THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Charleston County
Court of Common Pleas
Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2024-001803

Harold Simmons, Appellant,

v.

City of North Charleston, Respondent.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court properly affirm the municipal court's decision that Appellant violated the conditions of his conditional suspended sentence, resulting in imposition of the suspended thirty-day jail sentence?

STATEMENT OF THE CASE

This case is before this Court on Appellant Harold Simmons' appeal from a municipal court order requiring him to serve a thirty-day jail sentence based on his failure to comply with the conditions of his suspended sentence pursuant to his negotiated no contest plea agreement.

Appellant owns and operates an automobile paint, body, and motor repair shop located at 3042 North Carolina Avenue in the City of North Charleston. The shop is in a residential neighborhood. Appellant has a long history of parking inoperable and dismantled vehicles on his property and on the streets and sidewalks surrounding his shop. He has in effect created a mini-junk yard of inoperable and dismantled vehicles on his property, which overflows onto the street. The surrounding homeowners have complained about his use of the public streets as his personal parking and storage facility.

In pertinent part, Section 9-67 of the Code of Ordinances of the City of North Charleston (R. p. 161) declares that the storage of inoperable or dismantled vehicles is a public nuisance:

> Sec. 9-67 - Nuisances declared.
>
> Without limitation upon and in addition to any conditions which may constitute common nuisances under section 9-66, the following are declared to be unhealthy and unsightly conditions constituting public nuisances and endangering the life, health, safety, welfare and property of the entire community: conditions which afford a breeding place for and/or attract insects, rodents or reptiles or otherwise create a substantial risk of danger to health and/or safety through disease, fire, safety hazards or other means, including, but not limited to:
>
> . . . .
>
> (4)(a) Trucks, cars, trailers, boats, and similar items that (i) fail to comply with state or federal safety regulations or are incapable of self-

> propulsion (if the item in question is normally self-propelled), or are dismantled; and (ii) which are left in such state or condition for more than seventy-two (72) hours.
>
> (b) Excepted from this subsection 9-67(4) declaration of nuisance, however, are:
>
> (i) Such items when retained for purposes of repair or towing storage on the premises of a properly zoned repair or towing facility; provided that for any such vehicle retained more than ninety (90) days, the towing or repair facility must be able to document reasonable efforts that have been made to repair to return the vehicle and demonstrate reasonable cause for why repair or return has not been completed. Examples of reasonable cause for why repair or return has not been completed would include, but not be limited to, time statutorily required for compliance with state laws or back order time associated with parts required for repair.

Violation of Ordinance 9-67 constitutes a misdemeanor punishable by a fine of up to $500 and imprisonment for up to thirty days. *See* Ordnance 9-85 (R. p. 163) and Ordinance 1-10(a). (R. p. 160).

In the period from 2019 to 2023, the City of North Charleston ("City") repeatedly cited Appellant for violations of the City's nuisance and zoning ordinances regarding the condition of his property and his continued use of his property and public streets as a storage facility for inoperable and dismantled vehicles. He was also cited for operating without a business license. But Appellant willfully refused to comply. By 2023, Appellant had been issued approximately 15 citations, and he requested a jury trial on the charges.

On August 9, 2023, Appellant and his counsel appeared before the City's municipal court for a jury trial on the charges. During that proceeding, Appellant, with the assistance of his counsel, negotiated a plea agreement with the City to resolve all of the pending charges. As reflected in the transcript of the plea agreement (ROA p. 3), Appellant pled *nolo contendere* (no contest) to two

of the charges in exchange for dismissal of all the other charges, including dismissal of approximately $14,000 in potential fines. (R. p. 33, line 19-p. 34, line 14).

Per the negotiated plea agreement, Appellant pled no contest to the following two charges:

1. Removal of a condemnation sign from his building, which entailed a $50 fine; and

2. Violation of Section 9-67 of the City's nuisance ordinance regarding his storage of inoperable or dismantled vehicles on his property and streets.[1]

Simmons paid the $50 fine and the condemnation sign violation is not an issue in this appeal. In exchange for his no contest plea[2] on the nuisance violation, the municipal court judge verbally sentenced him to a fine of $1,087 and thirty days in jail, with the jail term suspended upon the condition that he bring his property into compliance with Section 9-67 within thirty days. The judge engaged in an extended colloquy with Appellant and his counsel to ensure that Appellant was freely and voluntarily entering the plea and understood the conditions of his suspended plea and what he needed to do to avoid having to serve the jail sentence. (R. p. 14, line 10-p. 35, line 23). The colloquy specifically included a discussion of how he should provide copies of parts orders or other documentation of pending repair efforts for any inoperable or dismantled stored vehicles he contends are subject to the "pending repair" exception in Ordinance 9-67(4)(b)(1) for vehicles stored pending completion of repair work. (R. p. 24, line 15-p. 34, line 15).

