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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to the Court of Appeals
Appeal from Orangeburg County
Roger M. Young, Circuit Court Judge

Opinion No. 2025-UP-10 (S.C. Ct. App. filed January 8, 2025)

THE STATE,

RESPONDENT,

V.

BOWEN GRAY TURNER,

APPELLANT.

APPELLATE CASE NO. 2025-000671

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Bowen Gray Turner, Appellant.

Appellate Case No. 2022-001018

Appeal From Orangeburg County
Roger M. Young, Sr., Circuit Court Judge

Unpublished Opinion No. 2025-UP-010
Heard September 10, 2024 – Filed January 8, 2025

AFFIRMED

Chief Appellate Defender Robert Michael Dudek and Appellate Defender Lara Mary Caudy, both of Columbia, for Appellant.

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

PER CURIAM: Bowen Turner appeals the probation revocation court's order requiring him to register as a sex offender. We affirm the probation revocation court's order.

1. Turner contends the probation court erred in refusing his request for a continuance. We disagree. "The denial of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion resulting in prejudice." *State v. Meggett*, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001). The probation court acted within its discretion in denying Turner's motion for a continuance. Any opinion evidence that would have been obtained from a medical evaluation should have been presented to the sentencing court at Turner's guilty plea. "[O]nce the Sentencing [court]'s order became final, neither [it], nor the Probation [court] would be permitted to alter the sentence [it] had handed down." *State v. Davis*, 375 S.C. 12, 16, 649 S.E.2d 178, 180 (Ct. App. 2007); *see also State v. Best*, 257 S.C. 361, 373–74, 186 S.E.2d 272, 277–78 (1972) (noting the sentencing court lacks subject matter jurisdiction to modify, change, or amend a sentence after adjournment of the term of court at which the court imposed the sentence).

2. Turner argues the probation court failed to exercise discretion by ordering him to register for the sex offender registry. We disagree. The probation court correctly declined to alter Turner's sentence. The sentencing court heard all of the circumstances surrounding Turner's guilty plea and noted that "there were some things going on that needed to be addressed and you've started doing that. Well, this will give you a chance to further address those things so the people don't have to go through that again." The sentencing court clarified that "any violation of the sex offender conditions of probation" would cause Turner to have to register as a sex offender. Turner signed a plea agreement when he pled guilty, notifying him of his placement on the registry if he violated the conditions of his probation. Condition eleven of the Standard Sex Offender Conditions signed by Turner at the guilty plea stated, "I will not consume alcoholic beverages." Turner was arrested after using fake identification to purchase alcohol in a bar and drinking three whiskey sours.[1] Therefore, the probation court did not err in revoking Turner's

[1] Additional concerning behavior related to Turner's approaching of female customers at the bar is detailed in the Summary of Turner's Administrative Hearing. The Summary notes, "As this behavior continued and the women complained of being harassed by Mr. Turner's behavior, Mr. Turner was asked to leave [the bar] around 11 PM." The probation revocation court was also notified of Turner's pending "citation charging him with threatening a public official at the jail."

probation and requiring him to register as a sex offender. The sentencing court's order was final. *See Davis*, 375 S.C. at 16, 649 S.E. 2d at 180 ("[O]nce the Sentencing [court]'s order became final, neither [it], nor the Probation [court] would be permitted to alter the sentence [it] had handed down."); *State v. Hamilton*, 333 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999) ("Probation is a matter of grace; revocation is the means to enforce the conditions of probation.").

AFFIRMED.

WILLIAMS, C.J., and MCDONALD and TURNER, JJ., concur.

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Roger M. Young, Circuit Court Judge

Opinion No. 2025-UP-010
(S.C. Ct. App. Filed January 8, 2025)

THE STATE,

RESPONDENT,

V.

BOWEN GRAY TURNER,

PETITIONER.

