THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM THE CIRCUIT COURT
The Honorable Brooks P. Goldsmith, Circuit Court Judge
Opinion No. 5266 (S.C. Ct. App. Filed 8/20/2014)
Appellant Case No. 2014-002517
Case Number 08-GS-40-02974

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JAN - 9 2015
S.C. Supreme Court

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THE STATE, ........................................................................RESPONDENT

v.

ANTHONY K. BLAKNEY, ...............................................................PETITIONER

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# RETURN TO PETITION FOR WRIT OF CERTIORARI

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## STATEMENT OF THE CASE

On April 30, 2010, the Petitioner appeared before the Honorable J. Michelle Childs for the offense of burglary in the first degree (burglary $1^{st}$). As a result of plea negotiations between the solicitor's office and the Petitioner, Judge Childs sentenced the Petitioner to a fifteen (15) year term of imprisonment suspended upon thirty (30) months incarceration. Pursuant to South Carolina law the Petitioner was released to the community supervision program on May 13, 2011.

On December 9, 2011, a community supervision violation hearing was held before the Honorable Thomas G. Cooper. The Petitioner was accused of violating community supervision due to a failure to report; failing to pay supervision fees; failing to comply with electronic monitoring; and failing to follow the advice and instructions of his agent. Upon the conclusion of this hearing, Judge Cooper decided to revoke community supervision and give him credit for the amount of pre-detention time served. Upon release, the Petitioner was again placed on community supervision. A second warrant was issued accusing the Petitioner of failing to report; providing an invalid address, thereby failing to allow his agent to visit his home; and failing to pay his supervision fees. On August 17, 2012, the Petitioner appeared before the Honorable Brooks P. Goldsmith. During this hearing the Petitioner argued he has already satisfied his sentence pursuant to State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010). In Picklesimer, the Petitioner argued the Supreme Court were referring to split sentences suspended upon the completion of probation. He was sentenced to a fifteen year period suspended to the service of thirty months, with no probation to follow. He argues that he satisfied his sentence so no further time can be revoked. During this hearing the Respondent argued that Picklesimer never distinguished between probationary and non-probationary sentences; his total aggregate sentence is fifteen (15) years, so

he should continue to be responsible for community supervision. Judge Goldsmith took both arguments under consideration before issuing a decision in this matter.

On September 7, 2012, Judge Goldsmith decided that this case is distinguishable from Picklesimer. He determined that the Petitioner's sentence did not include a term of probation; therefore, he satisfied the terms of his original sentence. He ruled there exist no additional revocable time to serve on community supervision, so he ordered the warrant quashed.

A notice of appeal was filed by both the Petitioner and Respondent regarding the decision of both Courts regarding this matter. This case was heard by the Court of Appeals on June 2, 2014. On August 20, 2014, the Court decided that Picklesimer did apply and that the Petitioner's total term of his original sentence is fifteen years. Since his sentence was never satisfied, he is continued to be responsible for community supervision. The Court of Appeals remanded the case back to the circuit court for another revocation hearing. One member of the Appellate panel dissented, stating that the State negotiated this illegal sentence, and now cannot argue that this case cannot be suspended. State v. Blakney, 410 S.C. 244, 763 S.E.2d 622 (2014)(Few, J. dissenting)

Upon receiving this opinion, the Petitioner filed a petition for writ of certiorari with the South Carolina Supreme Court. The Respondent will argue that the decision of the Court of Appeals was correct, that the total aggregate sentence of the Petitioner was fifteen (15) years, so he is responsible for either the service of the remainder of his sentence, or the completion of community supervision. The Respondent further argues they never argued that the sentence was illegal but wanted the Petitioner to remain on supervision. The Respondent files this return requesting the Supreme Court to deny this petition.

## ARGUMENT

1. **The Court of Appeals did not err in determining that the Petitioner's sentence was not competed and remanding the case to the lower court for another revocation hearing.**

The Petitioner was convicted of committing the offense of burglary 1st and given a sentence of fifteen (15) years suspended upon the service of thirty months. Burglary 1st is classified as an A-felony which makes this a no parole offense.[1] Pursuant to South Carolina law the Petitioner was responsible for serving at least eighty-five (85%) of his sentence, See, S.C. Code Ann. §24-13-150(Supp. 2011). Upon conclusion of the service of this mandatory time, the Petitioner was then released on community supervision, which he must serve for two continuous years.[2] While on community supervision the Petitioner is subject to a revocation for a period of one year until he has completed the maximum aggregate amount of time he was sentenced or until he has successfully completed community supervision. S.C. Code Ann. §24-21-560(D)(Supp. 2011).

