STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

STATE of SOUTH CAROLINA,

-v-

JOEY CORVELL REID,[1]
Defendant.

IN THE COURT OF GENERAL SESSIONS
WARRANT NO. W-24-20-0153
INDICTMENT NO. 2012-GS-24-1325

ORDER CONCERNING PROBATION VIOLATION

Addy, J.

THIS MATTER CAME BEFORE THE COURT on October 28, 2021 on a probation violation.[2] Mr. Reid was represented by Tristan Shaffer, Esq., the Department of Probation, Pardon, and Parole (hereinafter "PPP") was represented by Octavia Wright, Esq., and the 8th Circuit Solicitor's Office was represented by Solicitor David Stumbo. Having considered the applicable law, the argument of counsel, and the particular facts of this case, the Court finds as follows.

On January 27, 2014, Mr. Reid pled guilty to one (1) count of Assault and Battery, 1st degree, and one (1) count of Attempted Murder. At the plea, he was represented by Carson Henderson, Esq., Solicitor Stumbo represented the State, and Judge Doyet Early presided.[3] Per the sentencing sheets and the recollection of the Solicitor, the plea was negotiated and agreed to by all concerned. The negotiations contemplated Mr. Reid serving a ten (10) year sentence on the assault charge. On the

[1] A.K.A. Joey Corvell Sanders. "Sanders" is how Mr. Reid's name is indexed on the Greenwood public index.
[2] This matter was first scheduled before this jurist on May 24, 2021 and again on July 29, 2021. At those hearings, the Court continued the matter so that Mr. Shaffer could conduct additional research on the effect and nature of an illegal sentence as it relates to a subsequent probation violation. The hearing of May 24, 2021 was very brief because my notes reflect only that I continued the case and retained jurisdiction; in fact, that may have even been handled by way of a bench conference.
[3] Tara Scott was the court reporter for the plea, and coincidentally, she was the court reporter assigned to this judge when the matter came before the Court on both May 24, 2021 and July 29, 2021. Ms. Scott indicated at the July hearing that she may still have record of this plea and could potentially furnish a transcript. The Court suggested that the parties make a request and obtain a transcript in the hopes that it might shed some light on the events surrounding the plea. For whatever reason, no one has done so; therefore, the Court authors this order without the benefit of the January 27, 2014 plea transcript.

attempted murder charge which is the subject of the violation hearing, it was agreed that Mr. Reid would receive a sentence of twenty (20) years consecutive to the ten (10) years active, but the twenty (20) years would be suspended to probation for five (5) years.[4] The Court accepted Mr. Reid's plea, followed the negotiation, and imposed the agreed upon sentence.

Mr. Reid subsequently served his active sentence and was released from SCDC on probation on or about June 29, 2018. Mr. Reid was arrested for attempted murder on July 11, 2019. A subsequent probable cause violation before Judge Hocker resulted in the probation case being ordered continued. Mr. Reid was subsequently acquitted by the trial jury on the attempted murder charge on April 21, 2021.[5] The violation report detailed that Mr. Reid was in violation for changing his address without notifying his agent, failure to pay monetary obligations, and failing to follow the advice and instructions of his agent. The agent recommended a ten (10) year revocation.[6]

No appeal was taken from the plea, no action for post-conviction relief was pursued, and apparently no objection to the suspended nature of the attempted murder sentence was ever made. At the hearing of October 28, 2021, the Solicitor indicated that, at the time of the initial plea, the defense was driving this bargain and that the Solicitor wanted active time of some sort, a strike against Mr. Reid, and the potential for 85% time should a violation subsequently occur, hence the plea to attempted

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[4] At the October 28, 2021 hearing, Solicitor Stumbo indicated that Mr. Reid actually pled to three consecutive assault and battery 1st degree charges and received a thirty (30) year sentence on those charges. The Solicitor's recollection must be in error since no record of a plea to the other two A&B 1st charges can be located although two (2) additional counts of attempted murder were *nol prossed* by the State. Again, a transcript of the proceedings from January 27, 2014 would have been quite helpful.

