

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 48-2008-CF-13331-AO

STATE OF FLORIDA,

Plaintiff,

v.

CASEY MARIE ANTHONY,

Defendant.

**ORDER ON DEFENDANT'S EMERGENCY MOTION TO QUASH, VACATE,
AND
SET ASIDE COURT'S ORDER**

This matter came before the Court on August 6, 2011, on the Defendant's request to quash, vacate, and set aside the amended order of the Honorable Stan Strickland. The amended Order was entered by Judge Strickland on July 29, 2011, *nunc pro tunc* to January 25, 2010. The defense contends that Judge Strickland lacked jurisdiction to enter the Order and that the Order violated the Defendant's right to due process of law and violated the double jeopardy provision of the Constitution.

Facts of the Case

On January 25, 2010, the Defendant, Casey Marie Anthony, with her counsel, Jose Baez, tendered a plea to the Court to all 13 counts contained in the Information. After the Defendant's plea was accepted, Mr. Baez asked the Court to withhold adjudication of guilt on all counts, give

her credit for time served, and “due to statutory requirements give her a short probationary period of approximately one year following, and any credit for time served that the court would give.”

Assistant State Attorney Frank George recommended to the Court that the Defendant should be adjudicated guilty on all 13 counts and be sentenced to a straight incarcerative sentence with no probation to follow. Mr. George said the following concerning placing the Defendant on probation:

There's no earthly point in putting Miss Anthony on probation, which, in effect, is community supervision. She is being supervised 24 hours a day. She is in jail. And she will be so for the very foreseeable future, and maybe for the rest of her life.

The Court adjudged the Defendant guilty of counts 1, 2, 3, 6, 9, and 12 and sentenced her to time served of 412 days. No probation was ordered on those counts.

The Court withheld adjudication of guilt as to counts 4, 5, 7, 8, 10, 11, and 13 and sentenced her to one year supervised probation. The Defendant was also sentenced on those counts to 412 days in jail with credit for 412 days.

Concerning when the probationary sentence was to begin, Judge Strickland, in his oral pronouncement, stated:

So what I'm gonna do on those counts that I'm ordering probation and giving her withholds - - again, that's Counts 5, 8, 11 - - three of the four fraudulent personal ID counts - - there's gonna be a withhold, followed by a **year of supervised probation, once released** - - again, that's an issue here

(emphasis added).

It is clear the Court stated the Defendant's probation was to start once she was released from jail. Once the Defendant received a sentence of time served of 412 days on counts 1, 2, 3, 6, 9, and 12, the only reason that kept her in custody was her no bond status in a separate

and distinct case, Case Number 48-2008-CF-15606-AO on the charges of murder in the first degree and other charges contained in the Indictment.

After the Court announced the sentence, the State, through Mr. George, raised the issue concerning the Defendant's probation starting at an indefinite time in the future. The Court replied by saying that it may have to tweak it, but it was unsure how to handle the issue other than the way it was being handled. Judge Strickland specifically indicated:

I may have to tweak it. I've been thinking about this, and I'm not sure how else to do it. I don't know that it's that indefinite, because this is coming up and it will not - - the trial I'm speaking of is coming up within the period that I've got to work with.

....

Since it's within the five years that I've got to work with, I think I'm okay. Tell me if you think - - Mr. George, go ahead.

Mr. George then stated that Assistant State Attorney Jeff Ashton suggested that the Defendant's probation could start that day and the Defendant could do her probation while incarcerated in the Orange County Jail.

Mr. Baez alternatively suggested the problem could be resolved by allowing the Defendant to be released on bail in her other pending case, thus freeing her to start her probation.

In reply to both suggestions, Judge Strickland said, "I'm willing to reconsider and modify the sentence if there's a better way of doing this. I think everybody's goal is the same and - - Mr. Baez, anything else from you on that," to which Mr. Baez stated no.

