

STATE OF SOUTH CAROLINA
In The Court of Appeals

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Apr 20 2020

APPEAL FROM DILLON COUNTY

SC Court of Appeals

Court of General Sessions
The Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2019-000704

THE STATE,

Respondent,

v.

DANIEL ANTWAN ROGERS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The decision whether to activate a suspended sentence rests in the discretion of the trial court. In this case, the trial court activated Rogers' sentence because he was terminated from a drug court program, thereby violating a condition of his suspended sentence. Does the record support the court's ruling?

STATEMENT OF THE CASE

Appellant Daniel Rogers pled guilty in Dillon County General Sessions court before the Honorable Roger E. Henderson to distribution of methamphetamine and two minor drug-related offenses. Judge Henderson accepted a negotiated plea. Pursuant to the negotiation, he sentenced Rogers to 15 years' incarceration, but suspended the sentence on condition of Rogers' successful completion of the Fourth Circuit Drug Court program.

Rogers entered into an agreement with the drug court program requiring him to fulfill certain obligations in return for the right to withdraw his guilty plea after a period of not less than one year. (Drug court agreement). His obligations included attending counseling, maintaining employment, and abstaining from drug use and other criminal activity. The agreement provided that the "Fourth Circuit Solicitor's Office [and] Drug Court Staff as presented to the Drug Court Judge" had the authority to terminate Rogers from the program. Rogers acknowledged: "If I do not complete the Fourth Circuit Drug Court program, the Drug Court Judge will terminate me from the program and my sentence will be activated at an official and formal court proceeding." (Drug court agreement).

Rogers subsequently violated the agreement by being arrested on a separate charge, missing counseling sessions, and testing positive for drugs. The program convened a hearing before the drug court's supervising magistrate judge, the Honorable Robert Stanton. Judge Stanton terminated Rogers from the program. The next day, Rogers appeared before Judge Henderson for a sentencing hearing.

Judge Henderson found Rogers violated the conditions of his suspended sentence and activated the full original sentence. Rogers now appeals from this order.

STANDARD OF REVIEW

The decision whether a defendant has violated a condition of his suspended sentence rests within the sound discretion of the trial court. An appellate court will not reverse the trial court's decision unless that court abused its discretion. State v. Perkins, 378 S.C. 57, 61, 661 S.E.2d 366, 368 (2008).

ARGUMENT

The trial court acted within its discretion when it refused to re-refer Rogers to drug court after he was dismissed from the program.

Rogers claims the trial court abused its discretion when it refused to send him back to drug court after he was terminated from the program. He fails to show the court abused its broad discretion in sentencing. The record shows Rogers violated a condition of his suspended sentence by being terminated from drug court, and the trial court held the required hearing before activating Rogers' sentence. This Court should affirm.

The sentencing court has a limited role in drug court terminations. When a drug court participant on a suspended sentence is terminated from the program, he must appear back before the circuit court for a hearing to determine whether he has violated the conditions of his suspended sentence. The circuit court is not required to determine whether the defendant was properly terminated from the program. State v. Perkins, 378 S.C. 57, 61, 661 S.E.2d 366, 368 (2008) (explaining "it is inappropriate for the courts to review whether a participant was properly terminated from a Drug Court Program"). Instead, the court must determine whether the defendant was "in fact" terminated, thereby violating the conditions of his suspended sentence. Id. The defendant is entitled to notice and a hearing giving him an opportunity to contest the circuit court's determination. Once the court makes this finding, it may then exercise its discretion to activate the suspended sentence in full or in part. Id., 378 S.C. at 62, 661 S.E.2d at 368–69 ("In

the instant case, it is undisputed that a condition of Appellant's suspended sentence was the successful completion of the Drug Court Program and that Appellant was terminated from the Program. Thus, the trial court correctly determined that Appellant violated a condition of his suspended sentence, and therefore, properly imposed Appellant's original sentence. Accordingly, we must uphold the imposition of Appellant's sentence.”).

