THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT/APPELLANT,

V.

ANTHONY K. BLAKNEY,

APPELLANT/RESPONDENT

APPELLATE CASE NO. 2012-207286
APPELLATE CASE NO. 2012-212966

Appeals from Richland County
G. Thomas Cooper, Jr., Circuit Court Judge
Brooks P. Goldsmith, Circuit Court Judge

Opinion No. 5266

PETITION FOR REHEARING

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SC Court of Appeals

Pursuant to Rule 221(a), SCACR, appellant/respondent (hereinafter "appellant") requests rehearing because the majority of this Court may have overlooked the fact that even if it disagreed with the ruling of Judge Goldsmith, the state should be estopped from arguing the sentencing judge did not have the power to suspend the fifteen year sentence to thirty months with no probation where the state not only did not appeal that sentence, but it agreed with its imposition at the time it was imposed. The majority should respectfully adopt the dissenting opinion of the Chief Judge in this regard. There must be finality in sentencing, and allowing the state to challenge a suspended

sentence it where it agreed to it six years ago was fundamentally unfair. As the dissent wrote, Blakney is the aggrieved party, and not the state. The opinion of the majority sends the message that the state does not have to play by the same procedural rules, and it is not even bound by the positions it takes at the time of a guilty plea. This is respectfully most disturbing.

Appellant also urges that this Court should reconsider its opinion, and find that Judge Goldsmith correctly ruled that respondent satisfied the terms of his original sentence upon the service of the entire thirty months suspended sentence. This left no additional revocable time to serve on community supervision violation, particularly since his sentence did not include a term of probation. Again, this was the intent of the trial judge and the state agreed to it.

Defense counsel correctly argued that State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010) dealt with a situation where the defendant was sentenced to imprisonment for ten years which was suspended on the service of five years imprisonment *and five years probation.* The dissent also wrote that Picklesimer had no application to this case. However, since the majority did not agree the state was estopped from now challenging the sentence the dissent concluded that "Blakney received a fifteen year sentence with no suspension . . . since the "plea court had no power to suspend the sentence." State v. Anthony K. Blakney, Op. No. 5266, Shearouse's Adv. Sh. #33 at 154. The majority counters yet agrees with the dissent, finding the state is not estopped, that Blakney faces 15 years in prison. State v. Anthony K. Blakney, Op. No. 5266, Shearouse's Adv. Sh. #33 at 150. This, of course, ignores the fact that the judge intended for Blakney to serve a 30 month sentence (as a worst case scenario) for his crime, and the solicitor knew this sentence was the law of the case unless he appealed it. Yet, as the majority opinion stands today that unappealed sentence is not the law of the case.

Here, Judge Childs *had to intend* for appellant to serve no more than 30 months in jail since she imposed a sentence of 15 years suspended on 30 months with no probation to follow. Defense counsel agreed that Judge Childs envisioned that respondent would serve 85% of his 30 months in the Department of Corrections and that community supervision would follow. However, if appellant did not successfully complete his community supervision, the maximum sentence he could serve in prison would be the 15% of 30 months he had remaining. The judge could not have intended that appellant could serve 15 years imprisonment where she suspended that sentence on the service of 30 months with no probation to follow. The ship has -- rather, it should have -- sailed on the propriety of the suspended 30 month sentence since the state agreed to it, and did not appeal.

The Court held in State v. DeAngelis, 257 S.C. 44, 50, 183 S.E.2d 906, 909 (1971) that where there was a question of whether the judge meant to have a sentence served concurrently or consecutive -- meaning the amount of time the judge intended the defendant to serve -- "the intent of the judge is controlling."

Appellant asks that this Court to reconsider it holding, and hold that Judge Goldsmith correctly found that Blakney satisfied the terms of his original sentence upon the service of thirty months during the second revocation: "[U]pon which the suspended portion of his sentence was discharged, leaving no additional revocable time to serve on community supervision violations. Having served the maximum revocable time [30 months] allowed under his original sentence, Blakney can no longer be supervised by the Department of Probation, Parole, and Pardon Services . . ." R. 45.

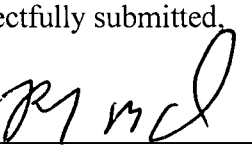
This dissent does not fault the state for agreeing to the suspended sentence in this case because there was evidence it was not uncommon in certain counties at the time. Appellant obviously does not have any problem with that statement but as the dissent also noted appellant is

now the aggrieved party. That is true because the state refuses to accept the fact that appellant has served his **full sentence** of thirty months imprisonment as envisioned by the **judge, the state, and appellant,** and yet the state seeks to re-incarcerate appellant many years later based on a technicality. As the tension between the majority and the dissent shows in this case: the application of the statutes and case law regarding community supervision is difficult, and the precedents of the Supreme Court in this area bolsters that conclusion.

In the final analysis appellant has served his full sentence of 30 months that Judge Childs imposed, and intended for him to serve as the penalty for his crime. Fundamental fairness dictates that appellant not be re-incarcerated years later where the state agreed to that sentence, and did not appeal it. All of the equities are with an appellant unschooled in the law who accepted a plea offer for a thirty month prison sentence in return for his crime.

Judge Goldsmith correctly found appellant has served his time. The fact that present attorneys for PPP -- years later -- always appeal when they do not agree with a ruling is not of any solace to anyone other than the state which slept on its rights and his now rewarded with an undeserved victory. Perhaps of equal importance the present opinion sends the message that the state enjoys a special status over the average citizen and that it is not bound by its agreements, and does have to appeal when aggrieved given that it is the state. Rehearing should most respectfully be granted.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

This 4th day of September, 2014.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Tommy Evans, Jr., Esquire, at South Carolina Department of Probation, Parole & Pardon Services, P.O. Box 50666, Columbia, SC 29250, on this 4th day of September, 2014.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 4th day
of September, 2014.

Rhonda Denise Foxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.