

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lancaster County
The Honorable Brian M. Gibbons, Circuit Court Judge
Case No. 2013-002510

THE STATE, RESPONDENT

v.

JOSEPH WRIGHT, JR., APPELLANT

INITIAL BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1343**

ATTORNEY FOR THE RESPONDENT

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TABLE OF AUTHORITIES

CASES

State v. Dawkins, 352 S.C. 162, 573 S.E. 2d 783 (2002).7

State v. Hackett, 363 S.C. 177, 609 S.E.2d 553.7

State v. Miller, 404 S.C. 29, 744 S.E.2d 532 (2013) 6

United States v. Green, 429 F.Supp. 1038 (W.D.Tex.1977).7

STATUTES

§24-21-440.6

§24-21-300.7

STATEMENT OF ISSUE ON APPEAL

- 1) **The Trial Court did not err because the period of probation had not expired.**

- 2) **Did the Trial Court err in entering the November 20, 2013 Order after the Defendant withdrew his consent?**

- 3) **Did the Trial Court err in entering an Order providing for a remedy of civil contempt?**

STATEMENT OF THE CASE

On January 10, 2005, the Appellant pled guilty to financial identity fraud, forgery, and obtaining signatures and property under false pretenses. The court sentenced the Appellant to concurrent 10-year sentences suspended on the service of 60 days incarceration and five years of probation with the special conditions of paying \$45,000 to "bank" and \$5,000 to "Mr. Price." (Sentence sheets).

On July 18, 2007, the trial court entered a new Order which set the date of Appellant's probation to begin on July 1, 2007.¹ The Court waived the 60 day incarceration period and ordered the Appellant pay \$100,000 in restitution to Homeowners Mortgage Enterprise. (July 18, 2007 Order of Restitution). The Order also required Appellant to pay \$25,000 by June 10, 2007, and to pay the remaining \$75,000 plus the collection fee during the five years of probation.

On July 14, 2008, probation agents filed a warrant for violation of probation. In the warrant, agents alleged that Appellant never reported to the Richland County Probation Office, failed to provide a verifiable address, absconded supervision, and did not pay supervision fees or restitution. The warrant was served on Appellant on March 27, 2009. (July 14, 2008 Warrant).

On May 15, 2009, Appellant appeared before the Honorable Judge Dickson on a probation revocation hearing. During that hearing, Judge Dickson signed the Form 9 which revoked 20 days to be served on weekends and ordered the following changes to Appellant's probation:

Maintain monthly payments of \$1875 on restitution throughout supervision. Pay \$5,000.00 on restitution today. Pay \$1875.00 in June 2009. Pay \$1875 in July 2009. Payments to be made directly to attorney Bob Wood. SCDPPPS is released from obligation of collecting restitution. Rest. Acct. to be removed from

¹ It appears that the Appellant was serving another active sentence and began his probation after release from an unrelated offense. (Jan. 14, 2005 Probation Schedule Note).

SCDPPPS. Recommend waive sup. Fees and exempt SF arrearage. Convert fine to civil judgement (sic). Probation begin date is 7/9/08 extend 5 years from that date. Case to be brought back for review in August 2009.

(May 15, 2009 Form 9).

On May 21, 2013, probation agents issued and served a citation on Appellant for financial matters, having a balance left of \$43,468.66 remaining. (May 21, 2013 Citation). The citation was heard on September 6, 2013, with the attorney for Homeowners in attendance. The trial court terminated probation pursuant to a civil contempt order agreed upon by the parties that day. (Sept. 6, 2013 Form 9).

The trial court later signed the Order, which was clocked in on November 20, 2013. (Nov. 20, 2013 Order).

The Appellant now brings this appeal before this Court.

ARGUMENTS

1) The Trial Court did not err because the Appellant's probation had not expired.

"The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended within the above limit." §24-21-440.

"South Carolina's appellate courts have expressly recognized the general authority of the circuit court to toll probation." State v. Miller, 404 S.C. 29, 744 S.E.2d 532 (2013).

While the statute outlines the maximum length of time a court can require a person to serve on probation, the court can delay the start of probation until the defendant is released from incarceration. This happens whenever a sentencing court imposes a "split sentence," one which

suspends a portion of the sentence to probation but requires a period of incarceration. See State v. Dawkins, 352 S.C. 162, 573 S.E. 2d 783 (2002).

Furthermore, tolling a defendant's probation is appropriate when a defendant absconds from supervision. See State v. Hackett, 363 S.C. 177, 609 S.E.2d 553 (Ct.App.2005) (relying on United States v. Green, 429 F.Supp. 1038 (W.D.Tex.1977)).