[5] Ivan Toney, Esq. represented Mr. Reid at trial, and this jurist was the trial judge. On December 14, 2021, Mr. Reid pled guilty after jury selection to a negotiated plea of five (5) years active to Obstruction of Justice, DV 2nd Degree, and Unlawful Neglect of Child. This jurist was also the sentencing judge on these cases. Between the time of the October 28, 2021 hearing and the trial, the Court issued an interim order dismissing the warrant and indicating that this formal order would be forthcoming. As a result, Mr. Reid was released from confinement at the Greenwood Detention Center since he had already made bond on the pending charges to which he pled on December 14, 2021.

[6] The Court notes that a recommended revocation of this magnitude is unusual for the violations alleged. The Court is inclined to believe and does find that the impetus for the initial ten (10) year partial revocation recommendation stems from the attempted murder charges for which Mr. Reid was acquitted on April 21, 2021.

murder.[7]

Counsel for PPP took the position that it is not appropriate for PPP to pass upon the legality or validity of a sentence imposed and further stated that PPP will accept a sentence imposed by the circuit court as valid. The Court agrees with Ms. Wright that PPP does not have an independent duty to verify the propriety of a particular sentence; as an extension of the court, probation agents are tasked with merely supervising an offender pursuant to the court's direction and PPP's internal guidelines.

Counsel for Mr. Reid argued that the sentence is illegal, and pursuant to language in State v. Lee,[8] the fact that a particular sentence was illegal may be used as a defense to a probation violation. Although Mr. Shaffer essentially conceded that Mr. Reid certainly benefitted from the suspended sentence, he argued that the illegal nature of the sentence should still result in a dismissal of the probation violation per *Lee*.

ISSUES PRESENTED

To what extent may or should a trial court enforce a negotiated sentence, which was illegal at its inception but which inured to the defendant's benefit, by way of a probation violation? And, to the extent that a court should not enforce an illegal sentence as a matter of public policy, what is the remedy?

LEGAL ANALYSIS

Section 16-3-29 defines the offense of Attempted Murder; it clearly and unambiguously states "A sentence imposed pursuant to this section may not be suspended nor may probation be granted." Ergo, the sentence which the parties agreed to and which the court imposed is contrary to statute, but it clearly benefits Mr. Reid in that he served no active, 85% time on this charge as a result of the plea.

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[7] The same result could have been achieved had the parties agreed to a guilty plea to ABHAN, an offense which can be suspended under the law; however, attempted murder and ABHAN are obviously treated differently under the recidivist provisions of Section 17-25-45. The Court also notes that Carson Henderson, Mr. Reid's attorney for the plea, was not present at the hearing of October 28, 2021 to offer his recollection of the events surrounding the plea.

[8] 350 S.C. 125, 564 S.E. 2d 372 (S.C. App. 2002).

Plea bargains and enforcement of any negotiated pleas are governed by contract law. *See* Reed v. Becka, 333 S.C. 676, 686, 511 S.E.2d 396, 401 (Ct. App. 1999); United States v. Ringling, 988 F.2d 504, 505 (4th Cir. 1993). That a court is without power to enforce an illegal contract is axiomatic, as such contracts are void as against public policy. *See* Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866-67 (Ct. App. 2002); Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 277, 437 S.E.2d 168, 170 (Ct. App. 1993). The power of a court to impose a particular sentence is wholly controlled by the statutory penalty provisions as enacted by the South Carolina General Assembly, and the trial court has broad discretion to sentence within the statutory limits enacted. In re M.B.H., 387 S.C. 323, 692 S.E.2d 541 (2010). It is not the providence of a court to question the wisdom of the General Assembly when it has spoken unequivocally. *See* State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011). The Circuit Court may be a court of general jurisdiction, but its authority is limited by the South Carolina Constitution and the powers granted to it by the General Assembly. State v. De La Cruz, 302 S.C. 13, 15–16, 393 S.E.2d 184, 186 (1990).