APPELLATE CASE NO. 2022-001018

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Bowen Gray Turner moves for rehearing because this Court may have overlooked or misapprehended the fact that *good cause* must be proven to place an individual on the sex offender registry. See S.C. Code Ann. § 23-3-430 (D) ("upon conviction, guilty plea, or plea of nolo contendre of a person of an offense not listed in this article, the presiding judge may order the condition of sentencing that the person be included in the sex offender registry if good cause is shown by the prosecution."); State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500-501 (Ct. App. 2008).

In the Interest of Christopher H., 432 S.C. 600, 854 S.E.2d 853 (Ct. App. 2021), this Court held that the sentencing judge erred by finding good cause existed to place Christopher H. on the private sex offender registry because there was insufficient evidence showing he was at risk of reoffending. Good cause was never proven in this case to mandate that petitioner register as a sex offender.

Further, neither State v. Davis, 375 S.C. 12, 16, 649 S.E.2d 178, 180 (Ct. App. 2007) nor State v. Best, 257 S.C. 361, 373-74, 186 S.E.2d 272, 277-78 (1972) mandate the holding of this Court that the probation revocation court had *no discretion not to place petitioner on the sex offender registry* where the violation of the sex offender condition of probation did not constitute good cause to place him on the registry. In Davis, this Court reasoned that because the state failed to prove good cause to place Davis on the sex offender registry at the plea hearing -- indeed the state seemingly admitted no good cause existed -- that the plea revocation judge could not place Davis on the registry nor make it a condition of his probation.

It respectfully does not follow that where good cause was not shown to place petitioner on the sex offender registry before the sentencing plea judge that the plea revocation judge had no discretion not to put petitioner on the sex offender registry where he violated the no drinking standard condition. Violations of standard conditions of probation are considered each week at probation revocation hearings throughout this state, and revocation judges are not required to revoke the person's probation and revoke it in full. The revocation hearing judge has discretion to hear any evidence in explanation or mitigation of the violated term of probation.

A holding that a revocation judge has no discretion whatsoever to hear evidence in explanation or mitigation and not to order sex offender registry where a standard sex offender condition is violated is illogical, particularly where the "good cause" requirement is never proven

by the state. Petitioner drinking alcohol was not indicative of his likelihood to reoffend or to commit a sexual crime.

Further, defense counsel Hutto did object at the guilty plea proceeding to petitioner being placed on the sex offender registry *in the future based on some minor violation such as a speeding ticket.* Respectfully, underage drinking was a minor violation of the standard sex offender terms. Consequently, defense counsel's objection at sentencing during the guilty plea should have been sufficient to protect petitioner procedurally against the strict liability imposition of the sex offender registry by a future revocation judge for this minor violation of drinking alcohol.

Again, *if the probation revocation judge had the authority to place petitioner on the sex offender registry* as this Court found, that revocation judge should have had to find "good cause" to place petitioner on the sex offender registry after hearing his case in explanation or mitigation of the sex offender term violation.

In addition, State v. Best, 257 S.C. 361, 373-74, 186 S.E.2d 272, 274-78 (1972) is an outlier case where the sentencing judge, without notice to the state, directed the three sentenced defendants be brought back before him again, and he lowered their sentences. This was not lawful since the term of court had ended, and court was adjourned.

Best does not dictate that the probation revocation court here had no discretion to impose a sanction of less than the sex offender registry where good cause was never shown to place petitioner on the registry as mandated by statute and precedent because the prior term of court had ended. The probation revocation judge was not a potted plant wholly without any discretion if petitioner violated a condition of his probation -- sex offender or otherwise.

Moreover, petitioner has correctly argued in this case that the probation revocation judge did not, given this Court's opinion in State v. Davis, 375 S.C. 12, 649 S.E.2d 178 (Ct. App. 2007), have the authority to order petitioner be placed on the sex offender registry. Only the guilty plea sentencing judge had that authority and that judge did not order sex offender registry. For this reason, also, rehearing should be granted.

