

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTWAN ADAMS,

APPELLANT

APPELLATE CASE NO 2016-000836

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the probation revocation judge abused her discretion in imposing an eighteen-month revocation where she had previously imposed a suspended six-month revocation such that the maximum sentence that could be reinstated upon Appellant's subsequent violation of probation was six months?

STATEMENT OF THE CASE

On November 8, 2010, Appellant Antwan Adams¹ pled guilty in Richland County before the Honorable C. Tolbert Goolsby to one count of use of a vehicle without permission with intent to deprive the owner of the vehicle or its possession, in violation of S.C. CODE ANN. § 16-21-60(A). He was sentenced to three years under the Youthful Offender Act, suspended to two years probation, with probation to terminate upon payment of fines and costs. R. 7, l. 22 – 8, l. 4.

On November 15, 2011, Adams was served with a probation citation alleging various violations of the conditions of his probation. R. 1 (Nov. 2011 probation citation). On July 18, 2012, an arrest warrant was issued for Adams for violating the conditions of his probation by “failing to report on December 6, 2011 or after,” “failing to notify agent of change of address,” “failing to notify agent of contact with law enforcement when arrested for forgery” in May 2012, and “failing to pay” fines and fees. R. 3 (July 18, 2012 arrest warrant).

On May 5, 2014, Adams appeared before the Honorable Deandrea Benjamin for a probation revocation hearing. Adams was represented by J. Christopher Shipman, and the state was represented by the South Carolina Department of Probation, Parole, and Pardon Services (“SCDPPPS”). R. 1. Mr. Shipman asked the court to convert the YOA sentence to an adult sentence and revoke for time-served of approximately three and a half months. R. 9, l. 21 – 10, l. 4. He explained that Adams had only recently, within the last week, begun working at a Hardees restaurant. R. 10, ll. 7-11. Adams told Judge Benjamin that he only had thirty dollars with him

¹ Appellant is also listed in various documents as Jerome Antwan Adams.

since he was only recently employed. R. 11, ll. 1-4. Adams' pastor also addressed the court and offered to contribute four hundred dollars towards Adams' monetary obligations. R. 12, ll. 2-4.

Judge Benjamin revoked six months of Adams' sentence, suspended upon payment of \$2,160.00 restitution within 120 days. She instructed that Adams was required to continue reporting and that if he missed any reports, a bench warrant would be issued for his arrest. Probation would terminate upon payment of the restitution and the fines and fees were converted to a civil judgment. R. 12, ll. 5-24. Judge Benjamin specifically told Adams: "You have to come up with \$2,160.00 within 120 days. **If you do not do that, sir, you will have six months in jail.**" R. 12, l. 25 – 13, l. 2; R. 13, l. 24 – 14, l. 1. SCDPPS responded: "We just have to get on record, in the event he doesn't do it within six months [sic], do you want to convert that to a 6-month straight adult time?" R. 13, ll. 12-15. Judge Benjamin answered: "Yes. Yes." R. 13, ll. 12-15. She further clarified: "I'm revoking six months. You are asking to convert it to an adult sentence. Revoking six months, suspending it upon payment. So if he doesn't make the payment, he will have to do six months And if he doesn't show up, then he will have to come back before the Court." R. 14, ll. 3-4.

On the probation revocation order, Judge Benjamin checked the first box, indicating: "IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve 6 months. R. 16 (2014 revocation order). In the addition conditions section, she wrote: "Revocation suspended upon DACOR being paid in full within 120 days; during 120 days subject must report monthly, any missed reports issue BW; failure to pay w/in 120 day issue BW and subject is to serve rev. convert YOE nte 3ys to straight 6 mth adult sentence." R. 16 (2014 revocation order).

On February 11, 2015, an arrest warrant was issued for Adams for violating the conditions of his probation, specifically failing to report on August 19, 2014. R. 17 (Feb. 11, 2015 arrest warrant). On April 15, 2016, Adams appeared before the Honorable Deandrea Benjamin for a probation revocation hearing. Adams was represented by Jonathan Comish, and the state was represented by SCDPPPS. R. 19. Defense counsel showed Judge Benjamin a copy of her 2014 revocation order. R. 21, ll. 12-13. Defense counsel reminded Judge Benjamin that she had suspended the six month revocation. He explained that Adams had been at the detention center for 53 days such that he only had a few more months left. R. 21, l. 25 – 22, l. 5. Judge Benjamin responded: “He had a YOA, I think I converted.” R. 22, l. 6. “He has three years hanging over his head. He didn’t do what he was supposed to do. All right. Revoke 18 months, terminate and convert fees and fines to civil judgment.” R. 22, ll. 8-11. Defense counsel said: “So we’re not going with your old order, Your Honor?” R. 22, ll. 12-13. Judge Benjamin responded: “No. I gave him a chance.” R. 22, l. 14.

ARGUMENT

The probation revocation judge abused her discretion in imposing an eighteen-month revocation where she had previously imposed a suspended six-month revocation such that the maximum sentence that could be reinstated upon Appellant's subsequent violation of probation was six months.

