC) ☐ § 17-25-45 w/minor 1st or Lewd Act)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State. (defendant's initials)

ATTEST: M.S. Stumbo 72105 SC Bar# [REDACTED] Defendant CARSON M. WILKINSON 15348
Stumbo, David M. SC Bar# [REDACTED] Attorney for Defendant SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 687 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____
*Fine: _____

| | | |
|--|---------|------------------|
| § 14-1-206 (Assessments 107.5 %) | \$ | |
| § 14-1-211(A)(1) (Conv. Surcharge) | \$100 | \$ <u>100.00</u> |
| § 14-1-211(A)(2) (DUI Surcharge) | \$100 | \$ |
| § 56-5-2995 (DUI Assessment) | \$12 | \$ |
| § 56-1-286 (DUI Breath Test) | \$25 | \$ |
| Proviso 47.9 (Public Def/Prob) | \$500 | \$ |
| § 14-1-212 (Law Enforc. Funding) | \$25 | \$ |
| § 14-1-213 (Drug Court Surcharge) | \$150 | \$ <u>2500</u> |
| § 50-21-114 (BUI Breath Test Fee) | \$50 | \$ |
| § 56-5-2942(J) (Vehicle Assessment) | \$40/ca | \$ |
| Proviso 90.5 (SCCA, Surcharge) | \$5 | \$ <u>500</u> |
| 3% to County (if paid in installments) | \$ | \$ <u>390</u> |
| TOTAL | \$ | \$ <u>133.90</u> |

Clerk of Court/ Deputy Clerk Laura R. Wall
Court Reporter: Yara Scott
SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 12GS24-1323

A/W#: M890213

Date of Offense: 12/4/2011

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

10 years negotiated - DMS

☐ CONVICTED OF or ☒ PLEADS

[No contest]

Presiding Judge [Signature]
Judge Code: 0136
Sentence Date: Jan 27, 2014

STATE OF SOUTH CAROLINA

COUNTY OF Greenwood
STATE VS.Joey Corvell (Joey Sanders) Reid Jr.

AKA:

Race: BLK Sex: M Age: 30DOB: [REDACTED] SS# [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: 01392729*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder / Attempted Murder (6-30 yrs.)in violation of § 16-03-0029of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Stumbo, David M. 72105 Joey Reid CARSON M. HENDERSON 15348
SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 12-65-24-1323
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ 500.00§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 18.90TOTAL \$ 648.90Clerk of Court/ Deputy Clerk Lynn A. WellsCourt Reporter: Jana Scott

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS OEID-3
CS-103INDICTMENT/CASE#: 12GS24-1325A/W#: M890215Date of Offense: 12/4/2011S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

20 suspended -
consecutive
Dms☐ CONVICTED OF or ☒ PLEADS[NO CONTEST]PTUP _____
_____ days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☒ Appointed PD or appointed other counsel,
47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge: MB TaylorJudge Code: 0156Sentence Date: Jan 27, 2014

Probation

ARREST WARRANT

Indictment Number: 12-GS-24-01325

Warrant Number: W-24-20-0116

State Identification No. (SID) 01392728

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF GREENWOOD, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that JOEY CORVELL REID, did on the 11 day of August, 2020 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

The offender has violated conditions 1, 2, 7, 9, 10 of the standard Department conditions associated with Section 24-21-430. The offender has also violated special conditions imposed by the General Sessions Court per order dated January 27, 2014. This warrant or citation is issued pursuant to section 24-21-450 or 300.

Now, therefore, you are empowered and directed to arrest the said defendant and bring JOEY CORVELL REID before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at GREENWOOD, S. C. this 11 day of August, 2020.

County of GREENWOOD

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Tyler Patrick, who, first being duly sworn, deposes and says that JOEY CORVELL REID did within this County and State on the 11 day of August, 2020, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

The offender has violated conditions 1, 2, 7, 9, 10 of the standard Department conditions associated with Section 24-21-430. The offender has also violated special conditions imposed by the General Sessions Court per order dated January 27, 2014. This warrant or citation is issued pursuant to section 24-21-450 or 300.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Subject changed his address without the consent of his agent as evident by a home visit conducted on 6/29/20 finding the subject had moved to a new address. Therefore, subject has absconded supervision. Subject failed to pay monetary obligations by being in arrears \$923.00 (SF) and \$250.00 (PDF). Subject failed to follow the advise and instructions of his agent by failing to contact his supervising agent within a reasonable amount of time to provide a new address.

Such actions constitute violation of conditions 1, 2, 7, 9, 10.

Sworn to and Subscribed before me
this 11 day of August, 2020.

Signature of Notary Public

(L.S.)

