

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

v.

KENNETH RAY BOYNTON,

RESPONDENT,

APPELLANT

APPELLATE CASE NO 2016-001153

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE..... 2

ARGUMENT 3

CONCLUSION 5

TABLE OF AUTHORITIES

Cases

<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	3
<u>State v. Perkins</u> , 378 S.C. 57, 661 S.E.2d 366 (2008)	3,4

STATEMENT OF ISSUE ON APPEAL

Whether the Horry County Drug Court/Probate Judge had jurisdiction to impose appellant's ten (10) year suspended sentence?

STATEMENT OF THE CASE

On September 16, 2015, appellant appeared before the Honorable Benjamin H. Culbertson, in Horry County Court of General Sessions and pled guilty to distribution of heroin. The State recommended ten (10) years suspended to drug court level II. Judge Culbertson followed the sentencing recommendation of the State. James C. Galmore, III, Esquire was plea counsel. David Tyler Bratton, Esquire was the assistant solicitor.

On March 2, 2016, the Honorable Kathy Ward of the Horry County Drug Court and a local probate judge issued an order dismissing appellant from the Drug Court and remanding him to the department of correction to serve his ten (10) year sentence. On March 7, 2016, a motion to alter or amend was submitted to the Drug Court asking it to dismiss as moot the claims against appellant and the sentence imposed by it. In the alternative, it asked that appellant's case be remanded to the Horry County Court of General Sessions for sentencing under the original charges. Respondent filed a reply dated March 14, 2016.

On May 23, 2016, a hearing was held before the Honorable Benjamin H. Culbertson in the Horry County Court of General Sessions. Appellant was represented by Kenneth Massey, Esquire, Robert Mills, Esquire, and Keith A. Dame, Esquire. Joshua David Holford, Esquire represented the State.

Judge Culbertson denied the motion for reconsideration or to alter the sentence.

This appeal follows.

ARGUMENT

The Horry County Drug Court/Probate Judge had no jurisdiction to impose appellant's ten (10) year suspended sentence.

The order of dismissal from the drug court/probate judge in this case dismissed appellant from the drug court because he “failed to comply with the requirements.” He was remanded “to the custody of the South Carolina Department of Corrections for the execution of his sentence.”

In State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) the Court wrote “that subject matter jurisdiction is the power of court to hear and determine cases of the general class to which the proceedings in question belong.” 363 S.C. at 100, 610 S.E.2d at 498. Further, “a defendant may for the first time on appeal raise the issue of the trial court’s jurisdiction to try the class of the case of which the defendant was convicted.” 363 S.C. 101-102, 610 S.E.2d at 499.

In State v. Perkins, 378 S.C. 57, 661 S.E.2d 366 (2008) the Court noted that the drug court there recommended the defendant’s termination. After a hearing, “the trial court issued an order terminating Appellant from the Program and imposing his original sentence.” 378 S.C. at 59, 661 S.E.2d at 367 (emphasis supplied). The Court also held that the “decision of whether a defendant has violated a condition of his suspended sentence rests within the sound discretion of the trial court.” 378 S.C. at 61, 661 S.E.2d at 368 (emphasis supplied).

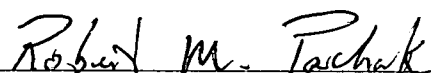
In State v. Perkins above, the Court noted in footnote 1 that the defendant in that case was sanctioned 18 times while in the drug program. Appellant in this case had an addiction problem. The solicitor recommended the drug court and the trial court agreed. Appellant only violated 5 times. (R. p. 35, lines 9-17) Appellant said he only failed twice because the authorities would not wait the required 72 hours before retesting him. (R. p. 47, lines 1-14) Appellant was

55 years old, with lymph node cancer, and had severe intestinal issues. (R. p. 35, lines 9-16) He was also HIV positive which came because of a blood transfusion. (R. p. 48, lines 22-23)

According to State v. Perkins, the drug court/probate judge did not have jurisdiction to remand appellant's case to the department of corrections to serve his ten (10) year suspended sentence. That is up to the court of general sessions that imposed the original suspended sentence to determine in its discretion what sentence should be imposed. A general sessions court should not be obligated to follow what a drug court/probate judge decides to do. That is in the jurisdiction of the original sentencing court.

CONCLUSION

Appellant's case should be remanded for resentencing without any deference to what the probate judge did. Drug courts should be instructed that they have no jurisdiction to be involved in sentencing matters.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

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."

July 7th, 2017

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 7th day of July, 2017.

Robert M. Pachak

Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of July, 2017.

Courtney Powers (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027

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