STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Laurens County
The Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No. 2018-000969

THE STATE,.....RESPONDENT

v.

REGINALD SPEARMAN,.....APPELLANT

INITIAL BRIEF OF RESPONDENT

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1. **Whether the trial court abused its discretion or jurisdiction when it imposed its sentence during a probation revocation hearing**

2. **Whether the Court's intentions were clear at all times from the time of sentencing through the simultaneous revocation and sentencing of a new conviction**

STATEMENT OF THE CASE

On December 1, 2017, the Appellant pled guilty to two separate charges of Domestic Violence, 2nd degree under Indictment numbers 2017-GS-30-1982 and 2017-GS-30-1983 before the Honorable Frank R. Addy, Jr. in Laurens County General Sessions Court. The court sentenced him on each count to three years incarceration suspended to probation for four years. Additional conditions of Marriage Counseling or Batterers' Treatment and three litter crew pickups were added to the sentence.

Less than two months after receiving this sentence, the Appellant was arrested on January 28, 2018 for domestic violence, 1st degree and resisting arrest. As part of a guilty plea, the domestic violence, 1st degree charge was nolle prosequi and the Appellant was given 143 days time served on the resisting arrest charge by Judge Addy on April 26, 2018. Judge Addy also terminated the Appellant's probation and ordered him to serve 2 years and 311 days consecutive to his sentence on the 2017-GS-30-1982 indictment. He also ordered that his sentence time would run concurrent with the 2018-GS-30-753 indictment that he received for resisting arrest.

On May 3, 2018, the Appellant filed and served a Motion for Reconsideration of Judge Addy's April 26, 2018 Order to request that the sentence imposed during the revocation hearing be modified, altered or amended regarding its consecutive nature.

On May 7, 2018, Judge Addy issued an Order Denying the Appellant's Motion to Reconsider Probation Revocation while finding a further hearing as being unnecessary. Within the context of the Order, the Court declined to modify, alter or amend the sentence imposed at the revocation hearing or the consecutive nature of the sentences. Essentially, the judge noted that no ambiguity existed with the case and the Court's intentions were clear at all times. Thus, the Court had inherent, discretionary authority to run any revocation consecutively due to the Appellant's

violations and the brief period between the December 1, 2017 initial sentencing and the January 28, 2018 arrest date that led to his probation violation. As a result, the Court activated the suspended sentences and ordered that they run consecutively.

On November 14, 2018, the Appellant filed and served a Petition to file his Initial Brief and Designation of Matter out of time. Despite admitting that Judge Addy did clearly state on the record that the Appellant "[has]...a total of six years over your head," at the plea hearing, the Appellant argues that the sentence was ambiguous based upon a box not being checked on the sentencing sheet.

This appeal follows.

ARGUMENT

1. The trial court did not abuse its discretion or jurisdiction when it imposed its sentence at a probation revocation hearing.

The Appellant argues that the judge's decision to deny his motion for reconsideration was incorrect based upon what he infers to be an ambiguous sentence. This alleged ambiguity is based upon the Court not marking either of the boxes of the sentence sheet to indicate whether the sentences were consecutive or concurrent. Despite this fact, the Appellant received suspended sentences. These sentences were under the discretion of the judge who handled the revocation pursuant to Section 24-21-460 of the SC Code of Laws as stated below.

> 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. Id.* (Emphasis added.)

Thus, the statute clearly gives the Court the right to revoke the sentence as if no suspension or probation of the sentence existed while giving the judge discretion to require the Appellant to serve all or a portion of the sentence imposed.

To that end, it's important to revisit the two charges that the Appellant pled guilty to at his initial sentencing. A single charge of criminal domestic violence in the 2nd degree can result in a defendant being sentenced to prison for up to three years. See §16-25-20(C). Pursuant to §16-25-20(F), a court must consider the *nature and severity of the offense*, the *number of times* the offender has *repeated* the offense, and the *best interests and safety of the victim* in determining whether or not to suspend the imposition or execution of all or part of a sentence [involving the charge(s) of criminal domestic violence]. (Emphasis added.)

In this matter, it is clear that Judge Addy considered these statutory factors at the time of the Appellant's initial sentencing and again at his simultaneous probation revocation and sentencing of a new additional charge, which indicated repeated offenses. As a matter of fact, the Court noted "the nature of Mr. Spearman's violations and the extremely brief period between the December 1, 2017 sentencing and the January 27, 2018 incident date which led to his probation violation" as a factor in activating the suspended sentences and ordering them to run consecutively. See *Order Denying Motion to Reconsider Probation Revocation.*

Despite these facts, the Appellant insists that he obtained an ambiguous sentence and as such his two sentences from the initial sentencing should run concurrently rather than consecutively. Pursuant to Finley v. State, 219 S.C. 278 (1951), Judge Addy specifically expressed his intent that the Appellant's sentence should run consecutively when he told the Appellant he had six years hanging over his head.

