

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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APPEAL FROM FLORENCE COUNTY

FEB 10 2016

SC Court of Appeals

D. Craig Brown, Circuit Court Judge

Appeal Number 2014-002664

The State, Respondent,

v.

Gayle G. Morgan, Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did Morgan's sentence for violating her probation and additional sentence for contempt of court subject the Morgan to double jeopardy?

STATEMENT OF CASE

On January 16, 2014, Gayle Gardner Morgan ("Morgan") pled guilty to Financial Transaction Card Fraud and Financial Transaction Card Theft. Morgan was sentenced to five years suspended to time served of two days, 90 days weekend time, and three years probation. [R. p.6]. On May 6, 2014, the Court held a Rule to Show Cause Hearing as to why Morgan was not doing her weekend time. [Id.]. At the hearing Morgan submitted a letter to the Court purporting to be from a cancer doctor in Florence stating that Morgan was unable to serve weekend time at the jail because Morgan was undergoing chemotherapy. [R. p.7]. As a result of the Rule to Show Cause Hearing, the Court ordered that the original probationary sentence be extended to the five year maximum and held the 90-day weekend time in abeyance contingent upon Morgan giving 90-day updates regarding her medical condition. [R. p.6-7]. On September 5, 2014, Morgan submitted another letter purporting to be from her cancer doctor stating that she remained unable to serve weekend time due to her cancer and health condition. [R. p.7].

After receiving the second letter, Morgan's probation agent called the cancer doctor and learned that Morgan's letters were fake and forgeries. [R. p.8].

On December 5, 2014, the Court revoked Morgan's probation and sentenced her to five years imprisonment in the South Carolina Department of Corrections (SCDC). [R. p.25]. At the probation revocation hearing, the Court also sentenced Morgan to 120 days consecutive for criminal contempt for her fraudulent misrepresentations to the Court. [R. p.26]. Defense counsel objected to the contempt also being the basis for the revocation. [R. p.27].

Notice of Appeal was timely filed on December 15, 2014.

STATEMENT OF FACTS

The Statement of Facts is the same as the Statement of Case.

ARGUMENT

MORGAN'S ADDITIONAL SENTENCE FOR CONTEMPT OF COURT SUBJECTED HER TO DOUBLE JEOPARDY.

The underlying offense in this case is a violation of probation and is not an offense against the peace and dignity of the state. A probation violation hearing is not a prosecution for a crime; it is a violation of a court order hearing. Although punishment of conduct as contempt of court will not bar the criminal prosecution of the accused for the substantive offense committed by such conduct, *State v. Jolly*, 405 S.C. 622 (2013), both the criminal contempt and the violation of probation are based upon Morgan's violation of the same court order, namely her

lying in her updates to the Court as to why she could not serve her weekend jail time. *See State v. Woodland*, 602 So.2d 554 (Fl. 1992)(prosecution of charge of violation of probation and charge of contempt for same act violates double jeopardy clause).

The Double Jeopardy Clauses of the United States and South Carolina Constitutions operate to protect citizens from being twice placed in jeopardy of life or liberty for the same offense. *State v. Brandt*, 393 S.C. 526, 538 (2011). “The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments for the same offense.” *Stevenson v. State*, 335 S.C. 193, 198 (1999).

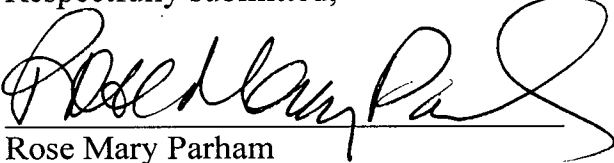
Applying the principles set forth in *Blockburger v. United States*, 284 U.S. 299 (1932), Morgan was punished twice for the same conduct, namely, lying to the Court. In sentencing Morgan, the Court attempted to differentiate between the two sentences, stating that it revoked Morgan’s probation for her not serving her weekend jail time and based the finding of contempt on Morgan’s lies and misrepresentations. However, after the May 6, 2014, Rule to Show Cause hearing, Morgan was no longer ordered to serve weekend jail time, rather she was ordered to submit updates every 90 days regarding her medical condition. Those fraudulent updates were the basis for both her probation revocation and her contempt of court sentence. Thus, the violation being the basis of two punishments unconstitutionally subjected Morgan to double jeopardy.

Further, the Court's sentence of Morgan was unreasonable and an abuse of discretion under the circumstances. The Court gave Morgan the maximum possible penalty he could have given her on the probation revocation making the additional penalty unreasonable and unjustified.

CONCLUSION

Based upon the foregoing, the additional 120-day penalty for contempt of court is unconstitutional as it violates the Double Jeopardy Clause of the United States Constitution.

Respectfully submitted,



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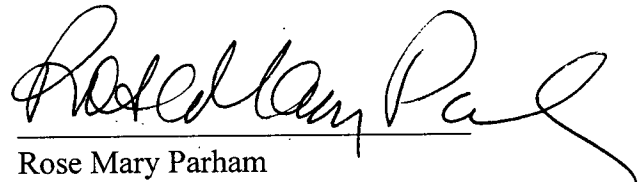
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b),
SCAR and with the South Carolina Supreme Court's order dated August 13, 2007.



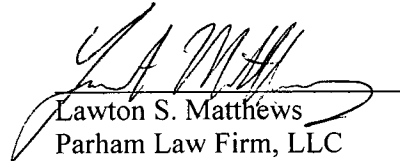
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February 5, 2016

CERTIFICATE OF SERVICE

I, Lawton Matthews hereby certify that a copy of the Appellants Final Brief along with a certificate of service was served on the following, this 8th day of February 2016, via U.S. mail, postage prepaid, at the following address:

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