

1977 S.C. Op. Atty. Gen. 293 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-369, 1977 WL 24707

Office of the Attorney General

State of South Carolina

Opinion No. 77-369

November 16, 1977

*1 TO: Clyde K. Laney, Jr.
Assistant Public Defender

QUESTION:

After the adjournment of a term of court at which a defendant was sentenced and placed on probation, does a circuit or county judge have the power to terminate that defendant's probation prior to its expiration date?

STATUTES AND CASES:

Section 24–21–410, Code of Laws of South Carolina, 1976;

[State v. Best](#), 257 S.C. 361, 186 S.E.2d 272 (1972);

[State v. Richland County Court](#), 261 S.C. 478, 200 S.E.2d 843.

DISCUSSION:

Under § 24–21–410, Code of Laws of South Carolina, 1976, ‘the judge of any court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation . . .’ This power to suspend sentence has to be exercised at the time of their imposition or during the same term of court. After completion of the term of court or after ‘the trial judge has completed his service in a circuit, the previous sentence should not be altered, amended, modified, or changed.’ [State v. Best](#), 257 S.C. 361, 373, 186 S.E.2d 272, 277 (1972).

[State v. Best](#), does not address itself directly to the question, but the court's rationale in that case applies with equal force to termination of probation prior to the normal expiration date. The court there foresaw certain dangers inherent in post trial sentence modification. For if the practice was approved, trial judges would be subjected “to private appeals or application by counsel or friends of one convicted . . .” [quoting [United States v. Smith](#), 331 U.S. 469 (1946)]. Such a practice would make of the judge a perpetual parole board.’ [State v. Best](#), 257 S.C. 361, 373–74, 186 S.E.2d 272, 278 (1972).

The proceedings and trial must close at some point. Otherwise, the orderly administration of justice is fatally undermined. This was recognized by the South Carolina Supreme Court when it said that both the defendants ‘and the State were entitled to have the sentences determined and finalized at the term of court.’ [State v. Best](#), 257 S.C. 361, 374, 186 S.E.2d 272, 278 (1972).

The issues raised in [State v. Best](#) were confronted again in [State v. Richland County Court](#), 261 S.C. 478, 200 S.E.2d 843 (1973). The result reached was the same. [State v. Richland County Court](#) involved the modification of the sentences of four (4) defendants. One of the defendants in that case was on probation. Eight (8) months after sentencing the defendant, the Circuit Judge amended the sentence so as to shorten the period of probation by more than one (1) year. The modification was held to be a nullity.

Since the action was taken without notice to the State, it was voidable on that ground alone. But, the court went on to say that ‘[i]n holding that sentences were improperly amended because the State was not given an opportunity to be heard, we do not intend to convey the thought that jurisdiction can be conferred by giving notice to the State . . .’ [State v. Richland County Court](#), 261 S.C. 478, 485, 200 S.E.2d 843, 845–46 (1973). And ‘[u]nder our judicial system the presiding judge in the Circuit Court loses jurisdiction with the adjournment of the term.’ [State v. Best](#), 257 S.C. 361, 368, 186 S.E.2d 272, 275 (1972). As the court said, ‘[t]he issues presented by the instant cases were discussed at length in our decision in [State v. Best](#), supra. The reasoning applied therein is equally applicable here . . .’ [State v. Richland County Court](#), 261 S.C. 478, 485, 200 S.E.2d 843, 846 (1973).

CONCLUSION:

*2 Once a defendant has been properly sentenced and placed on probation, a circuit or county court judge is without power to terminate that defendant's probation prior to its expiration date after the end of the term of court at which the sentence is imposed.

Joseph R. Barker
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