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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Honorable L. Casey Manning, Circuit Court Judge
DeAndrea G. Benjamin, Circuit Court Judge
Appellate Case Tracking No. 2020-001018

The State,

Respondent,

vs.

Terrell Denard Knightner

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The circuit court did not err in enforcing an unambiguous and unappealed sentence imposed by the sentencing judge after Appellant's plea, which required Appellant to register on the sex offender registry if he failed to comply with the terms of the sentencing order.

STATEMENT OF THE CASE

On July 20, 2016, the Richland County Grand Jury indicted Appellant on charges of criminal sexual conduct in the third degree. (Indictment; R.1). He appeared before the Honorable L. Casey Manning on December 13, 2016 and entered a plea of guilty to assault and battery in the first degree following a waiver of presentment. Appellant was sentenced to three years incarceration, suspended on service of three years' probation with various requirements. In addition to the standard sentencing sheet, Judge Manning issued a Sentencing Order reflecting his intentions in sentencing Appellant and the requirements of his probation. (Sentencing Sheet; Sentencing Order; R.25-26). As part of the Sentencing Order, Judge Manning required of Appellant:

1. That he must abide by all sex offender conditions;
2. That he be supervised by a sex offender agent;
3. That he not be required to be monitored by GPS;
4. That he is not to be placed on the sex offender registry **unless** there is a violation of these terms;
5. That probation may terminate upon completion of sex offender counseling.

(Sentencing Order; R.26)(emphasis added). Appellant never filed an appeal from the plea or the Sentencing Order.

On August 29, 2018, an arrest warrant was issued for Appellant related to numerous violations of the conditions of his probation, including violations of his Computer and Internet Use Agreement, conditions of his Standard Sex Offender Conditions, and conditions of his Standard Conditions of Supervision. (Probation Arrest Warrant; R.27). The Honorable DeAndrea Benjamin conducted a probation violation hearing and concluded Appellant violated multiple terms of his probation and the Sentencing Order of Judge Manning. As a result, Judge Benjamin revoked sixty

days of Appellant's sentence—to be served on weekends—and ordered he must register as a sex offender. (Order May 31, 2019; R.54).

Thereafter, Appellant filed a Motion to Reconsider on June 7, 2019. Judge Manning and not Judge Benjamin heard the motion to reconsider on June 27, 2019. At no time was the solicitor's office notified, and a probation agent represented the State at the reconsideration hearing. Judge Manning issued an Order granting Appellant's motion to be removed from the sex offender registry without prejudice. (Order dated June 27, 2019; R.64). After receiving the Order, the State—through the Fifth Circuit Solicitor's Office—filed a Motion to Reconsider Judge Manning's Order on July 3, 2019. (State's Motion to Reconsider; R.65).

Judge Manning considered the State's Motion on January 14, 2020. On February 7, 2020, Judge Manning signed an Order granting the State's Motion to Reconsider. He rescinded his prior order and reinstated Judge Benjamin's Order placing Appellant on the sex offender registry based on his violation of conditions. (Order dated February 7, 2020; R.84).

Appellant served a Notice of Appeal on July 20, 2020, stating he did not receive notice of the February Order until July 14, 2020.

STATEMENT OF FACTS

Appellant was originally charged with criminal sexual conduct in the third degree. He ultimately pled guilty to assault and battery in the first degree. (12/13T.3-4; 17; R.5-6; 19). The plea was conditioned on including a requirement of Sex Offender Counseling and an understanding that only if he completed the counseling he would not have to register as a sex offender. (12/13T.11; R.13). The facts presented at the plea indicated Appellant and the victim met on an online dating website and began a relationship which included consensual sex. The victim ended the relationship, but they two remained friends. Appellant invited the victim over to his residence. After hanging out for a little while, she decided to leave. Appellant grabbed her by the arm and asked her not to leave. He was able to turn her around and push her onto the bed. The victim's pants were removed and, even though she tried to get up, Appellant kept her down and sexually assaulted her. (12/13T.15; R.17). In subsequent text messages, Appellant apologized for what he did after he was confronted by the victim. (12/13T.16; R.18).

Judge Manning accepted the plea and sentenced Appellant to three years, suspended on service of three years' probation and Sex Offender Counseling. The probation agent and Appellant's plea counsel indicated a need for a specific sentencing order reflecting the requirements of Appellant's probation. (12/13T.18-19; R.20-21). After colloquy with the plea court about the requirements and need for an order, Appellant's plea counsel indicated he would prepare a sentencing order. (12/13T.20; R.22). A Sentencing Order was attached to the Sentencing Sheet and also directly referenced on the Sentencing Sheet. (Sentencing Order and Sentencing Sheet; R.26; 25).

On August 29, 2018, an arrest warrant was issued for Appellant related to numerous violations of the conditions of his probation, including violations of his Computer and Internet Use

Agreement, conditions of his Standard Sex Offender Conditions, and conditions of his Standard Conditions of Supervision. Specifically, it was alleged he:

[F]ailed to follow the advice and instructions of his agent in that he failed to refrain from accessing the social media site “Snapchat”; failed to refrain from accessing pornographic websites having admitted to watching porn and masturbating as a result; failed to refrain from deleting incriminating information from his phone having admitted to “erasing” things so his agent would not find it; failed to actively participate in Sex Offender Counseling having been terminated on 08/13/2018; failed to refrain from having contact with minors, having confessed on a polygraph examination to having contact with his two minor aged nieces and nephew without prior permission from his supervising agent; failed to comply with the Computer/Internet Use Agreement for Sex Offenders by accessing pornography, using social media and deleting material from his phone; failed to make truthful reports to agents prior to his polygraph examination; failed to pay supervision fees being \$640 in arrears, failed to pay Court Ordered Fines being \$400 in arrears, and has failed to pay his DNA fee being \$230 in arrears.

