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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID WYNDHAM NEWTON,

APPELLANT

APPELLATE CASE NO. 2025-002177

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court judge err when he concluded he had no discretion to revoke less than the entire suspended sentence after appellant's diversion into Multidisciplinary Court was terminated?

STATEMENT OF THE CASE

On May 4, 2023, appellant was indicted in Beaufort County for second-degree domestic violence. R. _____. On August 22, 2023, appellant appeared before the Honorable Brooks P. Goldsmith to plead guilty. GP Tr. 1. Hannah Kidd represented the State and Colin Hamilton represented appellant. GP Tr. 1. Judge Goldsmith accepted appellant's plea and sentenced him to "three years suspended upon successful completion of the Multidisciplinary Court, Tract 2." GP Tr. 8.

On October 14, 2025, appellant appeared before the Honorable Robert J. Bonds for what the solicitor called a "termination hearing." Term. Tr. 1, 3. Mary Jordan Lempesis represented the State and Phillip Little represented appellant. Term. Tr. 1. Judge Bonds imposed a three-year sentence. Term. Tr. 7. This appeal follows.

STANDARD OF REVIEW

The issue on appeal is a purely legal question and the standard of review is de novo.

ARGUMENT

The circuit court judge erred when he concluded he had no discretion to revoke less than the entire suspended sentence after appellant's diversion into Multidisciplinary Court was terminated.

Termination hearings from diversionary courts should be treated like probation revocation hearings. Appellant pled guilty to second-degree domestic violence and Judge Goldsmith sentenced him to three years' imprisonment suspended upon successful completion of Beaufort County's Multi-Disciplinary Court (hereinafter, the "MDC"). GP Tr. 8. Approximately two years later, appellant appeared before Judge Bonds for a hearing terminating appellant's diversion to the MDC. Term. Tr. 1, 3. Appellant's attorney argued that while "the courts typically do not deviate from the sentence that was imposed," appellant had a due process right under the state and federal constitutions for Judge Bonds to consider mitigating evidence and decline to revoke appellant's suspended sentence in full. Term. Tr. 5.

Judge Bonds was sympathetic to appellant's argument that he had discretion and indicated that had he been the original judge, he could have done "something." Term. Tr. 6-7. The judge favorably commented on a "well written letter, very thoughtful" document that appellant presented from the alleged victim in the case. Term. Tr. 6. But Judge Bonds said, "I think my hands are tied." Term. Tr. 6. Judge Bonds reasoned that he had no authority to "modify another judge's ruling as it relates to the sentence." Term. Tr. 7. The court ultimately ruled that he would "impose the three-year sentence that Judge Goldsmith basically held in abeyance." Term. Tr. 7.

Little appellate guidance exists on diversion court programs. In State v. Perkins, 378 S.C. 57, 661 S.E.2d 366 (2008) our Supreme Court explained the process for drug court program

terminations. Perkins at 60 – 61, 661 S.E.2d at 368. A drug court “program administrator” can *only* recommend the termination of a drug court program enrollee. Id. The program administrators, which include “social worker[s], *magistrate[s]*, or Drug Court team member[s],” lack the authority to impose the suspended sentence. Id. (emphasis added) Thus, the Perkins Court held that “program administrators” can only recommend termination and “the decision of whether a defendant has violated a condition of his suspended sentence rests within the sound discretion of the trial court.” Id. at 61, 661 S.E.2d at 368. (citing State v. Miller, 122 S.C. 468, 474 – 475, 115 S.E. 742, 754 (1923)) (see also State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006)).

Perkins recognized that due process rights attach to a defendant who is facing expulsion from a diversionary court program. Perkins at 60-61, 661 S.E.2d at 368. Perkins also cited two cases dealing with how suspended sentences are to be treated by the circuit court: Miller and Allen. Miller was cited to show that the termination court has the discretion to decide whether the defendant violated a condition of his suspended sentence. Allen, importantly, is a probation revocation case. The Perkins Court cited Allen for the standard of review: abuse of discretion. The citation of cases showing that circuit judges have discretion in these matters—especially the citation of the probation revocation case—shows that a termination hearing should be treated more like a probation revocation hearing.

Judges at probation revocation hearings do not have to impose the full term of the sentence that was suspended. “The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court.” Allen at 94, 634 S.E.2d at 655. If a termination hearing from a diversionary court is like a probation revocation hearing, then Judge Bonds had the discretion to not impose the entire suspended sentence. It was clear Judge Bonds

wished he had such discretion, but mistakenly concluded he lacked the authority. See Mollica v. State, 500 P.3d 1002, 1014-15 (Alaska Ct. App. 2021) (“[W]e now join courts in other jurisdictions in holding that a defendant facing termination from a therapeutic court program is entitled to due process protection akin to the limited due process protections that apply to parolees and probationers facing revocation of their parole or probation.”).

Even when a sentence is sealed after a defendant is tried in absentia, the judge who unseals the sentence has the ability to modify it upon proper motion. In State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981), our Supreme Court held that a trial judge who does not exercise discretion regarding a motion to modify or vacate a sentence, abuses her discretion. Smith was convicted in his absence for a third offense of driving under the influence. Smith, at 496, 280 S.E.2d at 201. On a motion to modify or vacate Smith’s sentence, the trial judge in Smith ruled that he had no jurisdiction to change the sentence. Id. at 497, 280 S.E.2d at 201. The Supreme Court held that the authority to change a sentence rests in the hands of the sentencing judge, within the exercise of discretion, and that the trial judge in Smith abused that discretion when he failed to exercise it. Id. at 498, 280 S.E.2d at 202. Here, Judge Bonds was in a similar position to the judge unsealing the sentence in Smith. The judge could have treated it as a timely motion to modify before imposition.

Treating a termination hearing and vesting discretion in our circuit court judges also complies with the policy reasons why alternative courts exist. A circuit court judge faced with a defendant who has legitimately tried to make his way through drug court, but failed, should be allowed the ability to take the defendant’s positive activity into account. Allowing discretion also creates an incentive for a defendant to keep trying while in drug court because any positive action may be viewed favorably by a judge even if the defendant cannot complete the program.

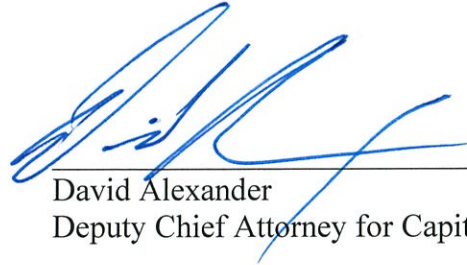
Discretion to consider good behavior (as well as bad) also reduces a defendant's incentive to abscond if he is terminated from drug court and facing a lengthy sentence.

Vesting judges with discretion does nothing to diminish the incentive created by the suspended sentence hanging over the defendant's head while he is in drug court. A defendant will know that if he is terminated, the judge will have the power to impose the full term of the suspended sentence. A defendant who does not take drug court seriously and foregoes the significant and generous opportunities drug court provides will, no doubt, be treated accordingly by our state's judges. The State and the court system lose nothing by allowing a judge to evaluate the defendant after the passage of what may be years of positive activity.

This Court should rule that judges have discretion in termination hearings to impose less than the full term of a suspended sentence. Appellant's case should be remanded so that a circuit judge can consider the full range of his behavior—both good and bad—while in Beaufort County's multidisciplinary court.

CONCLUSION

For the foregoing reasons, this case should be remanded back to the circuit court for reconsideration of the imposition of the full term of the suspended sentence.



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ATTORNEY FOR APPELLANT

This 25th day of September, 2026.