COURT OF APPEALS OF VIRGINIA

Record No. 1596-25-1

MICHAEL ANTHONY POWELL
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Beales, Lorish and Duffan

Opinion Issued October 13, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF SUFFOLK
Westbrook J. Parker, Judge Designate

(Sean E. Harris, Senior Trial Attorney; Office of the Public Defender, on brief), for appellant.

(Jason S. Miyares,[1] Attorney General; C. David Sands, III, Senior Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION
PER CURIAM

The Circuit Court of the City of Suffolk found Michael Anthony Powell in violation of the conditions of his probation. The circuit court revoked the remaining nine years and six months of his suspended sentence and resuspended all but one year and six months. On appeal, Powell argues that the circuit court erred by finding it had the authority to revoke his suspended sentence. He also argues that he did not receive notice of the revocation proceeding as required by Code § 19.2-306(B).[2]

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

[1] Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

[2] Having examined the briefs and the record in this case, the panel unanimously agrees that oral argument is unnecessary because "the dispositive issue or issues have been authoritatively decided, and the appellant has not argued that the case law should be overturned, extended, modified, or reversed." *See* Code § 17.1-403(ii)(b); Rule 5A:27(b).

BACKGROUND[3]

On June 8, 2007, upon his guilty pleas, the circuit court convicted Powell of three counts of statutory burglary in violation of Code § 18.2-91. On each count, the circuit court sentenced Powell to 5 years of incarceration, with 3 years and 2 months suspended, to run consecutively, for a total of 15 years of incarceration with 9 years and 6 months suspended. All three sentencing orders included the following language:

> The [c]ourt SUSPENDS THREE (3) YEARS AND TWO (2) MONTHS of the FIVE (5) YEAR sentence, for a period of FIVE (5) YEARS, upon the following conditions:
>
> Good Behavior. The defendant shall be of good behavior for FIVE (5) YEARS from the defendant's release from confinement.
>
> Supervised Probation. The defendant is placed on probation on release from incarceration, under the supervision of a Probation Officer for FIVE (5) YEARS, or unless sooner released by the court or by the probation officer.

Powell was released from incarceration on March 28, 2022, and placed on supervised probation in North Carolina.[4] On August 31, 2023, Powell was arrested in Northampton, North Carolina for possession of a firearm by a convicted felon and felony obstruction of justice. Powell pled guilty to felony obstruction of justice on April 22, 2024, and the firearm charge was dismissed. On May 24, 2024, Powell's probation officer filed a major violation report (MVR) with the circuit court, advising that Powell violated Condition 1 of his probation ("I will obey all Federal, State, and local laws and ordinances"). The circuit court issued a capias on June 6, 2024

[3] "On appeal, '[w]e "view the evidence received at [a] revocation hearing in the light most favorable to the Commonwealth, as the prevailing party, including all reasonable and legitimate inferences that may properly be drawn from it."'" *Green v. Commonwealth*, 75 Va. App. 69, 76 (2022) (alterations in original) (quoting *Johnson v. Commonwealth*, 296 Va. 266, 274 (2018)).

[4] Between 2007 and 2022, Powell was also incarcerated for other offenses committed in Southampton County.

to arrest Powell for the probation violation, and Powell was arrested and provided notice of the probation violation on July 30, 2024.

On September 26, 2024, Powell's probation officer filed an addendum to the MVR, advising that Powell was charged with burglary, grand larceny, and destruction of property in Greensville County. Powell's probation officer filed a second addendum on April 25, 2025, stating that Powell had been convicted of burglary and grand larceny and that the destruction of property charge was nolle prossed.

Powell moved to dismiss the probation violations, arguing that the circuit court lacked active jurisdiction over the revocation proceedings. Powell asserted that under the 2021 amendments to Code § 19.2-306(C), his five-year period of suspension of his suspended sentence ended in 2012. Powell further argued that, because his period of suspension of the suspended sentence ended in 2012, he did not properly receive notice of the revocation proceeding as required by Code § 19.2-306(B).