(Probation Arrest Warrant; R.27). Judge Benjamin conducted a probation violation hearing and concluded he violated his probation as alleged in the arrest warrant, which specifically included his failure to comply with Sex Offender Counseling and the requirements of his sex offender agent. As a result, Judge Benjamin found Appellant was required to register as a sex offender based on the non-discretionary language used by Judge Manning in his Sentencing Order after the original plea. (5/31T.12-13; R.42-43).

ARGUMENT

- I. The circuit court did not err in enforcing an unambiguous and unappealed sentence imposed by the sentencing judge after Appellant's plea, which required Appellant to register on the sex offender registry if he failed to comply with the terms of the sentencing order.**

Appellant contends the circuit court erred in requiring him to register because it was not the sentencing court and because it never made a finding of good cause to require registration under section 23-3-430(D) of the South Carolina Code. The Honorable L. Casey Manning heard and accepted Appellant's guilty plea, and as sentencing judge, properly ordered him to register on the sex offender registry if Appellant failed to comply with the various requirements including counseling and following all requirements of his agent. The Sentencing Order resulting from the plea, written by Appellant's plea counsel, was never appealed and is the law of the case. As a result, once Appellant violated the terms of the Sentencing Order, the Honorable DeAndrea G. Benjamin held a probation revocation hearing and properly required Appellant to register as a sex offender.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). "The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court." State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006). An appellate court will not reverse the trial court's decision unless that court abused its discretion. Id. at 94, 634 S.E.2d at 656.

Merits

Section 23-3-430 of the South Carolina Code requires someone who is convicted or pleads guilty to criminal sexual conduct in the third degree to automatically register on the sex offender registry. S.C. Code Ann. § 23-3-430(C)(3) (Supp. 2020). In this case, Appellant agreed to a plea to assault and battery. As a result, the sex offender registry statute provides: “Upon conviction, . . . guilty plea, . . . of a person of an offense not listed in this article, the presiding judge may order as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the solicitor.” S.C. Code Ann. § 23-3-430(D) (Supp. 2020).

In this case, Judge Manning’s Sentencing Order set forth particular requirements and specifically indicated Appellant “is not to be placed on the sex offender registry **unless** there is a violation of these terms.” (Sentencing Order; R.26)(emphasis added). The presiding judge over the plea found the sex offender registry was warranted if Appellant violated any terms of his probation.¹ This requirement was never appealed or challenged. As a result, whether correct or in error, Judge Manning’s Sentencing Order is the law of the case to be enforced. See Smith v. State,

¹ In his brief, Appellant extensively argues regarding the existence of good cause to place him on the registry, as well as detailing alleged mitigating circumstances. However, any discussion of good cause for the registry should have occurred at the time of sentencing after his plea. Judge Benjamin did not, and could not, make a finding regarding good cause to place Appellant on the Sex Offender Registry because that finding had to be made by Judge Manning as the presiding judge over Appellant’s plea. Judge Manning incorporated his findings into the Sentencing Order issued concurrent with Appellant’s sentencing sheet and found the registration was not warranted **unless** Appellant failed to complete the required terms of his probation. This finding was never challenged, and neither the probation revocation hearing nor this appeal is the proper venue to raise a challenge to Judge Manning’s unappealed sentence. See e.g., State v. Pfeiffer, 427 S.C. 10, 13, 828 S.E.2d 764, 766 (2019) (“In a criminal case, once the term of court ends, the trial court lacks jurisdiction to consider additional matters unless a party files a timely post-trial motion.”); Rule 29, SCRCrimP (“Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.”). As discussed below, Judge Manning’s Sentencing Order merely left the ministerial task of requiring Appellant to register to the judge who determined Appellant had violated one of the terms of the Sentencing Order.

413 S.C. 194, 196, 775 S.E.2d 696, 697 (2015) (explaining an unappealed ruling, whether right or wrong, is the law of the case (quoting Atl. Coast Builders & Contractors, L.L.C. v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)); State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (noting an unchallenged ruling, right or wrong, becomes the law of the case)).

At the probation revocation hearing, Judge Benjamin could not alter Judge Manning's prior Sentencing Order. As our Supreme Court has stated: "It is axiomatic (1) that an order not appealed from is the law of the case, and (2) a Circuit Judge does not have the power to reverse the ruling of another Circuit Judge." Tisdale v. Am. Life Ins. Co., 216 S.C. 10, 13, 56 S.E.2d 580, 581 (1949). The Court has also explained: "The rule is well settled that the prior order of one Circuit Judge may not be modified by the subsequent order of another Circuit Judge, except in cases when the right to do so has been reserved to the succeeding Judge, when it is allowed by rule of court or statute, or when the subsequent order does not alter or substantially affect the ruling or decision represented by the previous order." Dinkins v. Robbins, 203 S.C. 199, 26 S.E.2d 689, 690 (1943); see also Charleston Cty. Dep't of Soc. Servs. v. Father, Stepmother, & Mother, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) ("There is a long-standing rule in this State that one judge of the same court cannot overrule another."); Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."). Nothing allowed Judge Benjamin to alter or amend Judge Manning's mandatory inclusion of Appellant on the Sex Offender Registry when he failed to comply with the requirements set forth by Judge Manning's Sentencing Order. As a result, she did not abuse her discretion in enforcing Judge Manning's clear and unambiguous Sentencing Order.

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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Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Appellant filed December 20, 2021, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 20th day of December, 2021.



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