Following the August 9, 2023 plea hearing, Appellant paid the $1,087 fine, but he continued to store inoperable and dismantled vehicles on his property and on the streets

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[1] R. p. 6, lines 8-15.

[2] His no contest plea was equivalent to a guilty plea. *See* S.C. Code Ann. § 17-23-40 ("The defendant in any misdemeanor case in any of the courts of this State may, with the consent of the court, enter a plea of "nolo contendere" thereto and upon so doing such defendant shall be dealt with in like manner as if he had entered a plea of guilty thereto."); *State v. Munsch*, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985) ("A plea of nolo contendere is for all practical purposes a plea of guilty in the case in which it is pled.")

surrounding his shop.[3] Therefore, on September 8, 2023, the City filed a "Motion for Hearing" to determine if Appellant had complied with the conditions of his Court-ordered suspended sentence. (R. p. 38). On September 12, 2023, the municipal court notified Appellant that the hearing on the City's motion was scheduled for September 19, 2023, but the hearing was subsequently continued until October 6, 2023. (R. pp. 37, 38, 96).

Appellant attended the October 6, 2023 hearing with his counsel. During that hearing, the City presented evidence and testimony regarding Appellant's continued use of his property and streets for storage of inoperable or dismantled vehicles. Appellant, through his counsel, cross-examined witnesses and presented evidence, and he testified in his own defense. (R. pp. 96-97). As stated by the municipal court judge:

> The Court considered highly the testimony of [Appellant], which he acknowledged [sic] that flat tires on his vehicle was a violation of the city ordinance and several photographs demonstrated flat tires on the Defendants' property on August 10, 2023, September 5, 2023, and also on September 19, 2023. (R. pp. 97-98)

At the conclusion of the hearing, the municipal court judge found Appellant had failed to comply with the terms of his suspended sentence and imposed the thirty-day jail sentence. (R. pp. 96-97).

Appellant filed an appeal of the municipal court's decision to the circuit court, and the municipal court granted Appellant's request for a personal recognizance appeal bond to stay his jail sentence. After conducting a hearing on the appeal, the circuit court judge, The Honorable Roger M. Young, Sr., issued an order affirming the municipal court order. (R. p. 107). The circuit court denied Appellant's motion to reconsider. (R. pp. 116, 136). Appellant then filed an appeal to this Court.

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[3] And he continues to do so today. He also continues to operate without the required City business license.

STANDARD OF REVIEW

The municipal court judge, as the trial court, is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *See State v. Blackwell*, 420 S.C. 127, 140, 801 S.E.2d 713, 720 (2017) ("Because the trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony, we must defer to the court's determinations.") (citing *State v. Kelly*, 331 S.C. 132, 149, 502 S.E.2d 99, 108 (1998)). In reviewing a municipal court order, the appellate courts sit to review errors of law only, and the appellate courts are bound by the municipal court's factual findings, unless they are clearly erroneous. *See State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In criminal cases, the appellate court sits to review errors of law only. . . . This Court is bound by the trial court's factual findings unless they are clearly erroneous.") (citations omitted). "In criminal appeals from a municipal court, the circuit court does not conduct a de novo review; rather, it reviews the case for preserved errors raised to it by an appropriate exception." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 341, 713 S.E.2d 278, 282 (2011) (quoting *City of Cayce v. Norfolk S. Ry. Co.*, 391 S.C. 395, 399, 706 S.E.2d 6, 8 (2011)); *see* S.C. Code Ann. § 14–25–105 (stating the appeal of a municipal court decision is based on the municipal court's return and there shall be no trial de novo). "Therefore, [the appellate court's] scope of review is limited to correcting the circuit court's order for errors of law." *Roberts*, 393 S.C. 341, 713 S.E.2d at 282 (quoting *City of Rock Hill v. Suchenski*, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007)).

ARGUMENTS

I. The circuit court properly affirmed the municipal court's decision that Appellant violated the conditions of his conditional suspended sentence, resulting in imposition of the suspended thirty-day jail sentence.