My Commission Expires

Affiant

Address: 600 MONUMENT STREET
BOX P-111
GREENWOOD, SC 29646

(864) 942-8652

RETURN

STATE OF SOUTH CAROLINA

COUNTY OF

GREENWOOD

THE STATE

against

JOEY CORVELL REID

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

Joey C. Reid

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

on the 5th day of Sept, 2020

Date: 8/11/2020

Officer and Agency: SC Department of Probation, Parole and Pardon Services

Constable or Law Enforcement Officer

Tyler Patrick

This Warrant is certified for service in [County of warrant Certification] County. The accused is to be arrested and brought before me to deal with according to law.

Disposition

Sentence

Co-Defendants

Signature of Judge

(L.S.)

INFORMATION ON DEFENDANT

Name JOEY CORVELL REID

Address Unknown
unknown, SC

Phone (000) 000-0000

Sex Male Race Black Height 510

Weight 152 Birth date

Social Security Number

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant.

Decision

BAIL

Date Set

Magistrate

Amount

Surety

Probation

ARREST WARRANT

Indictment Number: 12-GS-24-01325

Warrant Number: W-24-20-0153

State Identification No. (SID) 01392728

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF GREENWOOD, AND ANY CONSTABLE OF THIS
MAGISTERIAL DISTRICT:

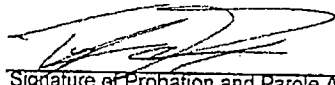
It appearing from the attached affidavit that there are reasonable grounds to believe that JOEY CORVELL REID, did on the 3 day of December, 2020 violate the
criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

The offender has violated conditions 4, 10 of the standard Department conditions associated with Section 24-21-430. The offender has also violated special conditions imposed by the General Sessions Court per order dated January 27, 2014. This warrant or citation is issued pursuant to section 24-21-450 or 300.

Now, therefore, you are empowered and directed to arrest the said defendant and bring JOEY CORVELL REID before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at GREENWOOD, S. C. this 3 day of December, 2020.

County of GREENWOOD


Signature of Probation and Parole Agent

(L.S.)

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Tyler Patrick, who, first being duly sworn, deposes and says that JOEY CORVELL REID did within this County and State on the 3 day of December, 2020, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

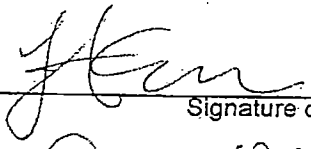
The offender has violated conditions 4, 10 of the standard Department conditions associated with Section 24-21-430. The offender has also violated special conditions imposed by the General Sessions Court per order dated January 27, 2014. This warrant or citation is issued pursuant to section 24-21-450 or 300.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Subject failed to refrain from possessing a firearm as evident from Greenwood County Sheriffs Incident report number: 2000034180 dated 11/25/20, placing the subject at a scene where a gun was unlawfully pointed and presented.
Such actions constitute violation of conditions 4, 10.

Sworn to and Subscribed before me
this 3 day of December, 2020.

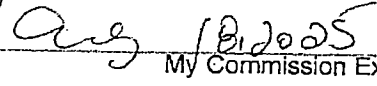

Affiant


Signature of Notary Public

(L.S.)

Address: 600 MONUMENT STREET
BOX P-111
GREENWOOD, SC 29646

(864) 942-8652


My Commission Expires

RETURN

STATE OF SOUTH CAROLINA

COUNTY OF

GREENWOOD

THE STATE

against

JOEY CORVELL REID

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

Joey Corvell Reid

on the 14th day of December, 2020

[Signature]

Constable or Law Enforcement Officer

This Warrant is certified for service in [County of warrant Certification] County. The accused is to be arrested and brought before me to dealt with according to law.

Signature of Judge

(L.S.)

Disposition

Sentence

Co-Defendants

Tyler Patrick

ARREST WARRANT

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

Date: 12/3/2020

Officer and Agency: SC Department of Probation, Parole and Pardon Services

INFORMATION ON DEFENDANT

Name: JOEY CORVELL REID

Address

Phone

Sex: Male Race: Black Height: 510

Weight: 152 Birth date

Social Security Number

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant.

Decision

BAIL

Date Set

Magistrate

Amount

Surety

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Circuit Court
The Honorable Frank R. Addy, Jr.

Appellate Case No. 2021-001465

STATE OF SOUTH CAROLINA APPELLANT

v.

Joey Corvell Reid, ...RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies with the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Matthew C. Buchanan
General Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

December 9, 2022

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Circuit Court
The Honorable Frank R. Addy, Jr.

Appellate Case No. 2021-001465

STATE OF SOUTH CAROLINA APPELLANT

v.