The Court's final remark about the sentence before advising the Defendant of her right to appeal was:

I've kind of struggled with the probationary issue, and I'll give this some thought. If either one of you want to submit something that you think might be better or - - or more realistic, let me know and I'll certainly consider it. Again, I don't think it's so indefinite as to be illegal, but I get your point. If you think there's a more proper way, let me know, we can reconvene in short order.

The record is clear that the sentences of one year probation on counts 4, 5, 7, 8, 10, 11, and 13 were to start once the Defendant was released from jail.

The Sentencing Order entered by Judge Strickland and prepared by the deputy clerk reflected the following language as to counts 4, 5, 7, 8, 10, 11, and 13:

Judgment

Adjudication of Guilt was withheld.

Jail

The defendant is ordered to serve 412 Days(s) in the Orange County Jail with credit for 412 Day(s) time served. This count to run concurrent with EACH COUNT. To be followed by Probation.

Probation

The defendant is placed on 1 Year(s) Supervised Probation under the supervision of the Department of Corrections. This Probation to run concurrent with EACH COUNT.

The Order of Probation which was entered at the same time for counts 4, 5, 7, 8, 10, 11, and 13 reflected the following language:

the defendant having pled guilty to the offense, the Court hereby withholds adjudication of guilt and sentences you to 412 day(s) in the Orange County Jail with credit for 412 day(s) time served. To be followed by 1 year(s) probation concurrent with each count with the following special condition(s):

No personal contact with the victim.

The Order of Probation also contained the so-called standard conditions of probation. (See Attachment "A").

Based upon the records, the Defendant was instructed on her probation conditions on February 2, 2010, by the Department of Corrections while she remained incarcerated in the Orange County Jail awaiting trial on an unrelated case. The Department of Corrections also sent a letter to the victim in this case, in care of the Office of the State Attorney, indicating among other things that the Defendant was currently under supervision of the Department of Corrections.

On July 29, 2011, Judge Strickland entered a Corrected Order of Probation requiring the Defendant to report to the probation office upon her release from the Orange County Jail, *nunc pro tunc*, to January 25, 2010. The Court also entered a Corrected Order of Sentencing requiring the Defendant to report to probation upon her release from the Orange County Jail. The Defendant was given 72 hours to report to probation. This Order corrected the written Orders in this case to conform to the oral pronouncement requiring the Defendant begin probation upon release from jail.

In the instant motion, the Defense has asked that the Corrected Orders entered by Judge Strickland be set aside based upon the grounds of lack of jurisdiction, and violations of due process and of double jeopardy principles.

Lack of Jurisdiction, Double Jeopardy, and Due Process

The evidence in this case established the Defendant was sentenced to a probationary sentence to began upon her release from jail. Through a clerical error, the judgment did not

reflect that, but instead indicated that the Defendant was sentenced to 412 days with credit for 412 days to be followed by 1 year supervised probation. The Defendant was also being held pending trial on the charge of first murder without bail and thus she was not released. It is quite apparent that the written sentence did not reflect Judge Strickland's oral pronouncement.

The first question to be addressed is whether the Court had jurisdiction to correct its own written judgment when it does not reflect what was orally pronounced.

It is axiomatic that oral pronouncements control over clerical errors. Venuti v. State, 437 So. 2d 238 (Fla. 5th DCA 1983). The court has the authority to correct its judgment. Mims v. State, 569 So. 2d 864 (Fla. 5th DCA 1990). An order is rendered, valid and binding, when orally given. Briseno v. Perry, 417 So. 2d 813 (Fla. 5th DCA 1982), rev. denied, 427 So. 2d 736 (Fla. 1983). It may be corrected at any time to reflect what the court had in fact done. Luhrs v. State, 394 So. 2d 137 (Fla. 5th DCA 1981). Florida has long recognized a court's inherent power to correct clerical errors. Sawyer v. State, 113 So. 736 (Fla. 1927). Lastly, the Florida Supreme Court, in D'Alessandro v. Tippins, 124 So. 455, 456 (Fla. 1929), stated:

If the first sentence contained clerical or formal errors, the judgment as entered may at any time be corrected so as to speak the truth of what was in fact done by the court.

