DIVISIONS IV & I

CACR07-815

JOHN WILLIAM "BILL" SEAMSTER, JR.

October 29, 2008

APPELLANT

V.

APPEAL FROM THE CRAWFORD COUNTY CIRCUIT COURT

STATE OF ARKANSAS

[NO. CR2000-334]

HON. J. MICHAEL FITZHUGH, JUDGE

APPELLEE

REVERSED AND DISMISSED

CRIMINAL LAW – SUSPENDED IMPOSITION OF SENTENCE – TERMS AND CONDITIONS – REVOCATION OF APPELLANT'S SIS WAS ERROR.– Because appellant's participation in the Reduction of Sexual Victimization Program(RSVP) was a condition of his incarceration, not of his suspended imposition of sentence (SIS), the trial court erred in finding that appellant's failure to complete RSVP justified revoking his SIS; furthermore, there was no evidence that appellant violated any other condition—specifically, there was no proof that he was ever ordered or recommended to participate in the Aftercare Program, which was a condition of his SIS; consequently, there was no demonstrated violation of the terms and conditions of appellant's SIS.

Appeal from Crawford Circuit Court; *J. Michael Fitzhugh*, Judge; reversed and dismissed.

Sam Sexton, III, for appellant.

Dustin McDaniel, Att'y Gen., by: *Leaann J. Irvin*, Ass't Att'y Gen., for appellee.

John William "Bill" Seamster, Jr., appeals the revocation of his suspended imposition of sentence (SIS) for first-degree sexual abuse. On appeal, he argues (1) the circuit court did not have jurisdiction to revoke his SIS because the revocation was for conduct occurring before the period of suspension had begun to run; (2) the 2001 judgment made the

RSVP[1](Reduction of Sexual Victimization Program) a condition of imprisonment, not a condition of his SIS or, alternatively, if completion of RSVP is deemed to be a condition of the SIS, then the sentence is illegal; and (3) the circuit court erred in finding that he failed to comply with the terms and conditions of his SIS. We hold that Seamster's second and third points have merit, and we reverse and dismiss.

On February 21, 2001, Seamster pleaded nolo contendere to two counts of first-degree sexual abuse. As part of his plea, he agreed to serve six years in the Arkansas Department of Correction on one count, receive a ten-year suspended imposition of sentence (SIS) on the other, and complete RSVP. Appended to the judgment and commitment order was a document styled "ADDITIONAL TERMS/CONDITIONS OF DISPOSITION." In pertinent part, it stated: "DEFENDANT IS TO ENROLL IN, AND COMPLETE RSVP PROGRAM PRIOR TO BEING RELEASED FROM ADC. SENTENCES ARE TO RUN CONCURRENT." Seamster was given a separate document styled "Conditions of Suspension or Probation." In addition to the standard conditions of suspension, he was ordered to have no contact with the victims or their family and to "complete aftercare program as may be ordered or recommended by RSVP Program."

Seamster reported to the Department of Correction and began to serve his six-year sentence. During his incarceration, he was not allowed to participate in RSVP because he did not comply with a requirement that he admit his guilt as condition of enrollment. After

[1] RSVP is the Arkansas Department of Correction's course of treatment for incarcerated sexual offenders. RSVP is only available to incarcerated inmates.

serving his entire six-year sentence, Seamster was released on March 6, 2007. On March 14, 2007, the State petitioned to revoke his SIS, alleging that Seamster "failed to complete the RSVP Program and has failed to comply with the After Care Program." The trial court granted the petition and sentenced Seamster to six more years in the Arkansas Department of Correction. He now appeals that order.

We need only focus on Seamster's second and third points, which due to their complementary nature, we will address together. Seamster cites Arkansas Code Annotated section 5-4-303(g) (Repl. 2006), which states: "If the court suspends imposition of sentence on a defendant . . . the defendant shall be given a written statement explicitly setting forth the conditions under which he or she is being released." He argues that participation in the RSVP was not included on the document entitled, "Conditions of Suspension or Probation," but rather on a sheet appended to the judgement and commitment order that was captioned "ADDITIONAL TERMS/CONDITIONS OF DISPOSITION." Construing the judgment as written yields the only logical conclusion that participation in RSVP was therefore, not a condition of SIS, but rather, a condition of incarceration. Arguing in the alternative, Seamster states that even if participation in RSVP was a condition, his failure to complete the program could not justify the revocation of his SIS because it was not an inexcusable violation because he was refused entry into the program simply because he would not admit his guilt. Seamster acknowledges that participation in the Aftercare Program was a condition of his suspended imposition of sentence, but nonetheless asserts that the circuit court erred in finding that he failed to comply with the terms and conditions of his suspended sentence. In his reply brief,

he expounded on his argument that the trial court erred in finding that he violated a term of his SIS. He notes that he was required to complete the Aftercare Program "*as May be Ordered or Recommended by RSVP Program,*" but asserts that the "State has never contended that an aftercare program was ordered or recommended by the RSVP Program" for him.[2] We agree.

In order to construe judgments, we look for the intention of the court, which is derived from the judgment and the record. *Bramucci v. State*, 76 Ark. App. 8, 62 S.W.3d 10 (2001). It is obvious to us from the record that participation in RSVP was a condition of Seamster's incarceration, not of his SIS. Accordingly, the trial court erred in finding that Seamster's failure to complete RSVP justified revoking his SIS. Furthermore, we agree that there is no evidence that Seamster violated any other condition—specifically, there is no proof that he was ever ordered or recommended to participate in the Aftercare Program. Consequently, there was no demonstrated violation of the terms and conditions of Seamster's SIS. Because we are required to construe criminal statutes strictly, and resolve any doubts in favor of the defendant, we hold that the trial court erred in revoking Seamster's SIS. *See Harness v. State*, 352 Ark. 335, 101 S.W.3d 235 (2003).

Reversed and dismissed.

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[2] The dissent posits that Seamster did not challenge the finding that he failed to participate in aftercare until his reply brief. We disagree. As we note, in his main brief he explained that he was denied entry into RSVP and that the State failed to prove that he violated a term or condition of his SIS. It was apparent from his argument, and made manifest in his reply brief that if he was not admitted into RSVP, he could not be ordered to participate in or be recommended for an aftercare program.

GLADWIN, HUNT, and BAKER, JJ., agree.

PITTMAN, C.J., and HEFFLEY, J., dissent.