After a hearing, the circuit court denied Powell's motion to dismiss and found that the terms of the original sentencing orders were "clear." The circuit court found Powell in violation of the terms of his probation and revoked the remaining nine years and six months of his suspended sentence and resuspended eight years on the condition that he be of good behavior for a period of three years upon his release from incarceration. Powell now appeals to this Court.

ANALYSIS

"A trial court's decision to revoke a suspended sentence 'will not be reversed unless there is a clear showing of abuse of discretion.'" *Hamilton v. Commonwealth*, 79 Va. App. 699, 705 (2024) (quoting *Jacobs v. Commonwealth*, 61 Va. App. 529, 535 (2013)). "However, '[t]he question of the authority of the trial court to revoke appellant's suspended sentence is one of

statutory interpretation and presents a pure question of law, which this Court reviews *de novo*.'" *Id.* (alteration in original) (quoting *Hodgins v. Commonwealth*, 61 Va. App. 102, 107 (2012)).

I. The Period of Suspension of Powell's Suspended Sentence

"After conviction . . . the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine." Code § 19.2-303. Under Code §§ 19.2-303 and -303.1, the court "may fix" a period of probation or a period of suspension "for up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned."

"[I]n any case in which the court has suspended the execution or imposition of sentence, the court may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any time within the probation period, or within the period of suspension fixed by the court." Code § 19.2-306(A). "If neither a probation period nor a period of suspension was fixed by the court, then the court may revoke the suspension for any cause the court deems sufficient that occurred within the maximum period for which the defendant might originally have been sentenced to be imprisoned." *Id.* In 2021, the General Assembly amended Code § 19.2-306(C) to provide that "[t]he court shall measure the period of any suspension of sentence from the date of the entry of the original sentencing order." 2021 Va. Acts Spec. Sess. I ch. 538.

Relying on the amendments to Code § 19.2-306(C), Powell argues that his five-year period of suspension began when he was sentenced on June 8, 2007, and so the circuit court lost jurisdiction over his probation and good behavior violations in 2012. He asks this Court to find that his period of suspension of his suspended sentence should have been measured from the date of the original sentencing order, as we did in *Hamilton*. 79 Va. App. at 706.

In *Lee v. Commonwealth*, 71 Va. App. 205, 207 (2019), the circuit court's January 2014 sentencing orders conditioned Lee's three-year period of suspension of his suspended sentence on his three-year period of good behavior and probation after his release from incarceration. After his release in April 2016, Lee violated the conditions of his probation in September 2017. *Id.* Relying on this Court's finding in *Green v. Commonwealth*, 69 Va. App. 99, 104 (2018), that a period of suspension begins "from the moment of its pronouncement," Lee asserted that the circuit court lacked jurisdiction over his probation violation because his period of suspension began in January 2014 and ended January 2017. *Lee*, 71 Va. App. at 207-08, 210. In rejecting Lee's argument, we noted that in *Green*, "the trial court's sentencing order did not include language specifying when the period of suspension was to begin." *Id.* at 211. By contrast, Lee's sentencing order clearly conditioned the period of suspension of his suspended sentence to begin upon his release from incarceration. *Id.* Thus, this Court held that the period of suspension had not expired in January 2017 and so the circuit court retained the authority to revoke his suspended sentence. *Id.* at 213.