Based upon the cited authority above, it is clear Judge Strickland had the ability to correct the judgment to reflect his oral pronouncement.

The next question to be addressed is whether the Court's amending the judgment to reflect its oral pronouncement violated double jeopardy principles. The United States

Constitution¹ and the Florida Constitution² guarantee that no individual will be put in jeopardy more than once for the same offense. The guarantee against double jeopardy consists of three separate constitutional protections. It “protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense.” Brown v. Ohio, 432 U.S. 161, 165 (1977).

It is the third protection against multiple punishments for the same offense that the defense alleged occurred in this case. Probation is a sentence in Florida. Larson v. State, 572 So. 2d 1368, 1370 (Fla. 1991). The double jeopardy protection against multiple punishments includes the protection against enhancements or extensions of the conditions of probation. Williams v. State, 578 So. 2d 846 (Fla. 4th DCA 1991).

This case does not involve additional punishment proscribed by the double jeopardy clause nor does it involve a punitive effect by requiring the Defendant to serve probation twice. The Defendant was in jail and unable to meet the goals and requirements of the probationary sentence. The Defendant could not comply with the standard thirteen conditions of probation while incarcerated on a pending charge.

As the Florida Supreme Court said in Bernhardt v. State, 288 So. 2d 490, 495 (Fla. 1974)(citations omitted), “[t]he underlying concept of probation is rehabilitation rather than punishment and presupposes the fact that probationer is not in prison confinement.” The Fifth

¹ The Fifth Amendment provides that no person shall “be subject for the same offence to be twice put in jeopardy of life or limb.” U. S. Const., Amend. V.

² Article I, section 9 of the Florida Constitution provides, in relevant part, that “[n]o person shall be . . . twice put in jeopardy for the same offense”

District Court of Appeal of Florida, in Jones v. State, 964 So. 2d 167, 170-71 (Fla. 5th DCA 2007)(citation omitted), stated:

It is well settled that a defendant cannot serve a prison term and be on probation simultaneously. To hold otherwise would be inconsistent with the rehabilitative concept of probation which presupposes that the probationer is not in prison confinement. Any term of probation presumed to run when the defendant cannot be supervised would be a nullity.

The court also explained that:

Simple logic would seem to dictate that, where a defendant is incarcerated . . . , a probationary period from an unrelated sentence would be tolled since a probationary term should not be allowed to expire simply because a defendant has decided to incur new prison time as a result of a separate and distinct offense.

State v. Savage, 589 So. 2d 1016, 1018 (Fla. 5th DCA 1991)(citation omitted).

Applying this concept, the court in Bradley v. State, 721 So. 2d 775 (Fla. 5th DCA 1998), affirmed the trial court's finding that a defendant's community control sentence was tolled during the period of his incarceration, and therefore, he was still under state supervision when he violated the terms of his community control.

In Bozza v. United States, 330 U. S. 160, 166-67 (1947), the United States Supreme Court cautioned that the constitutional prohibition against double jeopardy should not be used to turn sentencing into "a game in which the wrong move by the judge means immunity for the prisoner."

In this case, the State, defense counsel, and the Defendant all knew what the announced intent of the Court was as to when the Defendant's probation was to begin. All parties knew that the Court had ordered that Ms. Anthony's probation was to begin upon her release from custody, not while she was in custody. To permit this error to continue would in fact turn a clerical error

into a game cautioned against in the Bozza case. To bar the Court from correcting a clerical mistake and to permit the Defendant to serve probation in jail while awaiting trial on a totally unrelated charge without any possibility of complying with the terms of the probation order would clearly thwart society's interest in extracting a full, fair, and just punishment for a crime. No one in this case, after the sentence had been announced, had any expectations that the Defendant would be serving her probation while she was incarcerated awaiting trial.