All of the various arguments in Appellant's Brief fall under the following four categories of issues on appeal: (1) the municipal court lacked subject matter jurisdiction to hold the October 6, 2023 hearing on his failure to comply with the conditions of his suspended sentence; (2) the City failed to provide due process to Appellant by failing to inform him of the issues and consequences he was facing at the October 6, 2023 hearing; (3) lack of sufficiency of evidence to support the municipal court's decision that Appellant had not complied with the conditions of his suspended sentence; and (4) a claim based "newly discovered evidence." Each of these issues are addressed in turn below.[4]

A. Jurisdiction claim (Appellant's Argument 1)

Appellant argues the municipal court lost jurisdiction over him at the expiration of his thirty-day conditional suspended sentence. (Appellant's Brief p. 10). On August 9, 2023, the municipal court sentenced Appellant to thirty days imprisonment, suspended upon the condition that he cure his violations of the nuisance ordinance. Therefore, according to Appellant, the municipal court's jurisdiction over him expired on September 9, 2023, thirty days after the day of his original suspended thirty-day sentence on August 9, 2023. The municipal court and circuit court properly rejected that argument.

[4] In this Brief, the City is attempting to address the issues in a more concise manner, rather than attempting to provide a point-by-point counter to each of the numerous, and often overlapping, assertions contained in Appellant's Brief. To the extent this Brief does not specifically or directly respond to a particular assertion in Appellant's Brief, it is not intended to indicate acquiescence or agreement with the assertion.

In support of his argument, Appellant mistakenly relies on S.C. Code Ann. § 17-25-110, which states:

> When the sentence of any person who has been sentenced by a court of competent jurisdiction of this State shall be suspended by a judge of such court such suspension shall run for the period of time prescribed by such judge in the sentence or order of suspension and no person who has had a sentence so suspended shall be called back and required to do service under such sentence beyond and after the expiration of such period.

"A municipal judge possesses the power to 'suspend sentences imposed by him upon such terms and conditions as he deems proper, including, without limitation, restitution or public service employment.'" *City of N. Charleston v. Harper*, 306 S.C. 153, 157, 410 S.E.2d 569, 571 (1991) (quoting S.C. Code Ann. § 14–25–75). If a municipal judge finds a party guilty of violating a municipal ordinance, the judge may impose fines or imprisonment, or both, not exceeding $500 or thirty days imprisonment. S.C. Code Ann. § 14–25–65. "These statutes allow municipal judges a great degree of discretion to impose appropriate punishment and to suspend sentences. *Harper*, 306 S.C. at157, 410 S.E.2d at 571.

Research has not revealed a South Carolina case construing Section17-25-110, but a 2002 South Carolina Attorney General Opinion analyzed whether that statue prescribes a maximum time limit for which the conditions of a suspended sentence can be imposed. S.C. Atty. Gen. Op. dated October 8, 2002 (2002 WL 31728847). (R. p. 164). The Opinion notes the great degree of statutory discretion municipal judges have to impose conditions on suspended sentences and observes that Section 17-25-110 "prescribes . . . no limitation on the length of time the period of suspension may run." WL 31728847 at *1. (R. p. 165). The Opinion concludes that, "Generally, a municipal court judge's authority to impose conditions on suspended sentences is not subject to a maximum time limitation. Public policy as established by the Constitution, statutes and case law may, however, provide such constraints. Public policy violations would have to be determined on a case-by-case

basis." *Id*. at *3. The Opinion is well reasoned, persuasive, and should be applied to the facts of this case.

Here, on August 9, 2023, the municipal court judge imposed a thirty-day suspended sentence conditioned on Appellant's compliance with specific terms; namely, removal of inoperable or dismantled vehicles that he was storing on his property and streets. Contrary to his argument, Appellant was not called back into court on October 6, 2023, and required to do service under such sentence beyond and after the expiration of the suspended sentence as contemplated in Section 17-25-110. Instead, Appellant was called back to address his failure to comply with the conditions of his suspended sentence by failing to remove his inoperable and dismantled vehicles (or provide documentation of pending repairs) as ordered by the municipal court at the August 9, 2023 plea hearing.

At the October 6, 2023 hearing, the municipal court revoked Appellant's suspended sentence because he failed to meet the conditions set forth during his sentencing at the August 9, 2023 hearing. Section 17-25-110 does not apply to limit the municipal court's continued jurisdiction to ensure that Appellant complied with the conditions of his suspended sentence.

The municipal court and circuit court both properly concluded that the municipal court retained subject matter jurisdiction over Appellant to enforce the conditions of his no contest plea agreement at the August 9, 2023 hearing.

B. <u>Due process claim (Appellant's Argument 2)</u>

Appellant next argues lack of due process because "he never received notice of how he was in violation of the municipal court's Oral order or why he was being hauled back into court." (Appellant's Final Brief p. 12).