The Petitioner was given a fifteen (15) year sentence suspended upon the service of thirty (30) months. According to Picklesimer, an original sentence is defined as, the total aggregate suspended and unsuspended portions of a circuits court sentence. Picklesimer, at 847. The lower court agreed with this interpretation. The court determined that the Picklesimer interpretation of section 24-21-560(D) as applying to all community supervision revocations, whether or not the individual was placed on probation. Blakney, at 251. In Picklesimer, this Court never mentioned a distinction, it was only determined that the total aggregate sentence includes suspended and unsuspended portions. Picklesimer, at 848. The entire fifteen year sentence must be used in determining how

[1] For purposes of definition under South Carolina law a no parole offense means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years of more. S.C. Code Ann. 24-21-100(Supp. 2011).
[2] A community supervision program operated by the Department of Probation, Parole and Pardon Services must last no more than two continuous years. S.C. Code Ann. §24-21-560(B)(Supp. 2013).

much of the sentence the Petitioner is required to serve upon any revocation of community supervision.

The Petitioner argued that the sentencing court never wished him to serve fifteen (15) years, due to the thirty (30) month sentence with no probation to follow. The Sentencing Court did not order probation, because it will never be served. Any probation ordered on this case would ultimately become moot. See, State v. Dawkins, 352 S.C. 162, 573 S.E.2d 783 (2002)(Defendant's five year probation was discharged upon the successful completion of community supervision due to the statute stating a defendant is discharged from his sentence after completion of a community supervision program.) The Respondent believes that the sentencing Judge was aware of this decision, and realized any probationary sentence would be moot. This is due to the fact that any completion of community supervision would discharge probation, and any continuing violation would cause the Petitioner to serve the remaining portion of his fifteen (15) year sentence.

The Respondent is of the position that according to Picklesimer the Petitioner is responsible for the remainder of his sentence. This sentence includes both incarcerated and suspend portions. The Petitioner was given a total sentence of fifteen years; therefore, he is responsible for either the completion of community supervision, or upon violation, serving the remaining portion in one year increments. The decision of the Court of Appeals was correct, this petition should be denied.

2. **The Department is separate from the solicitor's office, with no control over plea negotiations.**

The Petitioner argues that the dissent was correct and this case should be heard by the Supreme Court. Within his dissent, Justice John Few determined that the State should not be allowed to negotiate an illegal sentence, then argue the sentence is illegal and should not be allowed. See, State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011). (a sentencing court has no power to suspend

a sentence for the offense of burglary in the first degree due to it carrying a maximum sentence of life.) The Department cannot be held responsible for negotiations between solicitor and Defendant. Even though the Department represents the State of South Carolina, the Department and the Solicitor's office are two separate entities with different duties and responsibilities.

The South Carolina Constitution gives the authority of the prosecution of individuals accused of committing crimes to the Attorney General. S.C. Const. Art. V §24. Solicitors shall perform the duty of the Attorney General and assist the Attorney General in matters of public concern, whenever they shall be and shall assist the Attorney General, or each other in all suits of prosecution in behalf of this State when directed so to do by the Governor or called upon by the Attorney General. S.C. Code Ann. §1-7-320(Supp. 2013). Part of the solicitor's responsibilities are plea negotiations. This job is solely that of the Attorney General or the Solicitors of the State, the Department has no ability to interject within these negotiations. The South Carolina Constitution place unfettered discretion to prosecute solely in the prosecutor's hands. The prosecutor may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they may simply decide not to prosecute the offense in its entirety. State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1999).