Joey Reid, #1392728, ...RESPONDENT

FINAL BRIEF OF APPELLANT

Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220**

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Can a circuit court judge vacate a sentencing order issued by another circuit judge when there was no appeal taken from the original sentence?
2. Should a sentence that was not appealed by either party become the law of the case even though it was not permitted by statute?

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. 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 and was released to probation from the Department of Corrections 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, Judge Addy 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). Judge Addy 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, Judge Addy 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.

This 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. 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.

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 he overstepped his authority by vacating Respondent's sentence.

2. A sentence that was not appealed by either party becomes the law of the case, even though it was not permitted by statute.

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 – until facing a revocation of that probation – did either the State or Respondent appeal or object to the sentence.

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 – and consequences for violating same – of 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, which 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.¹

The trial court also considered Justice (then 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 and battery of a high and aggravated nature (ABHAN) – it carries up to twenty years, adds a strike,

¹ 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 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,² 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.³ Furthermore, it is a bargain that could have been accomplished by reducing the offense to that of ABHAN.

Conclusion

While the 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.

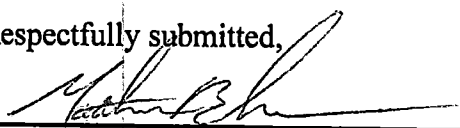
Furthermore, while the appellate courts *do* have the authority to reverse and remand an order or sentence from a lower tribunal, the rules strictly state that notice of appeal must be raised within ten days of the order. Rule 203(b)(2), SCACR. Clearly, this was not done, so the sentence

² Transcript, P. 17, l. 23 – P. 18, l. 4.

³ A far more apt analogy would be the enforceability of a judge handing down 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.

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.⁴

Respectfully submitted,


Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

Columbia, South Carolina
December 20, 2022

⁴ 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." Order Concerning Probation Violation, J. Addy, December 31, 2021, FN 6. This comment, however, fails to take into consideration the fact that Respondent had also pled guilty to 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).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Circuit Court
The Honorable Frank R. Addy, Jr.

Appellate Case No. 2021-001465

STATE OF SOUTH CAROLINA APPELLANT

v.

Joey Reid, #1392728, ...RESPONDENT

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Appellant filed December 20, 2022, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 20th day of December 20, 2022.


Matthew C. Buchanan
General Counsel
S.C. Bar No. 73740

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Frank R. Addy, Circuit Court Judge

THE STATE,

APPELLANT,

V.

JOEY CORVELL REID,

RESPONDENT.

APPELLATE CASE NO. 2021-001465

FINAL BRIEF OF RESPONDENT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUES ON APPEAL

1.

Can a circuit court judge vacate a sentencing order issued by another circuit judge when there was no appeal taken from the original sentence?

2.

Should a sentence that was not appealed by either party become the law of the case even though it was not permitted by statute?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE ON APPEAL

Do either the general rule that one circuit judge may not overrule another circuit judge or the doctrine of "law of the case" require a trial court to enforce a sentence that the parties agree is illegal?

STATEMENT OF THE CASE

On January 27, 2014, respondent Joey Reid pled guilty before the Honorable Doyet Early pursuant to a negotiated plea to one count of first-degree assault and battery and one count of attempted murder. Accepting the plea and following the negotiation for sentencing, Judge Early sentenced Reid to ten years' imprisonment on the assault charge and a consecutive twenty years' imprisonment suspended to five years' probation for attempted murder. No appeal was taken.

Reid began serving his probationary sentence and the State issued warrants seeking to revoke his probation. On October 28, 2021, a hearing on the probation warrants was held before the Honorable Frank R. Addy, Jr. R. 1. David Stumbo represented the State, Agent Wright appeared for DPPPS, and Tristan Shaffer represented Reid. R. 1. On December 31, 2021, Judge Addy issued a written order refusing to revoke Reid's probation, vacating Reid's attempted murder sentence, and granting Reid leave to move to withdraw his guilty plea to attempted murder. R. 26. DPPPS appealed to this Court.

STANDARD OF REVIEW

The issues before the Court are legal and should be reviewed *de novo*.

ARGUMENT

Neither the general rule that one circuit judge may not overrule another circuit judge nor the doctrine of "law of the case" requires a trial court to enforce a sentence that the parties agree is illegal.

Two valid and reasonable legal principles collide in this appeal. The first principle is that one circuit judge may not overrule another circuit judge. The second is that courts may not condone illegality, even though urged to do so by the parties. The trial court recognized this dilemma and decided that a "do-over" was the proper outcome. This Court should affirm.

