

EXHIBIT A

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STATEMENT OF THE CASE

S.C. SUPREME COURT

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

11 Respondent served his active sentence and was released to probation from the Department
12 of Corrections on or about June 29, 2018 and began his term of probation with the South Carolina
13 Department of Probation, Parole and Pardon Services (SCDPPPS). He was subsequently arrested
14 for attempted murder on July 11, 2019. Agents for SCDPPPS issued a warrant for violation of
15 probation on July 12, 2019, citing the allegations underlying the new arrest along with failing to
16 pay monetary obligations and failing to follow the advice and instructions of the agent. A hearing
17 on the probation violation was scheduled on January 30, 2020, before the Honorable Donald B.

18 Hocker but the matter was continued. Ultimately, the probation violation hearing was not

19 conducted (until after) Respondent was acquitted after trial by a jury of the attempted murder charge
20 on April 21, 2021.

21 The violation of probation hearing was finally heard on October 28, 2021 before the

22 Honorable Frank R. Addy, Jr. At an earlier hearing in which the matter was continued,

UNUSUAL
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EXHIBIT A1

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 unclocked 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.

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EXHIBIT B

ARGUMENT

The Court of Appeals reached the right result in dismissing the State's appeal because the undisputedly illegal sentence is a problem of the State's own making.

The Department asks this Court to make Judge Addy enforce an illegal sentence. ~~The Department admits the sentence is illegal.~~ Faced with conflicting legal doctrines in a very unusual case, Judge Addy reached the right result that is fair to the State and to Respondent: vacating the sentence and allowing Respondent the opportunity to move to withdraw his plea. Judge Addy's result puts the parties back in their original position.

The Department wants this Court to think that Respondent would receive a windfall if Judge Addy's Order is allowed to stand. The Department argues that Respondent received "a beneficial sentence" and that the State would be greatly prejudiced if forced to try Respondent after the passage of time. Br. App. at 5-6. But this prejudice cuts both ways. First, Respondent's illegal sentence for attempted murder was set to run consecutive to a ten year sentence for first-degree assault and battery. Had the State not negotiated an illegally suspended sentence, Respondent may have been able to serve his time concurrently. He has done all of his time on the assault conviction. Second, the State's complaint about having to try a stale case ignores that Respondent would be forced to defend a stale case. Every time this Court reverses a criminal conviction on direct appeal or on PCR the parties face the problem of stale evidence. Finally, Respondent faces a thirty-year maximum sentence on retrial instead of the twenty-year sentence he negotiated or even the ten-year revocation the Department sought at the hearing. The risk of affirming does not fall solely on the shoulders of the State as the Department wants this Court to believe. No windfall exists here for either side.

EXHIBIT C

Procedural Background and the Illegal Sentence

No dispute exists that the sentence given to respondent Joey Reid ("Reid") for attempted murder is illegal. The State admits the sentence is illegal. Br. App. at 7 (Respondent agrees the sentence is illegal) No other conclusion can be drawn from the plain language of the statute.

In 2014, before the Honorable Doyet A. Early, III, respondent Reid pled guilty ^{no contest} under 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 illegal because it cannot be suspended and probation cannot be imposed. See 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 his 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

EXHIBIT D

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

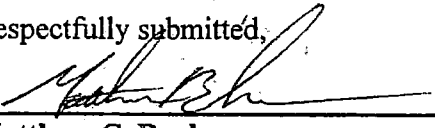
technically apply because the court interpreted an illegal contract instead of a statute, the logic of the rule applies here. Furthermore, the State should be viewed as the drafter of the contract, and

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

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,


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December 20, 2022

EXHIBIT E

⁴ SCDPPPS' 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).

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