To permit the Defendant, whose counsel was well aware that the probation was to begin upon the Defendant's release from jail, to avoid serving probation now, would take a lawfully imposed sentence and make it a mockery of justice. This would allow a defendant to take advantage of a scrivener's error and be rewarded. This is not the message the courts want to send to the public or defendants.

This Court concludes that multiple punishments were not involved in this case and by operation of law the start of Ms. Anthony's probation was tolled pursuant to Bradley and Savage.

The Court does not address the issue of the alleged violation of the Defendant's right to due process because the defense did not allege how it was violated.

Duty to the Court

Finally, this Court would like to address the issue of what duty does an attorney, an officer of the court, owe to our system of justice to see that the lawful orders of courts are followed. The defense acknowledged in court that Mr. Baez knew about the error, but contended he did not have any obligation to inform the court.

An attorney's duty to the courts relate to his or her status as a professional who serves, not only clients, but also the public interest. A lawyer may not be able to act in a way that serves the client's best interests if doing so would put the administration of justice and the public's confidence in the profession at risk. An attorney has a duty of candor. Under this umbrella of a attorney's duty to the court, attorneys are primarily responsible for ensuring that orders of the court are followed. While ignorance of the contents of a court order is one thing, the failure to abide by that order and the failure to notify the court of a known scrivener's error in the order may be a violation of an attorney's duty of candor. To additionally seek to use a scrivener's error to achieve an end that was against the court's intent, especially where both parties had argued the issue of when probation should commence, strikes at the very foundation of our justice system.

The duty of candor is simply not a rule of fine etiquette, but is the gold standard that all officers of the court - especially attorneys - must live by if we are to ensure the public's trust and faith in our justice system. No attorney should conduct himself or herself in a way that impedes an order of the court. While "[z]ealous advocacy is the cornerstone of good lawyering and the bedrock of a just legal system . . . zeal cannot give way to unprofessionalism" and noncompliance with court orders. Thomas v. City of North Las Vegas, 127 P. 3d 1057, 1067 (Nev. 2006). The smooth functioning of the courts and the interest of justice should always trump an attempt to secure an unfair tactical advantage. Our system of justice should never be in the position of rewarding someone who wilfully hides the ball.

The Florida Bar's Rules of Professional Conduct under the section entitled "Preamble: A Lawyer's Responsibilities" provides in part:

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having a special responsibility for the quality of justice.

....

While it is lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

....

In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system, because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

....

Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities. Within that context, the legal profession has been granted powers of self-government.

Rule 4-3.3 of the Rules Regulating the Florida Bar, entitled: "Candor Toward the Tribunal," talks about a lawyer's obligation in regards to candor to the court. Perhaps counsel will find guidance in this section of the rules.

It is very clear that the Defendant and her attorney knew she was to start her probation upon release from the Orange County Jail. Despite this fact, they took advantage of a scrivener's error which started the probation while she was being held in the jail pending trial. The defense should not be able to claim that they are now harmed by having the Defendant serve probation at this time.

Safety of the Defendant

The defense raises the issue of the Defendant's safety if she is now required to complete her probation. In an article published in the Orlando Sentinel on Thursday, August 11, 2011,

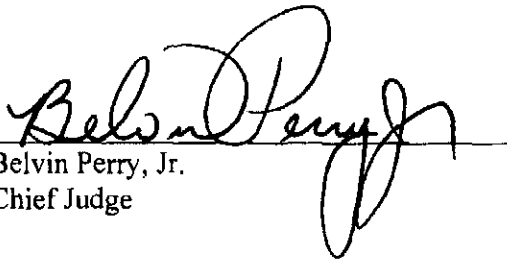
entitled "Poll: Casey is America's Most-hated Person" written by staff writer, Jeff Weiner, it is reported that the Defendant is the nation's most-hated person. Based on the results of a poll by E-Poll Market Research, it appears that public rage concerning this Defendant has not yet subsided. In the total dislike category of the survey, Anthony easily topped the charts at 94 percent. Fifty-seven percent of those polled described her as "creepy," the second-highest score in that category, and sixty percent described her as "cold" ranking her by far the highest in that category. This Court is very mindful that it is a high probability that there are many that would like to see physical harm visited upon the Defendant.