No dispute exists that the sentence given to respondent Joey Reid ("Reid") for attempted murder is illegal. Appellant properly admits this in the statement of its second issue on appeal. Br. App. at 4 ("...even though it was not permitted by statute."). In 2014, before the Honorable Doyet A. Early, III, respondent Reid pled guilty with a negotiated plea to first-degree assault and battery and to attempted murder. R. 52-53. R. 11, l. 4 – 17. Judge Early sentenced Reid to ten years' imprisonment for the assault and battery conviction. R. 52-53. R. 11, l. 4 – 12, l. 24. Judge Early also sentenced Reid to a consecutive twenty years' imprisonment for attempted murder, suspended to five years' probation. R. 52-53. R. 11, l. 4 – 12, l. 24.

Reid's attempted murder sentence is patently illegal because it cannot be suspended and probation cannot be imposed. S.C. Code Ann. § 16-3-29. The attempted murder statute provides:

A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted.

S.C. Code Ann. § 16-3-29 (emphasis added). The plain language of the statute makes Reid's sentence illegal.

Reid served his active sentence for assault and battery and began serving probation. When the probation department brought Reid before Judge Addy on a probation violation warrant, the parties agreed that the sentence was illegal. R. 5, l. 1 – 21. R. 13, l. 5 – 15, l. 21. Reid argued that the probation warrant should be dismissed because the sentence was illegal. R. 7, l. 4 – 7. The probation department argued that because no one appealed the sentence, the department was required to enforce the sentence as given and sought a ten-year revocation. R. 13, l. 5 – 15, l. 21. R. 27, n. 6.

The trial judge first refused to revoke Reid's probation because of the illegal sentence. R. R. 33. Judge Addy then crafted a result not sought by either party. R. 34, n.18. The judge vacated Reid's sentence and ordered resentencing. R. 34. Judge Addy granted Reid leave to move to withdraw his plea to attempted murder at the resentencing. R. 34-35.

The State argues that Judge Addy had no authority to vacate Reid's sentence because it "is well-settled that one circuit judge may not reverse an order of another circuit judge." Br. App. at 4. The general legal principle cited by the State is correct and is, admittedly, not without force in this case. Judge Addy recognized this principle and stated he was "not attempting to overrule another judge." R. 34, n. 18.

The judge was rightly concerned that instead of being asked to overrule another circuit judge, he was being asked to enforce an illegal sentence. Faced with this dilemma, Judge Addy made the right decision. The court correctly started from the fact that Reid's sentence came from a negotiated plea. Plea bargaining and negotiated sentences are interpreted using principles from contract law. See Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). In State v. Thrift, the Court cited with approval a Fourth Circuit case holding that while contract law applies, "a plea agreement analysis must be more stringent than a contract because the rights involved are

fundamental and constitutionally based.” 312 S.C. 282, 293, 440 S.E.2d 341, 347 (1994) citing United States v. Ringling, 988 F.2d 504 (4th Cir. 1993).

The court then correctly stated it was without the power to enforce an illegal contract. See Hinnant v. Southern Ry. Co., 113 S.C. 19, 100 S.E. 709 (1919). In Hinnant, the plaintiff hitched a ride on a train and then sued for injuries sustained when it crashed. Id. State and federal statutes prohibited the plaintiff’s presence on the train. Id. The plaintiff claimed he was legally on the train pursuant to a contract with the conductor and engineer. Id. The Court held, “Neither the conductor, the engineer, nor the defendant itself can make a contract in violation of law, or waive the requirements of the law.” Id.

Similar to the conductor and the plaintiff in Hinnant, the contract between Reid and the solicitor violated the law. Judge Addy correctly concluded that such a contract was void and refused to enforce it. Refusing to enforce an illegal contract does not contravene the general rule that one circuit judge may not overrule another circuit judge. Judge Addy correctly refused to violate Reid’s probation. Reid properly raised the illegality of the sentence as a defense to the probation violation warrant. See State v. Lee, 350 S.C. 125, 132-33, 564 S.E.2d 372, 376 (Ct. App. 2002) (“the 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.”

Judge Addy also was correct to vacate the sentence and grant Reid leave to withdraw his plea. The court recognized that continuing Reid on a probationary sentence that it was impossible for him to violate deprived the State of the benefit of its bargain. This ruling does not violate the doctrine of “law of the case” and was, as the trial judge recognized, the only way out of this dilemma. Judge Addy could not violate Reid without enforcing an illegal sentence. And as stated

above, State v. Lee allows a probationer to challenge the legality of the sentence as a defense to revocation. Therefore, the State's "law of the case" argument fails.

