

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
L. Casey Manning, Circuit Court Judge

Appellate Case No. 2018-0002060

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SC Court of Appeals

THE STATE, RESPONDENT

v.

CEDRICT HOPKINS, APPELLANT

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

- 1. Whether the revocation judge erred when he concluded that the extension of probation to the full five years should have been calculated from the date of the judge's order, or from the last day of the initial period of probation?**

STATEMENT OF THE CASE

On June 6, 2013, the Appellant appeared before the Honorable DeAndrea Benjamin and pled guilty to two counts of burglary in the second degree. He was given a youthful offender sentence not to exceed six years, but suspended to probation for three years, all to be run concurrently. (R.p. 22-p.23).

On May 4, 2016, the Department of Probation, Parole and Pardon Services (Department) issued a citation alleging several violations, including positive drug tests, failure to work at a lawful occupation, and failure to refrain from the violation of federal, state or local laws. The citation was served on the Appellant on May 18, 2016. (R.p.14-p.15).

The Appellant appeared before the Honorable Frank Addy, Jr., on September 23, 2016, for a hearing based on that citation. Judge Addy continued the Appellant on probation, and along with adding other special conditions he extended the Appellant's probation for two additional years. (R.p.11).

On August 3, 2018, the Department issued another citation alleging several violations against the Appellant, which was served on him on August 8, 2018. (R.p.16-p.17). The violation hearing was heard on October 19, 2018 before the Honorable L. Casey Manning. At that hearing, the court revoked the Appellant's probation and activated his YOA sentence. (R.p. 4, ll. 16-18).

On October 26, 2018, the Appellant's attorney filed a motion to reconsider. Judge Manning denied the motion on November 8, 2018. (R.p.9-p.10).

This appeal follows.

ARGUMENT

The General Sessions court did not err when it revoked the Appellant's probation because the end date of probation was properly calculated from the order extending probation an additional two years.

The Appellant argues that his probationary term had ended before the citation was issued, and therefore the court did not have authority to revoke his probation.

The Respondent does not dispute that citations or warrants must be issued while the term of probation is active, and that once the term of supervision has expired the Department no longer has the authority to issue citations.¹ Furthermore, if a citation or warrant is issued after the period of supervision, the court lacks the authority to revoke that probation.²

Thus, the crux of the issue in this case is when the probation period truly expired.

It is undisputed that the citation was issued on August 3, 2018. The Appellant insists in his brief that his probation should have expired on June 6, 2018 – or five years from the date the probation started.

The trial court ruled, and the Respondent agrees, that the proper probation end date was two years from the date the probation was extended by Judge Addy. At the earlier probation violation hearing on September 23, 2016, Judge Addy found the Appellant to have violated his probation. But instead of revocation, the court continued him on supervision and extended his probation two years. Probation terms may be up to five years, and the court may extend probation up to that limit. S.C. Code § 24-21-440.

The earlier probation hearing was held after the Appellant's probation would have expired. However, this is well-established in South Carolina. *Lovell v. State*, 223 S.C. 112, 74

¹ See S.C. Code Ann. § 24-21-300; S.C. Code Ann. § 24-21-450; and *State v. Ellis*, 397 S.C. 576, fn 3, 726 S.E.2d 5, fn 3 (2012): “[C]itations and warrants simply confer authority on those courts already in possession of jurisdiction.”

² See *State v. Crouch*, 355 S.C. 355, 360, 585 S.E.2d 288, 291 (2003) and *State v. Hutto*, 252 S.C. 36, 45-46, 165 S.E.2d 72, 76-77 (1968).

S.E.2d 570 (1953). In *Lovell*, the probationer appealed because although the warrant was issued during the term of his probation, it had expired before the violation hearing was held. “There is nothing in our statute expressly requiring that the order of revocation be made within the probationary period. It is only provided that during this period the warrant shall be issued, which is the pertinent jurisdictional fact.” *Id.* at 117, 572.

Consequently, the Appellant’s initial violation hearing was properly before Judge Addy on September 23, 2016. It was on that date that the probation was extended an additional two years to the full five years allowed by law.

Appellant no doubt argues that the extension of two years is applied retroactively, using the date of the start of his probation.

However, this argument ignores the fact that there was a period of time between the earlier expiration of the Appellant’s probation and the hearing before Judge Addy. From June 6, 2016 through September 23, 2016, the Appellant was not on supervision, although admittedly he still had to answer for his violations he committed while on probation. During that period of time between the expiration of his probation and his court hearing, the Department could not enforce the conditions of his probation, nor could it respond to a violation. For roughly three and a half months, the Appellant was not on probation.

Therefore, the proper calculation would be to extend the two years from the date Judge Addy restored the Appellant’s probation. In this way, he will be required to serve the full five years as ordered by the court, rather than four years and eight and a half months.

Tolling probation is recognized in South Carolina. *State v. Miller*, 404 S.C. 29, 35, 744 S.E.2d 532, 536 (2013). *Miller* clarified that tolling is only appropriate when “authorities could not supervise the defendant due to the defendant’s wrongful acts.” *Id.* at 37, 537. While an

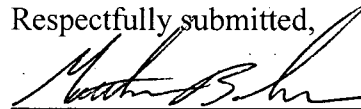
argument could be made that the expiration of the probation is not a result of the offender's "wrongful acts," only violations of supervision would necessitate the issuance of a warrant or citation and a hearing. The expiration of the term of probation is merely happenstance. Had the offender complied with the terms of probation, the case would have expired as normal.

To rule that credit for the period of time between the expiration of the probation and the hearing where probation is continued must be awarded also ignores the fact that many times, a citation or warrant is issued because the offender absconded or was convicted in another jurisdiction. Either of those occasions could mean that years could pass before the violation hearing. Should the court decide to continue that offender on probation and extend its length, tying that end date to the start date of probation would deny the court that option.

CONCLUSION

The trial court properly ruled that the two year extension was calculated from the date Judge Addy extended probation. The citation was issued while the Appellant's probation was still active. Therefore, the court did not err when it revoked his probation

Respectfully submitted,



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CERTIFICATE OF COUNSEL

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



Matthew C. Buchanan
General Counsel

September 19, 2019