THEREFORE, IT IS ORDERED AND ADJUDGED that the Emergency Motion to Quash, Vacate, and Set Aside Court's Order is hereby **DENIED**.

The Defendant, Casey Marie Anthony, is hereby ordered to report to the Department of Corrections no later than 12:00 p.m. on August 26, 2011, but she may choose to report earlier. Ms. Anthony's one year of supervised probation is to begin on the day she reports to probation. Ms. Anthony or her counsel shall contact Mrs. Priscilla A. Carter, Circuit Administrator, Florida Department of Corrections, 400 West Robinson Street, Suite 7095, Orlando, Florida, to arrange the time and place of her reporting to probation. This must be done 72 hours prior to her reporting. Ms. Anthony's conditions of probation are the same as announced in Judge Strickland's previous order of probation.

It is further **ORDERED** that the Florida Department of Corrections is hereby authorized in its discretion to keep confidential the Defendant's residential information and any other information that could lead to discovery of her location due to threats on the Defendant's life.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this 12th day of August, 2011.


Belvin Perry, Jr.
Chief Judge

CERTIFICATE OF SERVICE

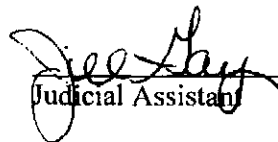
I certify that a copy of the foregoing Order was furnished this 12th of August, 2011, to the following by electronic mail:

Mr. Frank George, Assistant State Attorney, 415 N. Orange Avenue, Orlando, FL 32801

Mr. Jose Baez, Esquire, The Baez Law Firm, 522 Simpson Road, Kissimmee, FL 34744

Mr. J. Cheney Mason, Esquire, J. Cheney Mason, P. A., 390 N. Orange Avenue, Suite 2100, Orlando, FL 32801

Priscilla Carter, Circuit Administrator, Florida Department of Corrections, 400 West Robinson Street, Suite 7095, Orlando, FL 32801.


Joe Day
Judicial Assistant

Attachment "A"

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 48-08-CF- 13331-O / A

DIVISION NO: 35

STATE OF FLORIDA,
Plaintiff,

vs.

CASEY MARIE ANTHONY,
Defendant.

This cause coming on this day to be heard before me, and you, the defendant being now present before me, and it appearing to the satisfaction of this Court that you are not likely again to engage in a criminal course of conduct, and that the ends of justice and the welfare of society do not require that you should suffer the penalty authorized by law:

Now, therefore, based on the plea or court finding and judgment of the court set forth below, it is ordered that you are hereby placed on probation under the supervision of the Department of Corrections and its Officers, such supervision to be subject to the provisions of the laws of this State, as follows:

The Defendant having pled guilty to the offense, the Court hereby withholds Adjudication of Guilt and sentences you to 412 Day(s) in the Orange County Jail with credit for 412 Day(s) time served. To be followed by 1 Year(s) Probation concurrent with EACH COUNT with the following SPECIAL CONDITION(S):

- NO PERSONAL CONTACT WITH THE VICTIM,

The Defendant having pled guilty to the offense, the Court hereby withholds Adjudication of Guilt and sentences you to 412 Day(s) in the Orange County Jail with credit for 412 Day(s) time served. To be followed by 1 Year(s) Probation concurrent with EACH COUNT with the following SPECIAL CONDITION(S):

- NO PERSONAL CONTACT WITH THE VICTIM,

The Defendant having pled guilty to the offense, the Court hereby withholds Adjudication of Guilt and sentences you to 412 Day(s) in the Orange County Jail with credit for 412 Day(s) time served. To be followed by 1 Year(s) Probation concurrent with EACH COUNT with the following SPECIAL CONDITION(S):