Additionally, placing the parties back in the position before the illegal contract was made comports with the duties of solicitors and the Rule of Lenity. "Prosecutors are ministers of justice and not merely advocates." State v. Quattlebaum, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000). South Carolina places "unfettered discretion" to prosecute in the hands of solicitors. Thrift at 291-92, 440 S.E.2d at 346-47. While this case involves a mistake by the solicitor (and defense counsel and the court) and not the egregious conduct condemned in Quattlebaum, holding the State to a higher standard with respect to sentencing errors complies with the duties that run with their vast power.

The State should bear the minimal costs of the mistake in this plea bargain, not Reid. The trial judge cited the legal maxim that when parties are of equal fault, the defendant's position is the stronger (*In pari delicto potior est conditio defendentis*). R. 34. Another rule that also could have been applied is the Rule of Lenity. See State v. Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017). The Rule of Lenity is a canon of statutory construction and holds that any doubt about a statute's scope should be interpreted in the defendant's favor. Id. While this rule does not technically apply because the court interpreted an illegal contract instead of a statute, the logic of the rule applies here. Furthermore, the State should be viewed as the drafter of the contract, and terms of a contract are strictly enforced against the drafter. Maybank v. BB&T Corp., 416 S.C. 541, 574, 787 S.E.2d 498, 515 (2016). While Reid is not seeking enforcement of the terms of the illegal contract, this maxim together with the logic of the Rule of Lenity shows that the State was in the best position to avoid requesting an illegal sentence and cannot now complain when the trial

judge undoes the agreement. Faced with a difficult legal question, Judge Addy reached the right result and this Court should affirm.

CONCLUSION

This Court should affirm the decision of the trial court and remand for resentencing or withdrawal of a plea as dictated in the trial court's Order.

A handwritten signature in black ink, appearing to read 'DAVID ALEXANDER', written over a horizontal line.

David Alexander
Appellate Defender

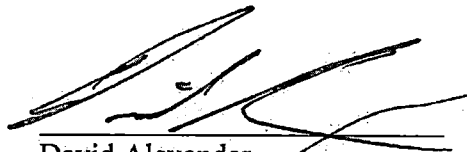
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

December 29, 2022

ATTORNEY FOR RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

This 29th day of December 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Frank R. Addy, Circuit Court Judge

THE STATE,

APPELLANT,

V.

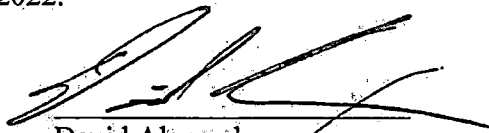
JOEY CORVELL REID,

RESPONDENT.

APPELLATE CASE NO. 2021-001465

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Respondent in the above-referenced case has been served upon Matthew C. Buchanan, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 29th day of December, 2022.



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Circuit Court
The Honorable Frank R. Addy, Jr.

Appellate Case No. 2021-001465

STATE OF SOUTH CAROLINA APPELLANT

v.

Joey Reid, #1392728, ...RESPONDENT

FINAL REPLY OF APPELLANT

**Matthew C. Buchanan
General Counsel**

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220**

ATTORNEY FOR APPELLANT

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Argument in reply

A sentence not appealed by either party is the law of the case even if not authorized by statute when the sentence is not disadvantageous to the defendant.

Respondent seeks for this Court to uphold the trial judge's decision to require a new sentencing proceeding, emphasizing the "illegal" nature of the original sentence while downplaying the fact that the Respondent received a significant benefit in its illegality. Admittedly, the sentencing judge should not have suspended the sentence. However, only upon facing a revocation of probation – which would require service of some or all of that suspended sentence – does the Respondent cry foul.

A ruling not objected to becomes the law of the case. State v. Sampson, 317 S.C. 423, 545 S.E.2d 721 (1995). The sentence pronounced by the Honorable Doyet Early on January 27, 2014, was ripe for appeal and/or objection – it was clearly contrary to statute. However, it was not appealed, nor was it challenged under the post-conviction relief act. Furthermore, it was far from an unconscionable sentence. Per the negotiations agreed to by both Respondent and the Eighth Circuit Solicitor's Office, he agreed to the terms of the sentence which included abiding by the conditions of probation or face a revocation of up to twenty years – a sentence that could have been accomplished by reducing the charge to assault and battery of a high and aggravated nature (ABHAN).

Because neither the State nor the Respondent objected to the sentence, it became the law of the case. While originally not legal, by virtue of neither side appealing or challenging the sentence, either on direct appeal or via PCR, it became binding on the parties. Thus, Judge Addy was not asked to enforce an illegal sentence. The sentence before him was a negotiated sentence agreed upon by both parties and ratified by Judge Early. Ideally, the mistake should have been

caught during the time of the plea because the identical sentence could have been achieved by Respondent pleading guilty to ABHAN. Sadly this did not occur, but because neither side appealed, the finality of the negotiated sentence should be upheld and enforced in the subsequent probation violation proceeding.