As reflected in the transcript of the no contest plea agreement at the August 9, 2023 hearing, the municipal court judge engaged in an extended colloquy with Appellant and his counsel to ensure that Appellant was freely and voluntary entering the plea and understood the conditions of his suspended sentence and what he needed to do to avoid having to serve the jail sentence, including the need for him to provide repair parts orders or other documentation for any vehicles for which he was claiming the "pending repair" exception in Section 9-67(4)(b)(1). (R. p. 24, line 14-p. 34, line 22).

Following Appellant's subsequent failure to comply, on September 8, 2023, the City filed a "Motion for Hearing" to determine if Appellant had complied with the conditions of his Court-ordered suspended sentence. (R. p. 38). The hearing on that motion was held on October 6, 2023. (R. p. 96). Appellant attended the hearing with his counsel, had an opportunity to cross-examine witnesses and present evidence, and he testified in his own defense. (R. p.97). At the conclusion of the hearing, the municipal court revoked Appellant's suspended sentence based on his failure to comply with the conditions of his suspended sentence. Appellant now claims lack of due process because the City did not provide him notice that at the October 6, 2023 hearing he faced thirty days in jail based on his no contest plea agreement that he entered into on August 9, 2023.

As properly observed by the circuit court in denying Appellant's appeal of the municipal court's October 6, 2023 decision revoking Appellant's suspended sentence:

> The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control,* 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). Due process is flexible and calls for such procedural protections as the particular situation demands. *S.C. Dep't of Soc. Servs. v. Wilson,* 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002); *Morrissey v. Brewer,* 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). In accordance, the South Carolina Supreme Court determined that the requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. *State v. Binnarr*, 400 S.C. 156, 733 S.E.2d 890 (2012)

(citing *S.C. Dep't of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997)). (R. pp. 109-110).

Here, Appellant contends that he was denied due process because he was not provided with sufficient notice of the allegations and that he faced incarceration at the October 6, 2023 hearing. However, the City's Motion for Hearing states the basis for the motion and concludes that "the City hereby moves for a hearing to determine if the defendant has complied with the court-ordered conditions and take appropriate action if necessary." (R p. 39). The record reflects that Appellant received notice of the hearing and attended the hearing with his counsel. (R. pp. 96-97). Both the record and Appellant's own account in his Brief in this appeal reflect that Appellant had the opportunity to present evidence, question witnesses, and argue his case at the hearing.

In short, at the August 9, 2023 plea hearing, the municipal court placed Appellant on clear notice of the potential ramifications of his failure to comply with the conditions of his no contest plea agreement. Appellant received due notice of the October 6, 2023 hearing, and he arrived at that hearing with his counsel and contested the City's position that he had failed to comply with the conditions of his suspended sentence. The municipal court judge rejected Appellant's position.

The municipal court and circuit court properly rejected Appellant's due process claim.

C. <u>Sufficiency of the evidence (Appellant's Arguments 3 and 4)</u>

Appellant's next argues that, at the hearing on October 6, 2023, the City failed to present sufficient evidence that Appellant did not conform to the Court's oral order of August 9, 2023. (Appellant's Final Brief pp. 15, 19). Specifically, Appellant contends that the City's evidence did not prove non-compliance with the nuisance ordinance or the terms of his suspended sentence.

As a threshold issue, Appellant's Brief is filled with verbal descriptions and embellishments of the testimony, evidence, and events occurring at the October 6, 2023 hearing, but Appellant failed to order a copy of the transcript from that hearing, so there is no record of that

proceeding in this appeal. As the appellant, Appellant has the burden of presenting this Court with an adequate record for review. *E.g., Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 446–47, 494 S.E.2d 827, 834 (Ct. App. 1997) (citations omitted). Appellant failed to order a transcript of the proceeding as required under Rule 207(a), SCACR. Because Appellant did not provide adequate materials for this Court to consider this argument, this Court should affirm the municipal court's findings.

Moreover, there is sufficient evidence in the record to support the municipal court's finding that Appellant failed to comply with the conditions of his plea agreement. The municipal court judge, as the trial court, is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *See State v. Blackwell*, 420 S.C. at 140, 801 S.E.2d at 720. "In criminal appeals from a municipal court, the circuit court does not conduct a de novo review; rather, it reviews the case for preserved errors raised to it by an appropriate exception." *Town of Mt. Pleasant v. Roberts*, 393 S.C. at 341, 713 S.E.2d at 282; *see* S.C. Code Ann. § 14–25–105 (stating the appeal of a municipal court decision is based on the municipal court's return and there shall be no trial de novo). "Therefore, [the appellate court's] scope of review is limited to correcting the circuit court's order for errors of law." *Roberts*, 393 S.C. at 341, 713 S.E.2d at 282.