South Carolina case law offers some degree of guidance on this issue. In State v. Lee, 350 S.C. 125, 132-33, 564 S.E.2d 372, 376 (S.C. App. 2002), Lee maintained that the legality of his sentence implicated the court's subject matter jurisdiction. In rejecting his assertion, the Court held "[T]he statutory authority of the sentencing court to issue the underlying sentence could have been challenged in a motion to reconsider the sentence, on direct appeal, or *as a defense to the probation revocation proceedings*." (emphasis supplied) *Id.* The Court in *Lee* further held that, because no motion to reconsider was filed by any party and no appeal was taken, the underlying sentence was the law of the case. *Id.*

Justice Few's dissent in State v. Blakney, 410 S.C. 244, 254, 763 S.E.2d 622, 628 (Ct. App. 2014) is also instructive. In discussing Justice Pleicones' dissent in Talley v. State, 371 S.C. 535, 640

S.E.2d 878 (2007), Justice Few states "[T]he suspension of a sentence is not effective when the law forbids the suspension." In footnote 11, Justice Few correctly states "Our supreme court has not held that a trial court's partial suspension of a sentence is effective even when the court has no power to suspend the sentence." Of course, the majority in *Blakney* held that, "because the State never sought to correct [the] error," the suspension of Blakney's sentence was the law of the case. 410 S.C. at 251, 763 S.E.2d at 626.

Although instructive, *Lee* and *Blakney* are not particularly helpful. *Lee* concerned the issue of whether the sentencing judge could legally order that probationary supervision coincide with supervision while on parole. *Blakney* concerned the extent to which community supervision violations are chargeable against the original unsuspended portion of his sentence.[9] Other cases decided by our court offer similarly limited guidance. In State v. Plumer, 433 S.C. 300, 857 S.E.2d 796 (2021), the Supreme Court vacated the "erroneous" sentence imposed on the firearm charge because the defendant received a life sentence on the attempted murder charge. 433 S.C. at 351, 857 S.E.2d at 803. However, the Court's basis for doing so centered upon judicial economy and had no ultimate effect on Plumer's actual sentence. Similarly, in State v. Jones,[10] the Court of Appeals found that the trial court lacked authority to suspend the mandatory minimum period of incarceration for trafficking and remanded the matter back to the trial court for resentencing. Again, however, none of these cases address the precise issue of the extent to which a trial court may, or should, activate a suspended sentence for an offense, the penalty for which cannot be suspended.

Furthermore, to the extent that *Lee* stands for the proposition that the underlying illegality of a sentence may be argued as a defense to a probation revocation, it leaves unanswered the obvious question: What next? If such a defense is successful in preventing a probation violation, should the

[9] Unlike the dissent, the majority in *Blakney* never truly addressed the impropriety of the sentencing court's suspension of the mandatory minimum fifteen (15) year sentence for Burglary, 1st degree.
[10] 2018 WL 2979790, 2018-UP-264 (S.C. App., June 13, 2018)

defendant remain on probation despite the fact that he would suffer no penalty for any subsequent violations? If an illegal sentence benefits a defendant and becomes the law of the case absent direct appeal, to what extent would our courts be parties to a direct contravention of the law?[10] If the Court merely accepts Mr. Reid's sentence as the law of the case, to what extent is this Court encouraging similar, improper negotiations to take place in the future? Because South Carolina law is silent on these questions, the Court has looked to our sister states for guidance.

Alabama treats such an error as jurisdictional, and a sentence which is unauthorized by statute is void. Ex parte McGowan, 2021WL 1805703 (Ala. 2021). At first blush, the facts in McGowan closely track the present case. McGowan received a split sentence which was not authorized by statute. The State subsequently sought to revoke the probationary portion of the sentence due to his being charged with new felonies. Following precedent holding that a trial court lacked subject matter jurisdiction to revoke probation where the underlying sentence benefiting the defendant was contrary to law, the Alabama Supreme Court found that the proper procedure was for the trial court to conduct another sentencing hearing. Although the facts in *McGowan* are similar to Mr. Reid's situation, Alabama law differs in that an illegal sentence implicates subject matter jurisdiction. Per South Carolina jurisprudence, an illegally excessive sentence does not implicate subject matter jurisdiction, and such cases are properly addressed through PCR. State v. Johnson, 333 S.C. 459, 510 S.E.2d 423 (1999).[11]

The courts of Texas would likely apply estoppel by judgment to the present case. In Deen v. State, 509 S.W.3d 345 (Tex. 2019), Deen received a sentence which was more lenient than permitted by statute. After serving that sentence, he was subsequently convicted of a new charge which was enhanced due to his prior conviction. In dismissing his challenge to the legality of the prior conviction