Respondent argues that the State should “bear the minimal costs of the mistake in this plea bargain, not Reid.” Br. Of Respondent at 7. Appellant submits that the costs would be significant to the State. A resentencing under attempted murder cannot restore Respondent’s probationary sentence, and anything greater than a suspended sentence would certainly be challenged by Respondent as contrary to the original negotiation. Resuming or renewing plea negotiations, as the Honorable Frank R. Addy, Jr. suggests in his order, would not result in a minimal cost for the State. The original offense was committed in 2012, more than ten years ago. The State is not in the same bargaining position as it was in 2013 and 2014, when witnesses’ recollections were fresher and their whereabouts known. Allowing Respondent to withdraw his plea and forcing the State to prepare for a possible trial years after the finality of a negotiated plea disproportionately punishes the State and rewards Respondent – especially when he failed to live up to his terms of the agreement by violating probation.

Respondent also calls for the Rule of Lenity and cites State v. Quattlebaum,¹ a case of egregious prosecutorial overreach. If anything, this is a case of prosecutorial *underreach*. Agreeing to a probationary sentence is far from egregious. Notably, Respondent did not object to his own negotiated windfall until faced with the consequences of failing to abide by the conditions of probation. Thus, instead of fearing to enforce an “illegal sentence” as done in this case, the court should have embraced the version of judicial estoppel espoused by Judge Few in his dissent in

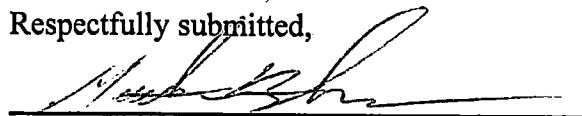
¹ 338 S.C. 441, 527 S.E.2d 105 (2000).

State v. Blakney, 410 S.C. 244, 763 S.E.2d 622 (2014). As discussed by Few, judicial estoppel would “prevent[] a litigant from asserting a position inconsistent with ... one the litigant has previously asserted in the same or related proceeding.” Id. At 255 (internal citations omitted). Respondent here *negotiated* for a probationary sentence. Then, years later in a related proceeding (his probation violation hearing), he objected to having received the probationary sentence in the first place. Placing the fault and significant costs upon the State as a consequence for the original sentence unduly burdens the State and unduly rewards Respondent.

Conclusion

Neither party appealed the sentence and Respondent did not challenge his sentence in PCR. As such, the sentence imposed became the law of the case. The violation court could have and should have treated the sentence before it as a fully legitimate sentence to which both Respondent and the State had agreed. Respondent’s objections to the sentence came only *after* he failed to abide by the conditions of supervision. He should not be rewarded and the State should not be forced into a far worse position as a consequence of his actions. The only fault of the State was committing the same mistake that Respondent and the sentencing court also shared. To throw the burden of that mistake years after the fact solely upon the State should not be the solution. The circuit court can and should be authorized to proceed with the violation of probation, where it can exercise its sound discretion – including revocation of the suspended sentence.

Respectfully submitted,



Matthew C. Buchanan #73740
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202

Columbia, South Carolina
December 20, 2022

(803) 734-9220

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Circuit Court
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Appellate Case No. 2021-001465

STATE OF SOUTH CAROLINA APPELLANT

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This 20th day of December 20, 2022.


Matthew C. Buchanan
General Counsel
S.C. Bar No. 73740

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Joey Corvell Reid, Respondent.

Appellate Case No. 2021-001465

Appeal From Greenwood County
Frank R. Addy, Jr., Circuit Court Judge

Unpublished Opinion No. 2023-UP-311
Submitted September 13, 2023 – Filed September 20, 2023

APPEAL DISMISSED

Matthew C. Buchanan, of South Carolina Department of
Probation, Parole, and Pardon Services, of Columbia, for
Appellant.

Appellate Defender David Alexander, of Columbia, for
Respondent.

PER CURIAM: The State appeals an order of the circuit court that found Joey Corvell Reid's sentence was illegal, and thus, his probation should not be revoked. The order also vacated Reid's illegal sentence and ordered resentencing. On appeal, the State argues the circuit court erred because (1) one judge cannot vacate

a sentencing order issued by another circuit judge when there was no appeal taken from the original sentence and (2) Reid's sentence, which was not appealed, was law of the case even though not permitted by statute. We dismiss on the basis the order is not immediately appealable.