Judge Benjamin had only revoked and suspended six months of Adams' sentence such that a violation of her additional conditions specified therein should have only resulted in the imposition of the suspended six-month sentence. R. 16 (2014 revocation order). Defense counsel pointed Judge Benjamin to her prior order and it is obvious from his argument that he had advised Adams that the maximum amount of time he would have to do was the six month suspended sentence. R. 21, ll. 12-13; R. 21, l. 25 – 22, l. 5. Because Judge Benjamin lacked the sentencing authority to impose an eighteen-month sentence, the sentence imposed constituted an abuse of discretion.

The statute regarding “action of court in case of violation of terms of probation” provides:

Upon such arrest the court, or the court within the venue of which the violation occurs, shall cause the defendant to be brought before it and may revoke the probation or suspension of sentence and shall proceed to deal with the case as if there had been no probation or suspension of sentence except that the circuit judge before whom such defendant may be so brought shall have the right, in his discretion, to require the defendant to serve all or a portion only of the sentence imposed. Should only a portion of the sentence imposed be put into effect, the remainder of such sentence shall remain in full force and effect and the defendant may again, from time to time, be brought before the circuit court so long as all of his sentence has not been served and the period of probation has not expired.

S.C. CODE ANN. § 24-21-460. **“Ambiguity or doubts relative to a sentence should be resolved in favor of the accused.”** State v. DeAngelis, 257 S.C. 44, 50, 183 S.E.2d 906, 909 (1971) (emphasis added); see also Tant v. S.C. Dep't of Corr., 408 S.C. 334, 346, 759 S.E.2d 398, 404 (2014) (“Because both of the trial court’s pronouncements, oral and written, are

susceptible to multiple interpretations, they are ambiguous. Accordingly, the sentences must be construed in the defendant's favor to run concurrently.”).

The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court. State v. Miller, 122 S.C. 468, 474-75, 115 S.E. 742, 745 (1923); State v. Proctor, 345 S.C. 299, 301, 546 S.E.2d 673, 674 (Ct.App.2001). The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation. State v. King, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); State v. Hamilton, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct.App.1999). “While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice.” White, 218 S.C. at 136, 61 S.E.2d at 756; State v. Allen, 370 S.C. 88, 96, 634 S.E.2d 653, 657 (2006) (“[A] probationer or parolee has a constitutionally protected liberty interest and cannot be denied due process simply because probation has been described as an act of grace.”).

An appellate court will not reverse the trial court’s decision unless that court abused its discretion. White, 218 S.C. at 135, 61 S.E.2d at 756; Hamilton, 333 S.C. at 647, 511 S.E.2d at 96. “An abuse of discretion occurs when the trial court’s ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.” Allen, 370 S.C. at 94, 634 S.E.2d at 656.

In the present case, the probation revocation judge could have revoked up to three years at the May 5, 2014 hearing. Instead, she revoked six months and suspended it, ordering Adams

to pay \$2,160.00 within 120 days and continue reporting during the 120 period. Notably, the revocation just checked the first box on the revocation order, stating “IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve 6 months.” She did not select the second box, which would have included language that the defendant would be “reinstated on probation.” The sentencing sheets specified that the revocation was suspended upon DACOR being paid in full within 120 days and that Adams must continue monthly reports during the 120 days. It further specified that a bench warrant would be issued if Adams failed to report or pay the ordered restitution. Lastly, the Order said that if a bench warrant was issued, “subject is to serve rev. **convert YOE nte 3ys to straight 6 mth adult sentence.**” R. 16 (2014 revocation order) (emphasis added).

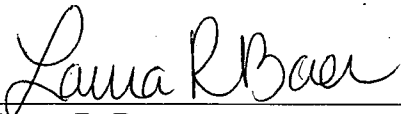
The SCDPPPS did not appeal the 2014 Order such that it became the law of the case. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”). Thus, pursuant to the revocation judge’s own 2014 order, the maximum amount of time that she was authorized to impose upon Adam’s subsequent violation of her order to pay restitution and continue reporting was the six month suspended sentence. To the extent there is an ambiguity in the sentencing sheets or oral pronouncement, it must be resolved in favor of Adams. See DeAngelis, 257 S.C. at 50, 183 S.E.2d at 909; Tant, 408 S.C. at 346, 759 S.E.2d at 404 (2014). As such, the revocation judge’s imposition of an eighteen-month sentence at the 2016 hearing was an abuse of discretion.

Additionally, even if Respondent argues that this case is moot because Adams has completed service of the eighteen-month sentence in the Department of Corrections, this Court can take jurisdiction because the issue raised herein is capable of repetition yet evading review.

See Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001)). Given the generally short terms of probationary sentences, like the one in this case, it is unlikely that an inmate will remain incarcerated before the lawfulness of their sentence can be reviewed on direct appeal. See, e.g., Nelson v. Ozmint, 390 S.C. 432, 434-35, 702 S.E.2d 369 (2010) (finding that issue of entitlement to good time or work credits against a one-year mandatory minimum sentence “is one that is capable of repetition, yet will usually evade review because most inmates will have served the year required by SCDC’s interpretation of the statute before the lawfulness of the interpretation can be reviewed.”).

CONCLUSION

Based on the foregoing, Appellant Antwan Adams respectfully requests that this Court reverse the revocation of probation and remand for a new revocation hearing, or grant such other relief as justice may require.



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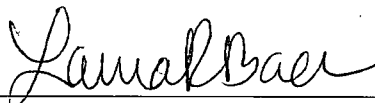
ATTORNEY FOR APPELLANT

This 24th day of February, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 24, 2017.



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