VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 29th *day of* May, 2015.

Douglas Scott Jackson, Appellant,

against Record No. 141142
Circuit Court No. CR11378-00

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Loudoun County.

In 2014, the trial court in this case docketed a restitution order as a civil judgment pursuant to Code §§ 8.01-446 and 19.2-305.2. Douglas Scott Jackson appeals, claiming that the trial court erred by docketing the judgment because the restitution order arose in a criminal case that had "concluded" years earlier when the trial court entered its last revocation order in 2002. Appellant's Br. at 7. We disagree and affirm.

I.

Jackson pleaded guilty in 1998 to the charges of receiving stolen goods belonging to Roberta Reeves, a felony violation under Code § 18.2-108, and grand larceny, in violation of Code § 18.2-95. He entered into a written plea agreement with the Commonwealth in which he agreed to pay $4,375 in restitution to Reeves. Accepting Jackson's guilty pleas, the trial court's conviction order recites that the plea agreement was "presented" to the court. J.A. at 5. Having found them to be in the "public interest," the order stated that "the Court doth agree to abide by the terms and conditions therein." Id.

In its later sentencing order, entered on August 18, 1998, the trial court imposed two consecutive sentences. For each offense, the court imposed a sentence of three years of incarceration, with two years suspended, leaving one year of active incarceration. Together, the sentences added up to a total of six years of incarceration, with four years suspended, resulting in two years of active incarceration.

After a statement that the partial suspension was predicated "upon the following conditions," the order includes six paragraphs entitled: "Good behavior," "Supervised probation," "Drug free," "Costs," "Restitution," and "Credit for time served." Id. at 9. The restitution provision stated:

> The defendant shall make restitution and pay costs in this case in accordance with a schedule to be established by the Probation and Parole Officer and filed with the Court within 30 days. Said schedule shall be incorporated into, and made a part of this Order unless objected to by the defendant or the Commonwealth within 10 days of its filing.

Id.

Shortly after the sentencing hearing and only six days before the sentencing order was entered, the probation officer filed a letter on August 12, 1998,[1] outlining the amount of Jackson's restitution obligation. No payment schedule was established at that time because of Jackson's incarceration and inability to make

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[1] The August 12, 1998 letter assigned the restitution of $4,375 owed by Jackson to Reeves to an incorrect case number. Another letter filed by the probation officer on August 24, 1999, corrected the case number. J.A. at 11.

restitution payments. Upon Jackson's release, a letter filed by the probation officer outlined the payment schedule. At no point did Jackson challenge the incorporation of the probation officer's letters into the sentencing order, and Jackson concedes in his brief that "[n]o objections to the payment plan were filed." Appellant's Br. at 3.[2]

In July 2001, the trial court found that Jackson had violated the terms of his probation. The court revoked his suspended sentences and re-suspended the sentences with the exception of forty-five days. In January 2002, Jackson was again found guilty of another probation violation, and the court revoked and re-suspended the entirety of his sentences.

In October 2002, Jackson was found guilty of his third probation violation. The court ordered in December 2002 that Jackson "be terminated unsuccessfully" from probation and "vacated" the "suspension of the execution" of his remaining sentences. J.A. at 28-29. After revoking the suspended terms of Jackson's unserved sentences, which was a total of four years less forty-five days at that time, the court then imposed two years of "Active Incarceration" in the state penitentiary. Id. at 29.

Twelve years later, in March 2014, the Commonwealth advised the trial court that Jackson had never made any restitution

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[2] Jackson also concedes that "by its sentencing order of August 1998, the trial court incorporated the plea agreement's term that [he] pay restitution" and established the "manner" in which it would be paid. Appellant's Br. at 10. Thus, the specifics of the restitution (the precise amount, payee, and payment schedule) were not contested in the trial court, nor are they on appeal.

payments. At the Commonwealth's request, the trial court held that:

- Jackson agreed in his plea agreement to pay restitution to Reeves in the amount of $4,375.
- The 1998 sentencing order ordered restitution and expressly incorporated by reference the probation officer's letter documenting the amount of restitution owed to Reeves.
- The 1998 sentencing order created a freestanding obligation to pay restitution that did not expire as a result of any later revocation orders.

Id. at 41, 57-58. Based on these rulings, the trial court docketed its restitution order as a civil judgment pursuant to Code §§ 8.01-446 and 19.2-305.2.

II.

We begin by framing the narrow issue presented by this case. On appeal, Jackson does not deny that he agreed, many years ago, to pay Reeves $4,375 in restitution or that he has not paid anything toward that obligation. Nor does Jackson claim that the 1998 sentencing order failed to incorporate the specific restitution obligation recorded in the plea agreement or that the probation officer's letters were later improperly incorporated by reference into the order.