In this case, petitioner was ordered to register as a sex offender without a showing of good cause. He was ordered to register as a sex offender on the antithesis of good cause – strict liability. Meaning, the guilty plea sentencing judge who placed petitioner on probation ruled if petitioner violated any condition of the standard sex offender conditions, here not to drink alcohol, that petitioner would automatically have to register as a sex offender. The probation revocation court would have no discretion to allow petitioner to avoid the most draconian result possible from this violation, sex offender registry. Petitioner would have to register as a sex offender for life regardless of the fact that no good cause was shown for registry as mandated by statute and precedent.[1]

Any argument that petitioner waived his right to have the state prove good cause for placing him on the sex offender registry as mandated by statute by agreeing to the negotiated probationary sentence fails because there is no showing in this record of an intentional relinquishment or abandonment of that statutory right to the predicate good cause showing. See Johnson v. Zerbst, 304 U.S. 458, 464 (1938)(waiver of a constitutional right).[2] Further, as seen,

[1] The state's allegation that petitioner engaged in obnoxious behavior such as asking women for a ride and "harassed" women in a bar are respectfully irrelevant and they do not change the fact that the standard sex offender condition petitioner allegedly violated was not to drink alcohol while on probation.

defense counsel Hutto objected to any future placement of petitioner on the sex offender registry for a minor reason such as a speeding ticket which also evidences petitioner was not waiving his right to have the state prove good cause for placing him on the registry.

As stated, during other probation revocation hearings, if the probationer violated probation, the revocation judge has the ability to hear evidence in mitigation or explanation and to continue the probationer on probation or impose a lesser sanction than a full revocation. Yet, in petitioner's case, respectfully given this Court's opinion, the probation revocation judge had no discretion and indeed he was obligated to place petitioner on the sex offender registry even if, as here, the state did not prove good cause existed to place petitioner on the registry based on his likelihood to reoffend. The probation revocation judge had no discretion when it came to placing petitioner on the sex offender registry -- forget good cause as required by statute and case law. Given this Court's present opinion, petitioner had to placed on the sex offender registry if he drank a sip of beer or any other type of alcohol. This Court should respectfully reconsider its holding in this case that the revocation court has no discretion to hear evidence in mitigation and must place an individual on the sex offender registry even where no good cause exists for that registration.

Further, as argued in petitioner's reply brief and otherwise before this Court, being placed on the sex offender registry essentially ruins a person's life. It is a far worse punishment than a short prison term for a probation violation regardless of whether courts want to recognize what has over time become obvious – the sex offender registry has been proven to be punitive even if it was not at its inception. The person on the registry is exposed to vigilante threats and violence.

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2 Overruled on other grounds by Edwards v. Arizona, 451 U.S. 477 (1981) which established a per se bright line rule on waiving the right to counsel. See Solem v. Stumes, 465 U.S. 638, 652 (1984).

See Abigail E. Horn, Wrongful Collateral Consequences, 87 Geo. Wash. L. Rev. 315, 333 (2019). The person likely will be fired from their job once it is learned he or she is a sex offender, and the person will likely suffer discrimination in housing and, as this petitioner's family has, ongoing harassment in the community.[3] See Moe v. Sex Offender Registry Bd., 467 Mass. 598, 604, 6 N.E.3d 530, 536 (2014).

Further, and respectfully, although defense counsel Hutto objected here to petitioner being placed on the registry in the future for some minor violation, it defies common sense to expect an attorney whose client is being placed on probation during a guilty plea to insist on presenting a full case in mitigation as to why his or her client should not be placed on the sex offender registry when that is not at issue during the guilty plea proceeding. Petitioner suffered no harm at the time of the guilty plea sentencing vis a vis the registry, and there was nothing that made him an aggrieved party with the right or obligation to object or to appeal.

Yet, given this Court's present opinion, petitioner's attorney would need to present the expensive expert testimony of Dr. McKee or another expert and lay testimony as to why petitioner was not a risk of reoffending sexually during the guilty plea hearing where sex offender registration was not being requested at the time.

