

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court building in the City of Richmond on Thursday, the 18th day of December, 2025.

Present: All the Justices.

COMMONWEALTH OF VIRGINIA,

APPELLANT,

against

Record No. 241105

Court of Appeals No. 1132-22-1

RASHEEM WATTS,

APPELLEE.

UPON AN APPEAL FROM A
JUDGMENT RENDERED BY THE
COURT OF APPEALS OF VIRGINIA.

On July 14, 2022, the Circuit Court of the City of Suffolk revoked Rasheem Watts' suspended sentences based on Watts' failure to comply with certain gang-related probation conditions. The Court of Appeals, sitting en banc, reversed the circuit court's judgment and remanded the case to the circuit court for further proceedings. Upon review, the Court vacates the judgment of the Court of Appeals and stays these proceedings to allow the circuit court to consider the entry of nunc pro tunc orders addressing the gang-related probation conditions at issue.

I.

In 2016, Watts was convicted of possession of a firearm by a felon, in violation of Code § 18.2-308.2, and malicious wounding, in violation of Code § 18.2-51. The circuit court sentenced Watts to five years of incarceration for the possession of a firearm conviction, with three years suspended, and six years of incarceration for the malicious wounding conviction, with four years and six months suspended. The circuit court placed Watts on supervised

probation and directed him to “comply with all the rules and requirements set by the probation officer.”

After Watts was released from incarceration, Watts’ probation officer required him to comply with a list of gang-related probation conditions. Watts, however, failed to comply with these conditions. Watts’ probation officer filed a major violation report based on Watts’ conduct.

The circuit court held a hearing concerning the matter on September 8, 2021. At the hearing, the circuit court focused on the gang-related probation conditions. The circuit court emphasized that Watts must comply with the gang-related probation conditions. The circuit court also clarified that the gang-related probation conditions should be treated as “special conditions” of Watts’ probation. The circuit court explained:

I . . . specifically incorporate as a special condition of your probation all the gang-related prohibitions that were in previous violation on your previous order that probation and parole puts on you. And so there’s no confusion this is a special condition of probation. All those conditions that they put on you are going to be part and parcel of the order as a special condition of probation.

The circuit court concluded that Watts violated the terms of his probation and revoked Watts’ previously suspended sentences, resuspending all but six months of each sentence.

On September 14, 2021, the circuit court entered written orders revoking Watts’ suspended sentences (the “first revocation orders”). The orders placed Watts on supervised probation “under the same terms and conditions as previously ordered.” The orders also required Watts to “comply with all the rules and requirements set by the probation officer.” The orders, however, did not expressly reference the gang-related probation conditions.

After Watts was released from incarceration, Watts' probation officer required him to comply with the same gang-related probation conditions. Watts again failed to comply with the conditions.

The circuit court held a hearing concerning the new probation violations on July 8, 2022. Watts conceded that he had violated the conditions of his probation, including the gang-related conditions. Nonetheless, Watts asserted that he had only committed technical violations of probation under Code § 19.2-306.1. Watts claimed that the first revocation orders did not impose the gang-related probation conditions. Therefore, Watts argued that he violated the instructions of his probation officer* rather than any special condition imposed by the circuit court.

Although the circuit court acknowledged that the gang-related probation conditions were not expressly set forth in the first revocation orders, the circuit court noted that the conditions were orally imposed as special conditions of Watts' probation. The circuit court concluded that Watts violated these special conditions and revoked Watts' suspended sentences, imposing a three-year term of active incarceration.

A divided panel of the Court of Appeals reversed the circuit court's judgment and remanded the case to the circuit court for resentencing. *Watts v. Commonwealth*, No. 1132-22-1, 2024 Va. App. LEXIS 152, at *29 (Va. Ct. App. 2024). The Court of Appeals subsequently granted the Commonwealth's petition for a rehearing en banc. In a split decision, the Court of Appeals reversed the circuit court's judgment and remanded the case for further proceedings. *Watts v. Commonwealth*, 82 Va. App. 428, 470 (2024).

* In pertinent part, Code § 19.2-306.1 states: "For the purposes of this section, 'technical violation' means a violation based on the probationer's failure to . . . follow the instructions of the probation officer." See Code § 19.2-306.1(A)(v).

II.

Code § 8.01-428(B) addresses the correction of clerical mistakes in court orders. This provision states:

Clerical mistakes in all judgments or other parts of the record and errors therein arising from oversight or from an inadvertent omission may be corrected by the court at any time on its own initiative or upon the motion of any party and after such notice, as the court may order. During the pendency of an appeal, such mistakes may be corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending such mistakes may be corrected with leave of the appellate court.

Code § 8.01-428(B).

“[T]he trial court has the inherent power, independent of statutory authority, to correct errors in the record so as to cause its acts and proceedings to be set forth correctly.” *Davis v. Mullins*, 251 Va. 141, 149 (1996). “A court has power to make an entry nunc pro tunc, in the exercise of its discretion, to correct the court’s records so that they speak the truth.” *Jefferson v. Commonwealth*, 269 Va. 136, 140 (2005).

When acting nunc pro tunc, the court does not reacquire jurisdiction over the case. Rather, the trial court merely corrects the record by entry of an order nunc pro tunc, under the accepted fiction that the order relates back to the date of the original action of the court “now for then.”

Davis, 251 Va. at 149 (citation omitted).

“[T]he purpose of a nunc pro tunc entry is to correct mistakes of the clerk or other court officials, or to settle defects or omissions in the record so as to make the record show what actually took place.” *Council v. Commonwealth*, 198 Va. 288, 293 (1956). In this context, the “power to amend should not be confounded with the power to create.” *Id.* at 292. “In making such an entry, the court’s power is restricted to placing upon the record evidence of judicial action that actually has been taken.” *Jefferson*, 269 Va. at 140.

In the present case, the circuit court addressed the gang-related probation conditions from the bench during the September 8, 2021, revocation hearing. Significantly, the circuit court explained that the gang-related conditions were incorporated as “special conditions” of Watts’ probation. The circuit court also explained that those conditions were to be “part and parcel” of the court’s orders. Despite the circuit court’s explicit directions, the gang-related probation conditions were not expressly set forth in the first revocation orders.

Under these circumstances, the Court vacates the judgment of the Court of Appeals and stays the present appellate proceedings. In light of the circuit court’s statements during the September 8, 2021, revocation hearing, the Court directs the circuit court to consider the entry of nunc pro tunc orders incorporating the gang-related probation conditions into the first revocation orders. After the circuit court enters or declines to enter the nunc pro tunc orders, the Court will lift the stay and take further action in these proceedings. The parties are directed to promptly advise the Court of the circuit court’s decision.

This order shall be certified to the Court of Appeals and the Circuit Court of the City of Suffolk.

CHIEF JUSTICE GOODWYN, dissenting.

I respectfully dissent from this Order of the Court. For the reasons stated therein, I would affirm the plurality opinion of the Court of Appeals, *Watts v. Commonwealth*, 82 Va. App. 428 (2024).

A Copy,

Teste:


Clerk