Instead, Jackson's arguments on appeal cluster around a single issue, phrased by him as "the survivability and/or termination of Jackson's restitution obligation upon the termination of his [criminal] case." Appellant's Br. at 7. This premise rests on two necessary assumptions. The first is that the trial court's last revocation order resulted in the "termination of his [criminal]

case," id., thus mooting the previous conditions of his suspended sentences. The second is that his restitution obligation was capable of being mooted because it served only as a condition of his suspended sentences and not as a freestanding obligation.

A. The "Termination" of Jackson's Criminal Case

Jackson's first argument focuses on the trial court's December 2002 revocation order. As Jackson reads it, the court "elected not to re-suspend any of [his] sentence," Appellant's Br. at 12, and thus terminated his criminal case. We find this to be, at best, a questionable assumption.

The December 2002 order, by its own terms, "terminated" Jackson's probation and "vacated" the "suspension of the execution" of his remaining sentences. J.A. at 28-29. It did not, however, terminate the criminal case or vacate Jackson's sentences. At the time of the December 2002 order, there were two consecutive sentences that remained suspended, each imposing two years of incarceration less forty-five days previously served. The order then imposed on Jackson two years of "Active Incarceration" in the state penitentiary, which still left another two-year term (less forty-five days) remaining from the 1998 sentencing order. Id. at 29.

Jackson assumes that this remaining unserved penitentiary term somehow disappeared because the trial court did not either impose it or re-suspend it. Under settled principles, however, a revocation order cannot "alter the finality of the judgment previously entered." Fuller v. Commonwealth, 189 Va. 327, 332, 53 S.E. 26, 28 (1949). The suspension of a sentence "is not a pardon, excuse, immunity, or relief, from the punishment, but a mere

suspension, or postponement, of its execution." Richardson v. Commonwealth, 131 Va. 802, 809, 109 S.E. 460, 462 (1921).

As a result, a revocation order cannot change the nature of the conviction, Burrell v. Commonwealth, 283 Va. 474, 479, 722 S.E.2d 272, 274 (2012), lengthen an original sentence, Robertson v. Superintendent of the Wise Corr. Unit, 248 Va. 232, 236, 445 S.E.2d 116, 118 (1994), or shorten an original sentence, Jacobs v. Commonwealth, 61 Va. App. 529, 539, 738 S.E.2d 519, 524 (2013),[3] absent a statutory basis for doing so.[4]

These settled principles raise serious questions about the effect of the December 2002 revocation order. It clearly "terminated" probation (but not the case itself) and vacated the "suspension of the execution" of Jackson's remaining sentences (but not the sentences themselves). J.A. 28-29. It also imposed two years of "Active Incarceration." Id. at 29. The revocation order, however, does not mention the two years (less forty-five days) that

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[3] See also Conner v. Commonwealth, 207 Va. 455, 457, 150 S.E.2d 478, 479-80 (1966); Leitao v. Commonwealth, 39 Va. App. 435, 438, 573 S.E.2d 317, 319 (2002); John L. Costello, Virginia Criminal Law & Procedure § 63.12[4], at 1148 (4th ed. 2008 & Supp. 2014) ("Revocation orders do not shorten an original suspended sentence. Revocation of the suspension and incarceration for the unserved portion of defendant's sentence exhausts the judge's powers." (citing Jacobs, 61 Va. App. 529, 738 S.E.2d 519)).

[4] See, e.g., Code § 19.2-303 (authorizing the power to "suspend or otherwise modify" the sentences of felons who have "not actually been transferred to a receiving unit" of the Department of Corrections if the court finds that doing so would be "compatible with the public interest and there are circumstances in mitigation of the offense").

remained unserved.[5] This omission raises the questions of whether the unserved sentence was implicitly re-suspended, or implicitly vacated, as Jackson asserts, and whether there was authority for the court to do either.

We need not answer these questions, however, because a simpler and more direct route leads to the proper conclusion in this case. Jackson's second assumption — that his restitution duty was only a condition of his suspended sentence and not a freestanding obligation — is also an essential premise to his argument on appeal. We believe it to be flawed.

B. Restitution as a Freestanding Obligation

A Virginia trial court presiding over a criminal case may order a defendant to pay restitution to a victim just as it may order the defendant to pay costs to the Commonwealth. See Code §§ 19.2-305.1(B) (restitution), 19.2-305 (costs). An award of restitution in a criminal case can serve one or both of two related functions.