[10] Obviously, direct appeal is the only avenue by which such an error could be corrected. PCR would not present an option since a court is unlikely to find that a defendant was prejudiced by his attorney obtaining a suspended sentence for a crime which called for mandatory incarceration. *See e.g.* State v. Graves, 822 So.2d 1089 (Miss. 2002)

[11] Again, as discussed in the previous footnote, PCR would not constitute a means by which to remedy an illegally *permissive* sentence.

for enhancement purposes, the Texas court found that Deen was equitably estopped from accepting the benefits of the prior illegally lenient sentence and then arguing that the underlying offense could not be used to enhance a subsequent crime. From a review of Justice Few's dissent in *Blakney*, perhaps judicial estoppel should be applied in Mr. Reid's case. Clearly, Mr. Reid enjoyed the benefits of an illegal probationary sentence on the Attempted Murder charge. However, Mr. Reid only accepted that benefit after also agreeing to serve ten (10) years active as part of a quintessential, negotiated (and illegal) "package deal." More to the point, to say that Mr. Reid benefited from probation and is judicially estopped from arguing application of *Lee* would constitute the Court enforcing a contract which violates South Carolina law. Put bluntly, to apply judicial estoppel, or a "law of the case" analysis for that matter, would condone and encourage wholesale disregard for what statutory law plainly mandates; essentially and as a practical matter, the Court would be saying, "Meh…so the justice system ignored the law…big, hairy deal."

Finally, Florida appears to take a slightly different approach. Although they follow the rule that a person may not contest their conviction if they benefit from an illegal sentence, they may challenge an illegal sentence that exceeds the statutory maximum, essentially applying a theory of estoppel. White v. State, 828 So.2d 491 (2002). In situations where the plea was negotiated and the illegal sentence was to the defendant's detriment, the case is remanded, and the State may either agree to resentencing or withdraw from the negotiated agreement and proceed to trial.[12] *Id.* at 492. Because Mr. Reid's negotiated sentence represented a "package deal" whereby he was incarcerated for a period of time on a legal sentence prior to beginning his illegal probationary sentence, if Florida's rule were applied and the State agreed to resentencing, PCR would then become an available remedy. If the State opted for trial, then any prejudice to Reid would be lessened since he would still have the option of

[12] *White* does not explain exactly why the State gets to control the relief afforded in an illegally negotiated plea situation, especially when the State is a party to the initial, improper sentence. As explained below, the better rule would be to permit a defendant to move to withdraw his plea.

presenting a defense or attempting further negotiations.[14]

SO, WHAT NEXT?

That probation constitutes a matter of grace by the sentencing court is axiomatic. State v. White, 218 S.C. 130, 136, 61 S.E.2d 754, 756 (1950). Similarly, revocation of a probationary sentence is left to the sound discretion of the judge. State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006); S.C. Code Ann. § 24-21-460 (1989). This Court is faced with a situation where the active part of Mr. Reid's negotiated deal was legal, but the suspended portion was illegal. Again, the Court does not have the benefit of the transcript of the initial plea; however, the sentencing court was simply without power to do what it did regardless of the reason for doing it.[15]

Therefore, as it relates to Mr. Reid's probation violation, the Court finds that, pursuant to *Lee* and because the sentence was illegal, Mr. Reid's probation should not be revoked.[16]

Having elected not to revoke his probation, this Court still has the obligation to clarify where Mr. Reid's probationary status stands. At present, Mr. Reid remains convicted of attempted murder. However, if this Court is correct in its analysis that *Lee* constitutes a means by which Mr. Reid may avoid any ramifications for future probation violations, his sentence is illusory and of no practical effect.

The Court is also genuinely concerned with the fact that the court of general sessions, implicitly or mistakenly, endorsed and imposed a sentence which violates the law. As Justice Few correctly observed, a court is without power to do that which the law prohibits it from doing. More troubling,

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[14] Presuming that a defendant in Mr. Reid's situation was ultimately convicted, the sentencing court could, of course, take into account the fact that he had previously served a ten (10) year sentence as part of the initial package deal.