- NO PERSONAL CONTACT WITH THE VICTIM,

The Defendant having pled guilty to the offense, the Court hereby withholds Adjudication of Guilt and sentences you to 412 Day(s) in the Orange County Jail with credit for 412 Day(s) time served. To be followed by 1 Year(s) Probation concurrent with EACH COUNT with the following SPECIAL CONDITION(S):

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- NO PERSONAL CONTACT WITH THE VICTIM,

The Defendant having pled guilty to the offense, the Court hereby withholds Adjudication of Guilt and sentences you to 412 Day(s) in the Orange County Jail with credit for 412 Day(s) time served. To be followed by 1 Year(s) Probation concurrent with EACH COUNT with the following SPECIAL CONDITION(S):

- NO PERSONAL CONTACT WITH THE VICTIM,

- 1) Not later than the fifth day of each month, you will make a full and truthful report to your Probation Officer on the form provided for that purpose.
- 2) You will pay to the State of Florida \$20.00 per month toward the cost of supervision, plus a 4% surcharge per month by the fifth day of each month unless otherwise waived in compliance with Florida Statutes.
- 3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your Probation Officer.
- 4) You will neither possess, carry or own any weapons or firearm without first securing the consent of your Probation Officer.
- 5) You will live and remain at liberty without violating any law. A conviction in a court of law shall not be necessary in order for such a violation to constitute a violation of your probation.
- 6) You will not use intoxicants to excess; nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.
- 7) You will work diligently at a lawful occupation and support any dependents to the best of your ability as directed by your Probation Officer.

- 8) You will promptly and truthfully answer all inquiries directed to you by the Court or the Probation Officer, and allow the Officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions he may give you.
- 9) You will not possess or use any marijuana or other controlled substance except upon prescription of a duly licensed medical or osteopathic doctor and then only in accordance with the prescribed dosage. You will not possess any controlled substance paraphernalia or forged or blank prescription forms.
- 10) Unless prohibited from consuming alcoholic beverages by a special condition elsewhere in this order, you will not consume alcoholic beverages to the extent that your normal faculties are impaired.
- 11) You will submit to a reasonable search without a warrant by the Probation Officer of your person, effects, residence or business premises or vehicle for alcoholic beverages, controlled substances, weapons or firearms. You will submit to chemical tests (breath, urine and blood) upon request of your Probation Officer to determine the presence and quantity of alcohol or controlled substance in your blood.
- 12) The Court retains jurisdiction to place you in the Probation and Restitution Center upon recommendation of your Probation Officer without finding of violation of probation.
- 13) You will not knowingly associate with any persons engaged in criminal activity.

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision; and that if you violate any of the conditions of your probation, you may be arrested and the Court may revoke your probation and impose any sentence which it might have imposed before placing you on probation.

You shall report in person within 72 hours of your release from confinement to the Probation and Parole Office in Orange County, Florida, unless otherwise instructed by your officer. (This condition applies only if released from the Department of Corrections confinement.) Otherwise, you must report immediately to Probation and Parole, 5449 S. Semoran Blvd Ste 21, Orlando, FL 32822.

It is further ordered that when you have reported to the Probation Officer and have been instructed as to the conditions of probation you shall be released from custody if you are in custody and if you are at liberty on bond, the sureties thereon shall stand discharged from liability.

It is further ordered that the Clerk of this Court file this Order in her office, record the same in the Minutes of the Court, and forthwith provide copies of same to the Probation Officer for his use in compliance with the requirements of law.

Filed in Open Court this 25th day of January, 2010.

Done and Ordered at Orange County, Florida this 25th day of January, 2010.

Lydia Gardner
Clerk of the Circuit and County Courts

By: K. Del Pilar,
Deputy Clerk in Attendance



Honorable Stan Strickland, Judge Presiding

I acknowledge receipt of a copy of this order and am thus responsible for complying with the conditions of my sentence contained herein, this 25th day of January, 2010.

CASEY MARIE ANTHONY, Defendant