On January 27, 2014, Reid pled guilty pursuant to a negotiated plea to first-degree assault and battery and attempted murder. The plea court accepted the negotiated plea and sentenced Reid to ten years' imprisonment on the assault charge and twenty years' imprisonment, suspended to five years' probation, on the attempted murder charge. Reid served his active sentence and was released on probation in 2018. Subsequently, the South Carolina Department of Probation, Parole and Pardon Services issued a warrant for violation of the terms of probation. Following the probation violation hearing, the circuit court, in its order, found a conviction for attempted murder could not be suspended to probation, regardless of the fact that it was a negotiated plea, and determined that because the attempted murder sentence was illegal, Reid's probation should not be revoked. *See* S.C. Code Ann. § 16-3-29 ("A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. . . . A sentence imposed pursuant to this section *may not be suspended* nor may probation be granted." (emphasis added)). The court, concluding that Reid's probationary sentence was "illusory and of no practical effect," then vacated Reid's attempted murder sentence and ordered resentencing. Because the order is not final until after Reid has been resentenced and no subsection of section 14-3-330 of the South Carolina Code (2017) is applicable, we dismiss the order as not immediately appealable. *See Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005) ("Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within [section] 14-3-330.").

APPEAL DISMISSED.¹

WILLIAMS, C.J., and HEWITT and VERDIN, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Circuit Court
The Honorable Frank R. Addy, Jr.

Appellate Case No. 2021-001465

STATE OF SOUTH CAROLINA APPELLANT

v.

Joey Reid, #1392728, ...RESPONDENT

PETITION FOR REHEARING

The Appellant, the South Carolina Department of Probation, Parole and Pardon Services (the Department), respectfully petitions this Court for rehearing pursuant to Rule 221(a), SCACR. Respondent hereby seeks a rehearing on the grounds that this Court may have misapprehended or overlooked several crucial points in its determination that the order of the probation revocation court was interlocutory and no subsection of section 14-3-330 was applicable.

Specifically, Respondent submits this Court did not acknowledge the impropriety of the probation revocation court's order. This Court's determination that the order being appealed was interlocutory fails to address the fact the court simply lacked the authority to issue it. The Department brought revocation of probation procedures before the court pursuant to section 24-21-460, which outlines the actions a court may take in the context of a probation violation hearing. The court "may revoke the probation or suspension of sentence and shall proceed to deal with the

case as if there had been no probation or suspension of sentence except that the circuit judge before whom such defendant may be so brought shall have the right, in his discretion, to require the defendant to serve all or a portion only of the sentence imposed.” Essentially, the probation revocation court’s options are to revoke the suspended sentence, revoke a portion of the suspended sentence and continue. Certainly, the court may also continue the probation with the same or modified conditions of supervision. S.C. Code Section 24-21-430. However, vacating the original sentence is not – nor should it be – an option for circuit judges presiding over probation violation hearings. The appellate court may correct errors of law in its authority to review the decisions of circuit courts presiding over probation violations. *State v. White*, 218 S.C. 130, 135, 61 S.E.2d 754, 756. Appellant submits that the circuit court clearly committed an error of law by issuing an order outside of its authority to make.

A circuit court judge generally “is without authority to consider a criminal matter once the term of court during which judgment was entered expires.” *State v. Warren*, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011); see *State v. Hinson*, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) (“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.”). And, that rule is only inapplicable when either: (1) a timely post-trial motion is filed; or (2) a motion for a new trial based on after-discovered evidence is filed. *State v. Campbell*, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008). In light of that, a circuit court judge lacks the authority to act in a particular matter once the term of court has ended absent the filing of a timely post-trial motion or a specific type of new trial motion. *Id.*; see Rule 29(a), SCRCrimP (“Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.”).

In vacating a final sentence and ordering the resentencing, the probation violation court clearly overstepped its authority. Appellant submits that the remand is a nullity, striking down a sentence the circuit court had no authority to strike down. *See Blanton v. Stathos*, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002) (“A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on.”); cf. *Tant v. South Carolina Dep’t of Corr.*, 408 S.C. 334, 342-343, 759 S.E.2d 398, 402 (2014) (“The judge sent the letter two-and-a-half years after sentencing and at that point no longer had jurisdiction over the case. Therefore, Judge Saunders was without jurisdiction to make any subsequent pronouncement concerning Tant’s sentence.” (citation omitted)).

Appellant respectfully submits that if null orders issued by judges without authority over the matter may not be appealed because they are “interlocutory,” then no order can ever be considered final. Every order could be subject to a remand by judges without authority and any party relying on the order would be without recourse to appeal except to let the remand run its course. Clearly, this Court should grant this Petition for Reconsideration and address the merits of this appeal.

Furthermore, Appellant submits that this matter falls within the section 14-3-330. In remanding the matter for resentencing, the probation violation court not only overstepped its statutory authority in issuing such an order, but the order is final in all practical considerations, thus falling squarely under 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.