In the instant case, the trial court may have imposed the sentence on January 10, 2005, but because of the Appellant's incarceration, probation would not have begun until his release. This is further evidenced by the judge's instruction on the sentence sheet for Indictment No. 2003-GS-40-5503, which has the written instruction "Probation to begin upon release from 60 days." (Sentence sheet).

Subsequently, the Restitution Order established a new start time for Appellant's probation of July 1, 2007. Even though the Order also set forth the end date for his probation, Appellant's subsequent actions required that to be revised.

After absconding and failing to report to begin his probation resulting in a warrant being issued, the trial court again revised the Appellant's start of probation. Judge Dickson in his Order May 15, 2009 set the start date at July 9, 2008 and extended the probation again to five years, which resulted in a completion date of July 9, 2013.

By the issuance of the Citation dated May 21, 2013, the agents were able to assert the court's jurisdiction over the Appellant's probation for the subsequent hearing on September 6, 2013. §24-21-300 ("The issuance of a citation or warrant during the period of supervision gives jurisdiction to the court and the board at any hearing on the violation.").

Therefore, through the proper adjustment of Appellant's start date of probation and the proper tolling of the probation due to Appellant's own actions, the trial court did not err in

holding jurisdiction over the Appellant on September 6, 2013. During that hearing, the court terminated the Appellant's probation.

When the trial court terminated Appellant's probation, the involvement of the South Carolina Department of Probation, Parole and Pardon Services in this case was also terminated. Further negotiations regarding the Consent Order and the civil contempt did not include agents of the Department. Indeed, it even appears that the Department's involvement regarding Appellant's restitution requirement had been ended with the May 15, 2009 Order.

2) Whether the Trial Court erred in entering the November 20, 2013 Order after the Defendant withdrew his consent.

After the September 6, 2013 Order terminated the Appellant's probation, the Department's involvement in this case was ended. The Department respectfully feels it does not have standing to put forth an argument before this Court.

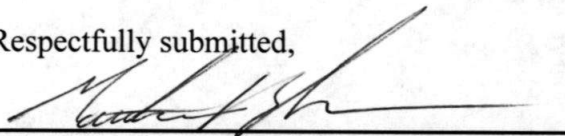
3) Whether the Trial Court erred in entering an Order providing for a remedy of Civil Contempt.

After the September 6, 2013 Order terminated the Appellant's probation, the Department's involvement in this case was ended. The Department respectfully feels it does not have standing to put forth an argument before this Court.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully submits that the Trial Court did have jurisdiction over the Probation Citation on September 6, 2013. However, the Respondent respectfully submits it does not have standing to respond to the second and third arguments put forth by Appellant.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
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Attorney for the Respondent

Columbia, South Carolina
April 30, 2014

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DESIGNATION OF MATTER

In addition to what Appellant has designated in the Record on Appeal, Respondent proposes the following additional information to be included in the Record on Appeal:

- 1- Revocation Orders Dated May 15, 2009
- 2- Offender Scheduler Event Dated January 14, 2005



Matthew C. Buchanan
General Counsel

April 30, 2014

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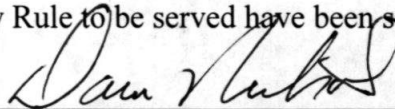
JOSEPH WRIGHT, JR., APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Initial Brief of Respondent and Designation of Matter* dated April 30, 2014, on Appellant this 30th day of April, 2014, by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Hemphill Pride, III, Esquire
P.O. Box 4529
Columbia, South Carolina 29240-4529

I further certify that all parties required by Rule 10 to be served have been served.



Dawn K. Nichols
Executive Administrative Assistant

South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

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SC COURT OF APPEALS

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Hemphill Pride, III, Esquire
P.O. Box 4529
Columbia, South Carolina 29240-4529

RE: State v. Joseph Wright, Jr.

Dear Mr. Pride:

Please find enclosed copies of the matter we designated for inclusion in the Record on Appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan".

Matthew C. Buchanan
General Counsel

MCB:dkn

cc: The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

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SC COURT OF APPEALS

April 30, 2014

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street- 5th Floor
Columbia, South Carolina 29201

RE: State v. Joseph Wright, Jr.

Dear Ms. Kitchings:

Enclosed please find the original of the *Initial Brief of Respondent and Designation of Matter*, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan".

Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures

cc: Hemphill Pride, III, Esquire