In regards of the Department, the responsibilities are totally different than that of the solicitor. Unlike the Solicitor, the Department is responsible for the supervision of a person once released on community supervision.[3] It is not the duty of the Department to have any influence on the sentence; however, it is the duty of the Department to bring the Petitioner before the Court due to a possible violation. Though this should be considered an illegal sentence, the case became in the

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[3] The department must determine when a prisoner completes a community supervision program, violates a term of community supervision, fails to participate in a program satisfactorily, or whether a prisoner should appear before the court for revocation of the community supervision program. S.C. Code Ann. §24-21-560(C)(Supp. 2013).

control of the Department some eleven (11) months after conviction. Even if the Department wanted to make an objection to the validity of this sentence, the time allowed under the rules had already expired to make any objection. Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence. Rule 29(a), SCRCP. By the time the Respondent was made aware of this supervision, it was too late to make any objections to its validity. The only available remedy was to supervise the Petitioner under community supervision pursuant to South Carolina law.

The Petitioner is incorrect in relying on the dissent of this case in support of this petition. The Solicitor and Department have totally unrelated objectives and do not control the actions of each other. The Department is unaware and have no control over plea negotiations between the solicitor and defendant; in turn, the solicitor has no control over the supervision, or violation of a person under Department supervision. These are two separate departments under the executive branch that have no control over the actions of each other, the Department cannot be held responsible of the Petitioner receiving an illegal sentence.

The Respondent will further argue they never requested this sentence be remanded for resentencing. During oral arguments the Respondent agreed with the Court that due to Jacobs this was an illegal sentence. However, it was always the argument of the Respondent that since the Petitioner is currently under the community supervision he is responsible for either the completion of community supervision, or the service of the remaining fifteen (15) year sentence. There was never a raised objection over the sentence made by the Respondent. This matter was raised by the Court and agreed upon by the Respondent. This is not an argument, the Respondent raised before the Court; therefore, the Petitioner should not argue that the Respondent challenged the sentence. There was never a challenge raised by the Respondent of the original sentence. The Respondent is

aware that though illegal, there no longer exist any jurisdiction to raise an objection. The Department only request the Court to allow the Petitioner to be responsible for service of the amount of time he was originally sentenced. This argument by the Petitioner should not be considered. The illegality of the original sentence was never raised by the Respondent, only agreed upon after being raised by the Court during oral argument.

## CONCLUSION

For all the reasons set forth above, the Respondent submits this Court should deny the Petition for Writ of Certiorari and allow the case to remain as properly decided by the Court of Appeals. If the Court grants this Petition for Writ of Certiorari, the Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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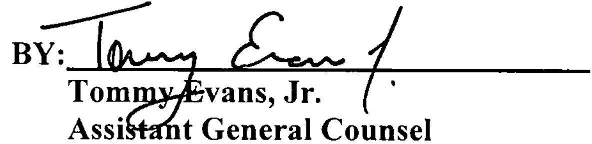

BY: ______________________
**Tommy Evans, Jr.**
**Assistant General Counsel**

Columbia, South Carolina
January 7, 2015

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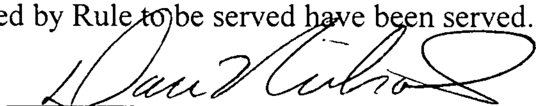
ANTHONY K. BLAKNEY, ..............................................................PETITIONER

**CERTIFICATE OF SERVICE**

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Return to Petition for Writ of Certiorari,* dated January 7, 2015, on Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record this 7th day of January, 2015:

Robert Dudek, Chief Appellate Defender
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, S.C. 29211-1589

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



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State of South Carolina
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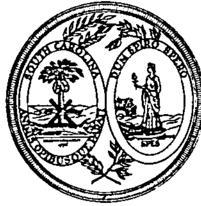
NIKKI R. HALEY
Governor



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S.C. SUPREME COURT

January 7, 2015

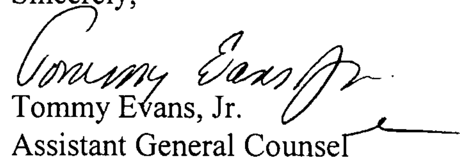
The Honorable Daniel E. Shearouse
Clerk of the S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

**Re: State v. Anthony Blakney**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari for filing in your office. By copy of this letter we are serving opposing counsel with this Return today.

Sincerely,



Tommy Evans, Jr.
Assistant General Counsel

Enclosures

cc: Robert Dudek, Chief Appellate Defender