This is exactly what happened in this case. Rogers was terminated from the drug court program for cause after a hearing before the supervising magistrate, and then appeared before the circuit court for sentencing. Rogers never contested that he was in fact terminated from the program. Instead, he asked the court to re-refer him to the program.¹ The trial court had the discretionary authority to send him back to drug court. But given the fact that Rogers had just been terminated from the program, the court understandably declined to do so.

Rogers claims the trial court refused to exercise its discretion by refusing to send him back to drug court. The record does not support this assertion. There is nothing to suggest the trial court believed he did not have the power to re-refer Rogers. Rather, the colloquy shows he simply believed Rogers’ non-compliance with the conditions of his suspended sentence warranted revocation. The court’s

¹ Rogers claimed Judge Stanton told him Judge Henderson was authorized to re-instate him to the program. However, Judge Stanton actually told Rogers he would accept him back into the program if he was found not guilty of his new charge, but terminated him anyway. (April 16 Tr.p.10). In any case, Judge Stanton’s statements signaling he would be open to letting Rogers back into the program were not controlling on the circuit court judge, who decided Rogers’ termination warranted immediate activation of his sentence.

statement that the magistrate had already “made the decision” to terminate Rogers from the program correctly reflected that the circuit court does not have the authority to dictate the drug court judge’s decisions on termination from the program. This authority was granted to the magistrate by a Supreme Court order, and Rogers agreed in writing to submit to that authority. (Supreme Court Order dated January 24, 2002, available at <https://sccourts.org/courtOrders/displayOrder.cfm?orderNo=2002-01-24-01>). The sentencing court’s role is to decide whether to activate the sentence in full or in part after termination.

By being granted a suspended sentence, Rogers was given a “get out of jail free” card. He squandered it by failing to perform the basic requirements of the program. The sentencing court held a hearing to determine the fact of Rogers’ termination, and believed it warranted an activation of the full original sentence. This decision is entitled to great deference from appellate courts. As long as decision is not arbitrary or capricious, it is left to the discretion of the trial court. This rule was explained in State v. Miller, 122 S.C. 468, 115 S.E. 742, 745 (1923):

[T]he authority of the court of general sessions to revoke such suspension of sentence may not be capriciously or arbitrarily exercised, but should always be predicated upon an evidentiary showing of fact tending to establish violation of the conditions. Since, however, this court's authority to review the findings of a lower court upon such an issue is confined to the correction of errors of law, unless it appears that the action of the circuit court was influenced or controlled by some erroneous view of the law, or was wholly without evidence to support it (a judicial determination wholly without a supporting basis of fact being error of law), or amounted to a manifest abuse of discretion, a finding of fact by the court of general sessions as to a breach of the conditions of a suspended sentence is final.

The facts of this case support the trial judge's decision. Accordingly, this Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on counsel of record for the Appellant by electronic mail to the address listed for counsel in AIS, and by depositing one copy of the same in the United States mail, postage prepaid, addressed to Victor R. Seeger, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.
This 20th day of April, 2020.



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From: Anne Mueller
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Cc: [Josh Edwards](mailto:Josh.Edwards@scag.gov); [William Blitch \(wblitch@scag.gov\)](mailto:wblitch@scag.gov); [Victim Services](#); [Anne Mueller \(amueller@scag.gov\)](mailto:amueller@scag.gov)
Subject: Rogers Daniel - Initial Brief of Respondent and Designation of Matter - Appellate Case No. 2019-000704
Date: Monday, April 20, 2020 1:54:00 PM
Attachments: [Rogers Daniel - Initial Brief of Respondent and Designation of Matter - Appellate Case No. 2019-000704 \(02260827xD2C78\).PDF](#)
[Rogers Daniel - Cover letter for IBOR \(02260832xD2C78\).PDF](#)

Dear Mr. Seeger:

Attached please find a copy of the Initial Brief of Respondent and Designation of Matter and our cover letter in the above matter. The initial brief will be filed with the court today.

Kindly reply by return email to confirm that you have received this email, the brief and cover letter.

Sincerely,

Anne Mueller

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