By Appellant's own recount of the events as set forth in his Brief in this appeal, at the hearing on October 6, 2023, the City presented photographs taken of Appellant's property after the thirty-day compliance period had passed. These images depicted vehicles in a state that suggested non-compliance with the municipal code, such as the vehicle with a flat tire or the vehicle missing a bumper. Additionally, witnesses, including a code enforcement officer, testified that based on their observations, Appellant had not brought the property into full compliance with Ordinance 9-67(4), as ordered at the August 9, 2023 plea hearing. In her Return, the municipal court judge specifically noted that she "considered highly the testimony of [Appellant], which he

acknowledged [sic] that flat tires on his vehicle was a violation of the city ordnance and several photographs demonstrated flat tires on the [Appellant's] property on August 10, 2023, September 5, 2023, and also on September 19, 2023." (R. pp. 97-98).

While Appellant argues that minor defects, such as a flat tire, do not render a vehicle "inoperable" under the terms of Ordinance 9-67(4), the municipal court found that these conditions, along with the other evidence and testimony (including Appellant's own testimony) at the October 6, 2023 hearing, reflected that Appellant had failed to comply with the safety and nuisance standards defined by Ordinance 9-67(4). The Ordinance's language is broad, encompassing any condition that creates a risk to health or safety, and is not limited solely to vehicles that are entirely incapable of operation, and includes dismantled vehicles.

At the August 9, 2023 hearing, the municipal court was clear that compliance with the Ordinance required that all vehicles on the property be in safe, operable condition. Therefore, even relatively minor issues, like flat tires or missing bumpers, can reasonably be interpreted as rendering the vehicles inoperable, dismantled, unsafe, or unfit for operation.

The municipal court's role at the October 6, 2023 hearing was to determine whether the vehicles on Appellant's property posed a violation of the nuisance Ordinance in violation of the conditions of his no contest plea agreement. In finding that Appellant failed to comply with the conditions of his suspended sentence, the municipal court judge reasonably relied on the photographic and testimonial evidence provided by the City, and the judge heavily relied on Appellant's own testimony.

On appeal of the municipal court's finding of noncompliance, the circuit court properly concluded that, given the broad discretion afforded to trial courts in interpreting factual matters, and considering the Ordinance's intent to prevent unsightly and potentially hazardous conditions,

the municipal court's finding that the vehicles were not in compliance with the Ordinance was within the municipal court's discretion. (R. pp. 107, 113).

In short, there is sufficient evidence in the record to support the municipal court's finding that Appellant failed to comply with the conditions of his plea agreement, and this Court should not conduct a de novo review and disturb that finding on appeal.

D. Newly discovered evidence (Appellant's Argument 5)

The remainder of Appellant's Brief is devoted to a discussion of "newly discovered evidence" constituting an "illegal action" filed by the City's housing authority in 2021. (Appellant's Final Brief p. 23). Appellant is referring to the Summons and Complaint filed in the trial court case captioned *City of North Charleston v. Harold Simmons*, Case No. 2021CP10002563, filed in the Charleston County of Common Pleas on June 3, 2021. (R. p.126).

Although Appellant claims that housing authority case was newly discovered by Appellant's counsel after the hearing on Appellant's appeal before the circuit court on August 19, 2024, that housing case is specifically referenced at the top right corner of the first page of the transcript from Appellant's plea hearing before the municipal court judge on August 9, 2023. (R. p. 3). During that August 9, 2023 plea hearing, that housing case was specifically referenced as being one of the charges being dismissed as part of Appellant's negotiated no contest plea agreement. (R. p. 11, lines 22-24).

Moreover, Appellant raised this issue for the first time via a motion to reconsider filed after the circuit court judge had held a hearing and issued an order denying Appellant's appeal of the municipal court's imposition of the thirty-day sentence. (R. pp. 116, 121). The circuit court's order denying Appellant's motion to reconsider properly rejected Appellant's after-the-fact attempt to raise this issue as being untimely presented. (R. pp. 136-137).

Lastly, the record is devoid of any credible evidence that that housing authority case—which was merely one of fifteen pending charges and was ultimately dismissed—somehow had any adverse impact on Appellant's no contest plea agreement and his subsequent failure to comply with the terms of his conditional suspended sentence.

CONCLUSION

For the reasons set forth above, this Court should affirm the decisions of the municipal court and circuit court. In accordance with Rules 208(b)(2) and 220(c), SCACR, the City also requests that this Court affirm the decision of the municipal court and circuit court on any other grounds appearing in the record.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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