First, a restitution award can constitute a freestanding legal obligation uncoupled to any particular sentence. See Code § 19.2-305.1(B). As such, an order of restitution may become a lien against the defendant's real property by being "docketed as provided in § 8.01-446 when so ordered by the court or upon written request of the victim and may be enforced by a victim named in the

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[5] Jackson does not assert that the trial court found that the "public interest" and evidence of "mitigation" justified a modification to the original sentence pursuant to Code § 19.2-303. And nothing in the record suggests as much.

order to receive the restitution in the same manner as a judgment in a civil action." Code § 19.2-305.2(B).

Second, a trial court may impose a duty to make payments of a restitution award that will serve as an express condition of a suspended sentence, either with or without a term of probation. See Code §§ 19.2-305(B), 19.2-305.1(A). In this capacity, the restitution duty impacts the fact and duration of the defendant's actual incarceration, and the failure to pay restitution as ordered could result in the revocation of a suspended sentence and a violation of probation, if any.

These two types of restitution awards, however, are not mutually exclusive. A sentencing court can issue a single order creating a freestanding obligation and, simultaneously, can impose the duty to make payments toward that obligation as a condition of a suspended sentence.

In this case, the trial court treated the restitution award as both a freestanding obligation and a condition of the suspended sentences. On appeal, we review with deference a trial court's interpretation of its own orders. "[I]t is a well-established principle in our jurisprudence that circuit courts have the authority to interpret their own orders." Upper Occoquan Sewage Auth. v. Blake Constr. Co., 275 Va. 41, 61, 655 S.E.2d 10, 21 (2008). That deference dissipates, of course, if the trial court abuses its discretion by adopting a patently unreasonable interpretation. Roe v. Commonwealth, 271 Va. 453, 457-58, 628 S.E.2d 526, 528 (2006). We cannot say that the trial court did so in this case.

The trial court stated that Jackson "was ordered to make restitution" and that nothing in the record supported the proposition "that the obligation to pay restitution disappears somewhere," J.A. at 57, following the expiration of the suspended sentences. The court also pointed out that Jackson "agreed to pay restitution in the amount of $4,375" to Reeves as part of the plea agreement and that the sentencing order "incorporated" the probation officer's letters confirming the restitution amount. Id. at 41. This context, along with the text of the restitution provision itself, confirmed the trial court's view that the 1998 sentencing order "previously ordered" the restitution as a freestanding obligation in addition to considering it as a condition of the suspended sentences. Id.

It is true, as Jackson observes, that the restitution paragraph in the sentencing order appears five paragraphs after the provision specifying the sentences in the order. This sequencing appears to make all of the paragraphs that follow subject to "the following conditions" for a partial suspension, id. at 9, and thus raises the inference that the restitution award should only be understood as a condition of the suspended sentences.

We find Jackson's interpretation plausible but not convincing. The paragraph immediately preceding the restitution provision ordered Jackson to pay costs, and the paragraph immediately succeeding the restitution provision granted Jackson the benefit of time served as a credit to his sentences. The costs provision

cannot be viewed solely as a condition of the suspended sentence,[6] and the time-served provision cannot be viewed as a condition of any kind. These provisions reinforce the trial court's holding that some of the paragraphs in that series reasonably could be understood as more than conditions of the suspended sentences.

III.

The 1998 sentencing order, as interpreted by the trial court, imposed a freestanding restitution obligation. That obligation did not cease to exist upon the entry of the court's subsequent 2002 revocation order, even if that order did "terminate" the criminal proceeding as Jackson asserts.

For these reasons, we affirm the trial court's order docketing the restitution award as a civil judgment pursuant to Code §§ 8.01-446 and 19.2-305.2. The appellant shall pay to the Commonwealth of Virginia two hundred and fifty dollars damages.

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[6] See Code § 19.2-336; Wright v. Matthews, 209 Va. 246, 248-49, 163 S.E.2d 158, 160 (1968) ("Costs assessed against a person who has been convicted of a crime are not part of his punishment for the crime."); Anglea v. Commonwealth, 51 Va. (10 Gratt.) 696, 701 (1853) ("[T]he laws of costs shall not be interpreted as penal laws: they are to be construed as remedial statutes and liberally and beneficially expounded for the sake of the remedy which they administer. The right to enforce payment of [costs] is a mere incident to the conviction, and thereby vested in the [C]ommonwealth for the sole purpose of replacing in the treasury the amount which the defendant himself has caused to be withdrawn from it.").

This order shall be certified to the said circuit court.

A Copy,

Teste: Kate L Harrison

Clerk