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, so 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 ten-year-old case to trial after it had already negotiated a resolution nine years ago. Regardless of the resolution of the resentencing order, 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. Consequently, this Court should consider the probation court's order remanding the matter for resentencing as a final order under section 14-3-330(2)(a), and consider the merits of the State's appeal.

In the alternative, Appellant submits that the order for "resentencing" is effectively an order for a new trial in light of the fact that the sentence was negotiated, meeting the requirements of section 14-3-330(2)(b). As stated earlier, the probation violation court's order remanding the matter for a resentencing will not result in a new sentence 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 be reviewed.

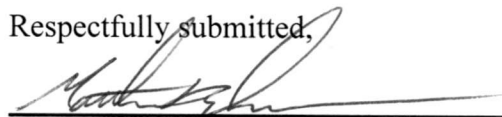
A third alternative would be to consider section 14-3-330(3) as applicable to the situation. A probation violation hearing is a proceeding that follows a judgment – that being conviction and

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. 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.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court reconsider its ruling that the probation court's remand for resentencing is not an appealable order. Not only was the order clearly outside the court's authority, but the order falls within several categories of section 14-3-330 that make it immediately appealable. Otherwise, a judge presiding over a probation revocation would have unchecked authority to reach back and vacate, alter, or even extend a criminal sentence. Such a result would be absurd. Therefore, this Court should grant this motion to reconsider and address the appeal on its merits.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

Columbia, South Carolina
September 29, 2023

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Circuit Court
The Honorable Frank R. Addy, Jr.

Appellate Case No. 2021-001465

STATE OF SOUTH CAROLINA APPELLANT

v.

Joey Reid, #1392728, ...RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant to counsel for Appellant, certify that I have served the Petition for Rehearing dated September 29, 2023, on Respondent this 2nd day of October, 2023, by placing a copy in first class United States mail, postage prepaid, upon the following:

David Alexander, Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

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



Dawn K. Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Frank R. Addy, Circuit Court Judge

THE STATE,

APPELLANT,

V.

JOEY CORVELL REID,

RESPONDENT.

APPELLATE CASE NO. 2021-001465

RETURN TO PETITION FOR REHEARING

The State's argument in its petition for rehearing exaggerates the scope of this Court's ruling. Judges hearing probation revocations have zero appetite to undo the sentences of the defendants before them. Judge Addy grappled and struggled with a singular legal dilemma—whether he could undo the illegal sentence of another trial judge or whether he should enforce the terms of an illegal sentence. The trial judge's actions were far from a case of judicial activism. The judge was placed in a difficult position, recognized it as such, reacted thoughtfully, and reached the right result.

This Court's dismissal of the appeal, like Judge Addy's decision that a "do-over" was required, also reaches the correct result. Furthermore, this Court's wise decision to render an

unpublished decision that cannot be cited as authority eliminates the dangers predicted by the State in its petition. The sky is not going to fall.

The unusual facts of this case are unlikely to occur again and are largely of the State's own making. The State agreed to an illegal sentence. It was in the best position to protect itself at the time this plea was negotiated. It failed to do so.

What is not unusual is the result of this Court's decision about which the State so loudly complains—having to bring a ten-year old case to trial. A criminal defendant who exhausts a direct appeal and then prevails in PCR (either at the PCR court or on appeal) will likely be nearing or past the ten-year mark when his new trial occurs. A criminal defendant who prevails on a motion for a new trial based on after-discovered evidence could be retried after decades have passed. Criminal defendants in “cold cases” may find themselves attempting to defend against twenty-year-old allegations. The State's complaints ring hollow and the petition for rehearing should be denied.



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

October 12, 2023

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

APPELLANT,

V.

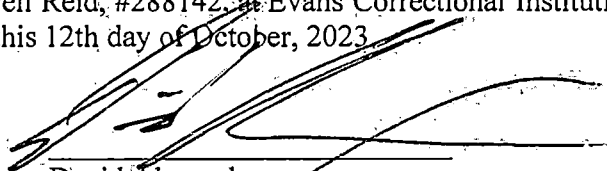
JOEY CORVELL REID,

RESPONDENT.

APPELLATE CASE NO. 2021-001465

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Return to Petition for Rehearing in the above-referenced case has been served upon Matthew C. Buchanan, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Joey Corvell Reid, #288142, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 12th day of October, 2023.



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

The South Carolina Court of Appeals

The State, Appellant,

v.

Joey Corvell Reid, Respondent.

Appellate Case No. 2021-001465

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. Bruce W. Osteen C.J.

3L L. H. J.

Robert H. Verdin J.

Columbia, South Carolina

cc:

Matthew C. Buchanan, Esquire

David Alexander, Esquire

FILED
Nov 20 2023