Like the sentencing orders in *Lee*, Powell's sentencing orders conditioned his period of suspension of his suspended sentence on periods of probation and good behavior—both of which began upon his release from incarceration. *See id.* at 207. Indeed, the relevant portions of Powell's sentencing orders are identical to those in *Lee*, apart from the length of the period of suspension—five years in this case, and three years in *Lee*. *See id.* As this Court stated in *Lee*, "we turn to the language of the order to determine the original sentencing judge's intent." *Id.* at 213 (quoting *Wood v. Commonwealth*, 12 Va. App. 1257, 1260 (1991)). Here, as in *Lee*, the language of the sentencing orders makes clear that it was the circuit court's intent that the period of suspension of Powell's suspended sentence began running upon his "release from incarceration." *See id.*

Contrary to Powell's contentions, neither the holdings of *Green* nor *Hamilton* control this case. In *Green*, this Court held that the period of suspension of a suspended sentence "began from the moment of its pronouncement" when the circuit court's order did not specify when the period of suspension began. 69 Va. App. at 104. Here, like in *Lee*, the sentencing orders clearly state that the period of suspension of Powell's suspended sentence began upon his "release from incarceration." *See* 71 Va. App. at 213. Thus, *Green* is clearly distinguishable from this case. *See* 69 Va. App. at 104.

Powell correctly points out that in *Hamilton*, this Court stated that the period of suspension of a suspended sentence must be measured "from the date of the entry of the original sentencing order" in accordance with Code § 19.2-306(C). 79 Va. App. at 706. However, this argument fails to recognize the fact that the Supreme Court has held that the 2021 amendments to Code § 19.2-306(C) do not apply retroactively. *See Johnson-Bey v. Commonwealth,* 303 Va. 386, 393 (2024); *see also Hannah v. Commonwealth*, 303 Va. 106, 122 (2024) ("Code § 19.2-306(C) was reenacted effective July 1, 2021, and therefore is presumed to operative prospectively, applying only to conduct occurring after that date."). Therefore, "[f]or criminal sentencing, courts should apply the penalty in existence at the time of the commission of the underlying offense." *Id.* The sentencing orders in this case were entered in 2007, and so the version of Code § 19.2-306(C) in effect at the time, which did not require that the period of suspension begin upon pronouncement of the sentence, must be applied. *See* 2021 Va. Acts Spec. Sess. I ch. 538. Because the 2021 amendments to Code § 19.2-306(C) are inapplicable to this case, the circuit court had the authority to condition the period of suspension of Powell's suspended sentence to begin upon his release from incarceration.[5] *See Lee*, 71 Va. App. at 211.

[5] Even if the new version of Code § 19.2-306(C) were in effect at the time Powell was sentenced, Powell's argument would fail. Code § 19.2-306(C) does not require a trial court to begin measuring the length of a suspended sentence from the time the sentence was imposed. To

In short, because Powell was released from incarceration in 2022 and violated his good behavior and probation requirements in 2023, and because the five-year period of suspension of Powell's suspended sentence began running upon his release from incarceration, the circuit court possessed active jurisdiction to revoke his suspended sentence.

II. Notice of the Revocation Hearing

Under Code § 19.2-306(B):

> The court may not conduct a hearing to revoke the suspension of sentence unless the court issues process to notify the accused or to compel his appearance before the court within 90 days of receiving notice of the alleged violation or within one year after the expiration of the period of probation or the period of suspension, whichever is sooner . . . .

Again asserting that the period of suspension of Powell's suspended sentence expired in 2012, Powell argues that he did not receive proper notice of the revocation proceeding as required by Code § 19.2-306(B). However, the record shows that the circuit court issued a capias for Powell's arrest within two weeks of the MVR notifying the circuit court of the violation and thus satisfied the 90-day requirement in Code § 19.2-306(B). In addition, as noted *supra*, the five-year period of suspension did not begin to run until 2022 and therefore had not even expired at the time of the revocation hearing.

CONCLUSION

For all of the foregoing reasons, we affirm the circuit court's judgment.

Affirmed.

---

the contrary, it sets an outer limit on how long time can be suspended for—"a period up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, less any time already served . . . ." Statutory burglary is punishable by up to twenty years of incarceration. Code § 18.2-91. Even if measured from his sentencing in 2007, the trial court could have imposed a suspended sentence that would have reached at least through 2027, if there had *only been one* conviction of statutory burglary. In this case, however, there were multiple convictions of statutory burglary—with sentences imposed consecutively.