[15] Nothing in this Order should be read as suggesting anything nefarious on behalf of any party to the plea or the sentencing judge. Regardless, the fact remains that the sentence was not permitted under the law.

[16] As an additional sustaining ground for this ruling, even if this Court were to apply an estoppel or law of the case analysis, the Court would still not revoke Mr. Reid's probation. Again, he was acquitted on the underlying charges which precipitated issuance of the probable cause warrant. At most, the Court would allow for, and does so find, the substantial time Mr. Reid served in jail satisfies the stated violations of moving without notifying his agent and being behind on his monetary obligations.

per the analysis of the South Carolina cases above, only in those situations where the state undertakes to appeal an illegal sentence could such an impermissibly lenient sentence be corrected. To entrust the state with sole responsibility to *enforce* the law vigorously and correctly is to ignore the court's inherent obligation to *apply* the law decorously and properly. Put simply, to afford the state sole power, by rule of procedure or preservation, to correct an illegal sentence under a law of the case theory is to invite the very mischief which threatens the integrity of the bench and erodes public trust in our judiciary.[17]

Similarly, under the facts as presented here, applying an estoppel theory is improper and invites the same mischief regardless of whether the sentence was of benefit to a defendant. Rather than estoppel, the Court is inclined to borrow from another equitable maxim: *In pari delicto potior est condition defendentis*. South Carolina jurisprudence certainly supports this maxim's public policy rationales in the civil context, and this Court sees every reason the same rule should apply in the criminal context especially because society's protection and citizens' liberty interests are both implicated by a court doing what it simply may not. *See* Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 437 S.E.2d 168 (Ct. App. 1993); Bateman Eichler, Hill Richards, Inc. v. Berner, 472 U.S. 299, 306 (1985).

Accordingly, the Court finds and orders as follows.[18] Because the sentencing court was within its jurisdiction and authority to accept Mr. Reid's plea, Mr. Reid's underlying plea to and conviction for attempted murder stands. However, Mr. Reid's sentence is vacated, and it is ordered that he be resentenced. At the resentencing, Mr. Reid may move to withdraw his plea if he so desires. Should he elect to withdraw his plea and the Court permits him to do so, the State and Mr. Reid are free to renew

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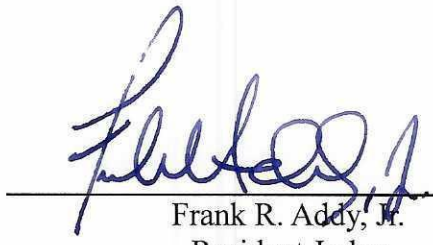
[17] This constitutes both a real and a practical concern. This jurist has been asked on numerous occasions to accept a plea to the offense of false imprisonment. Of course, such an offense no longer exists. State v. Bernsten, 295 S.C. 52, 367 S.E.2d 152 (1988). However, that has not stopped the parties from judge shopping in the hopes of finding someone who will accept such a plea. Just as a court may not accept a plea for conduct which does not violate the law, a court may not impose a sentence which is in contravention of the law.

[18] The Court is well aware that none of the parties involved in this matter requested the relief which the Court is ordering. Additionally, this jurist is not attempting to overrule another judge. Rather, the Court is simply doing what this Court feels must be done due to the above concerns and trusts that the appellate courts will provide further guidance on these issues.

their negotiations or take the matter to trial.[19] Clearly, any future sentencing judge may take into account the fact that the prior negotiations involved Mr. Reid serving an active period of incarceration on an otherwise legally imposed sentence.

WHEREFORE, it is ordered that Mr. Reid's underlying conviction for attempted murder remains valid and a new sentencing hearing shall take place pursuant to the terms and conditions of this Order.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Resident Judge

December 31, 2021
Greenwood, South Carolina

[19] The Court is also aware that PPP intends to appeal the Court's order, and as explained previously, Mr. Reid is currently serving an active five (5) year sentence. Should Mr. Reid be released prior to any appeal being decided, the Court orders that he shall remain under the supervision of PPP and abide by all the terms and conditions of his prior probation case. Any violation of the terms of his probation may be addressed by a citation, and the Court may find him in contempt for any willful failure to abide by said provisions. The remainder of Mr. Reid's probationary period is ordered tolled while he serves his five (5) year sentence.