This Court essentially holds that all evidence, including expert testimony, must be presented to the sentencing court on the issue of sex offender registration even though the state is not asking for sex offender registration before the sentencing court. Leaving the probation revocation court without any discretion – even when a standard condition violation was not good

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3 The state's Pollyanna-like assertion that, under new legislation, Petitioner will have a chance to be removed from the sex offender registry after more than a decade or two if he meets certain conditions, does not change the draconian reality – as argued before this Court -- that many individuals are fired from their jobs, unable to live in certain locations, and are harassed, threatened and exposed to violence once it is discovered that they are on the sex offender registry.

cause for registration – violates statutory law and case law. See S.C. Code Section 23-3-439 (D) (Supp 2022); In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). The sentencing court is mandated to consider all evidence and information that bears on a proper sentence, yet the probation court has no discretion not to impose sex offender registration even though good cause has not been shown to either the sentencing court or the revocation court.

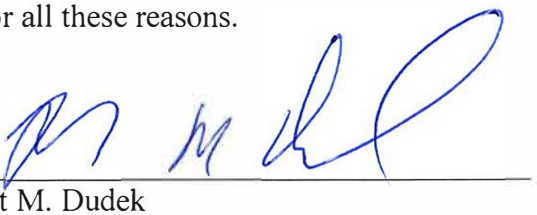
Finally, this Court should reconsider and grant rehearing as to its holding that it was not an abuse of discretion to deny petitioner's motion for a continuance so that he could present the expert testimony of Dr. McKee after a psychosexual evaluation on petitioner's risk of reoffending to show lack of good cause to order petitioner to register as a sex offender. Respectfully, expert testimony in this situation was necessary for a judge to make an educated decision on whether petitioner presented a real risk of reoffending sexually, which petitioner strongly submits he does not.

Again, however, the abuse of discretion for denying a continuance argument runs into the same obstacle that this Court has constructed by holding that all mitigating evidence must be presented to the sentencing court even though the state is not requesting the sentencing court place the defendant on the sex offender registry at that hearing. This holding and procedure is respectfully illogical, and, as seen, it violates the statute and case law that good cause must be shown to place an individual, here petitioner, on the sex offender registry.

Moreover, State v. Davis, 375 S.C. 12, 16, 649 S.E.2d 178, 180 (Ct. App. 2007) holds that the probation revocation court cannot order sex offender registry where it was not ordered by the sentencing court at the guilty plea proceeding. Yet, in this case, this Court approves of a revocation court ordering petitioner to register as a sex offender as long as the revocation court

does not have any discretion to determine whether good cause has ever been shown to order such registration.

Rehearing should respectfully be granted for all these reasons.



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This 23rd day of January 2025.

RECEIVED
Jan 23 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOWEN GRAY TURNER,

PETITIONER.

APPELLATE CASE NO. 2022-001018

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the 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) this 23rd day of January 2025.

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Chief Appellate Defender

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

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

STATE OF SOUTH CAROLINA .....RESPONDENT

v.

BOWEN GRAY TURNER.....PETITIONER

RETURN TO PETITION FOR REHEARING

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Respectfully submitted,

Matthew C. Buchanan
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Columbia, South Carolina
January 30, 2025

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

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

STATE OF SOUTH CAROLINA .....RESPONDENT

v.

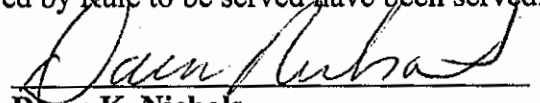
BOWEN GRAY TURNER.....PETITIONER

CERTIFICATE OF SERVICE

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

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

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



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The South Carolina Court of Appeals

The State, Respondent,

v.

Bowen Gray Turner, Appellant.

Appellate Case No. 2022-001018

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 Williams C.J.

Stephanie P. McDonald J.

J.

Columbia, South Carolina

cc:
Matthew C. Buchanan, Esquire
Robert Michael Dudek, Esquire
Lara Mary Caudy, Esquire
The Honorable Roger M. Young, Sr.

FILED
Mar 10 2025