As noted in Judge Addy's Order, the Appellant's argument that a particular box on the sentencing sheet was not checked was based on an improper analogy between this case and that of the Court in Tant v. South Carolina Department of Corrections, 4018 S.C. 334, 759 S.E.2d 398 (2014). In the Tant decision, a situation occurred where the sentencing sheets and the court's oral pronouncement of sentence created an ambiguity regarding whether certain charges should run concurrently or consecutively. In order to clear the matter, the South Carolina Department of Corrections (hereinafter, "SCDC") obtained a letter from the sentencing judge to clarify the sentence *two and a half years after the sentence.* However, the South Carolina Supreme Court found that the court no longer had jurisdiction over the case. Additionally, SCDC had already configured a shorter sentence time and informed the Defendant of such prior to obtaining the letter from the judge, which ultimately caused them to increase his sentence without due process.

In the case at hand, no such ambiguities exist. Judge Addy issued two separate sentence sheets based on two separate indictments representing two separate charges of criminal domestic violence in the 2nd degree at the initial sentencing hearing. Each charge carried a maximum of three years per its penalty statute and as noted on the sentencing sheets. Each three year term was suspended on the successful completion of four years of probation. Judge Addy stated on the record at this hearing that the Appellant had six years hanging over him. *Less than two months later*, the Appellant violated his probation by receiving additional charges. He appeared back in front of Judge Addy to be sentenced for these charges along with his probation revocation, which was clearly still within the jurisdiction of Judge Addy.

Furthermore, Judge Addy has continuously served as the Chief Administrative Judge for the Eighth Circuit in which Laurens County resides since December 31, 2017. As such, he has the

authority to set probation revocations and other nonjury general sessions matters accordingly. Consequently, the trial court's decision to deny the motion for reconsideration was proper, and clearly not arbitrary or capricious.

2. The Court's intentions were clear at all times from the time of the initial sentencing through the simultaneous revocation and imposition of a sentence for a new conviction.

The Appellant contends that Judge Addy's intentions were ambiguous based upon a box not being checked on either sentence sheet for the two consecutive charges despite his clearly stated oral pronouncement at the initial hearing regarding a six year term. In this case, the majority rule than an oral pronouncement should control the sentence should be upheld because the written sentence does *not* seek to increase the time of the sentence that was made via its oral pronouncement in the Appellant's presence. *Id.* at 344. Also, see Boan v State, 388 S.C. 272, 695 S.E.2d 850 (2010). Thus, the same constitutional arguments that were made in those cases regarding the Defendant's right to be present at sentencing do not apply in this case. Additionally, the oral pronouncement in the case at hand was also clearly stated unlike in Tant.

Since the oral pronouncements at the initial trial, probation revocation, and new sentence hearing were clearly made regarding the Appellant receiving a six year term and a consecutive sentence for two separate charges, the sentence was clearly unambiguous and should be upheld regardless of what is written on the sentence sheets. See Bordeaux v. State, 410 S.C. 495 (2014) where the South Carolina Supreme Court held that an unambiguous oral sentencing pronouncement took precedence over ambiguous written statements.

CONCLUSION

The trial court was well within its authority to impose its sentence at a probation revocation hearing based upon its statutory authority. Furthermore, the court's intentions were

clear from the time of the initial sentence through the probation revocation and new sentencing process. The sentencing judge clearly stated that the offender had "six years hanging over his head" at the initial sentencing regardless of whether a box was checked on the sentencing sheets. The oral pronouncements that were made throughout sentencing were not unambiguous and should be upheld as such pursuant to the relevant and applicable case laws as discussed herein. Therefore, this Court should affirm the trial court's denial of the motion for reconsideration accordingly.

Respectfully submitted,

Octavia Y. Wright
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December 12, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
The Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No. 2018-000969

THE STATE,.....RESPONDENT

v.

REGINALD SPEARMAN,.....APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within Initial Brief and Designation of Matter dated December 12, 2018, on Appellant this 12th day of December, 2018, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Tristan Shaffer, Esquire
PO Box 1027
Chapin, S.C. 29036

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

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December 12, 2018

The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: State v Reginald Spearman

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter dated December 12, 2018, along with proof of service in the above referenced case.

Sincerely,

Octavia Y. Wright
Legal Counsel

OYW:dn

Enclosures

cc: Tristan Shaffer, Esquire

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