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Aug 26 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOB RYAN ALJOE,

APPELLANT.

APPELLATE CASE NO. 2021-001532

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge improperly revoke appellant's probation and community supervision for a technical violation, such that the revocation was capricious?

STATEMENT OF THE CASE

On December 13, 2021, a revocation hearing was held on appellant's probation and community supervision before the Honorable R. Scott Sprouse in Anderson County. R. 1. Kerin Buckner was the probation agent. R. 1. Matthew Bradley represented appellant. R. 1. Appellant was on community supervision for second degree criminal sexual conduct with a minor/attempt and was on probation for lewd act. R. 4, l. 20 – 5, l. 3. Judge Sprouse revoked five years on the probation and one year on the community supervision. R. 46, l. 14 – 22. This appeal follows.

STANDARD OF REVIEW

“The decision to revoke probation is addressed to the sound discretion of the trial court.” State v. Spare, 374 S.C. 264, 268, 647 S.E.2d 706, 708 (Ct. App. 2007).

ARGUMENT

The trial judge improperly revoked appellant's probation and community supervision for a technical violation which made the revocation capricious.

The probation agent told Judge Sprouse that the violations were failing to give a truthful report, not paying fees, and having contact with a minor child. R. 5, l. 4 – 16. The failing to give a truthful report and having contact with a minor child arose from the same incident. R. 6, l. 7 – 11, l. 6.

After appellant got out of prison, he got a job and made plans to pay his fines, finish his probation, and move to West Virginia to make a fresh start. R. 30, l. 9 – 31, l. 6. He got engaged to Erica Hamby (“Hamby”). R. 31, l. 7 – 16. Even though they were engaged, Hamby did not tell appellant that she had a child. R. 31, l. 7 – 16. She wanted to make sure that appellant would be a permanent part of her life before introducing her child. R. 31, l. 7 – 16. Hamby testified at the hearing and corroborated that the first time appellant saw her child was on the day of the incident. R. 40, l. 14 – 42, l. 21.

Hamby called appellant because she needed gas money to take her son to therapy. R. 40, l. 14 – 20. Appellant met Hamby and her son at the gas station. R. 40, l. 21 – 41, l. 14. Appellant said at the hearing that his mother dropped him off at the store. R. 31, l. 17 – 25. They went inside to pay for the gas. R. 40, l. 21 – 41, l. 14. A woman behind them in line noticed appellant and ran out of the store. R. 40, l. 21 – 41, l. 14.

This woman was the mother of the complainant (“Mother”) in the lewd act case for which appellant was imprisoned. R. 22, l. 6 – 10. Mother forcefully spoke at the probation hearing about appellant's history and her efforts on behalf of her daughter. R. 14, l. 18 – 29, l. 7. She stated she would be described by appellant's lawyer as “persistent; merciless; relentless; ongoing” that she

taunted appellant, and then said those things were true. R. 16, l. 14 – 23. When she was in line at the gas station, she recognized appellant's voice and confronted him, asking, "What the hell are you doing on the street." R. 25, l. 16 – 21. Mother was with the complainant's father and Mother agreed he had a verbal altercation with appellant. R. 27, l. 17 – 22.

Hamby said the man threatened appellant. R. 40, l. 21 – 41, l. 14. Hamby put her child in her car and started pumping gas. R. 40, l. 21 – 41, l. 14. The store clerk tried to separate everyone and put appellant back in the store. R. 40, l. 21 – 41, l. 14. According to Hamby, Mother and the man began yelling at her and her child. R. 40, l. 21 – 41, l. 14. Appellant's mother arrived, but Mother positioned herself so appellant could not get into his own mother's car. R. 40, l. 21 – 41, l. 14. Appellant got into Hamby's car and Hamby took him straight home. R. 40, l. 21 – 41, l. 14.

Appellant admitted shaking Hamby's child's hand in the store, but then stepped away from him. R. 32, l. 1 – 12. He said, "I knew I had to get home and tell my probation officer that [Hamby] has a child. I had just found out." R. 32, l. 1 – 12. He immediately started calling his probation officer, but he was on vacation. R. 33, l. 21 – 25. She called the next day and told him to speak with another agent, Agent Holcombe. R. 34, l. 1 – 13. Appellant was able to reach Agent Holcombe and told him what happened. R. 34, l. 14- 20. The Agent told him they would likely issue a warrant and Appellant turned himself in first thing Monday morning. R. 34, l. 14 – 35. Appellant strenuously denied ever having prior contact with the child. R. 34, l. 21 – 35, l. 9.

Agent Holcombe recounted their phone conversation which largely corroborated appellant's version except for one difference. R. 11, l. 23 – 14, l. 17. In Agent Holcombe's version of the conversation, Hamby picked up appellant at his house with her child in the backseat. R. 11, l. 23 – 14, l. 17. Appellant saw the child in the backseat and still got into the car and rode to the gas station. R. 11, l. 23 – 14, l. 17. Agent Buckner reviewed the surveillance footage at the gas

station and claimed that she could tell the child had known appellant before the gas station because of the way the child acted toward him. R. 43, l. 10 – 16. Another probation agent agreed with Agent Buckner and described appellant as someone who would “try to manipulate the system.” R. 43, l. 18 – 45, l. 20.

When stating his reasons for revoking appellant’s probation and community supervision, Judge Sprouse said, “Contact with the child of this nature would not appear to be a serious violation, but considered in the light of the circumstances of the case and the reason why that is in place, it is very serious.” R. 46, l. 5 – 22. The judge stated he was taking into account the fact that multiple victims existed in the case and that appellant had a previous revocation. R. 46, l. 5 – 22.

“[A] probationer or parolee has a constitutionally protected liberty interest and cannot be denied due process simply because probation has been described as an act of grace.” State v. Allen, 370 S.C. 88, 96, 634 S.E.2d 653, 657 (2006). The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation.” Id. at 94, 634 S.E.2d at 655. If the trial court’s decision lacks an evidentiary basis, it will be determined to be arbitrary and capricious and this Court may reverse. State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999).

The trial judge’s decision here lacked a sufficient evidentiary basis. The only evidence appellant had any contact with the child was Agent Holcombe’s recollection of a telephone conversation and the opinions of agents who watched a small child react to a person on a video. Even assuming the agents’ versions were true, at best appellant committed only a technical violation. Most of the evidence presented at the hearing was character evidence from Mother regarding the criminal acts, not the alleged violations. Under these circumstances, the revocation was arbitrary and capricious and this Court should reverse.

CONCLUSION

Wherefore, this Court should reverse the revocation of appellant's probation and community supervision.

s/David Alexander
Appellate Defender

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ATTORNEY FOR APPELLANT

This 26th day of August, 2022.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jacob Ryan Aljoe states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Scott Sprouse, which was held on December 13, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Jacob Ryan Aljoe.

Respectfully Submitted,

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of August, 2022.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

(1) December 13, 2021, hearing transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

s/David Alexander
Appellate Defender

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PO Box 11589
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ATTORNEY FOR APPELLANT

This 26th day of August, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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s/David Alexander
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Matthew C. Buchanan, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jacob Ryan Aljoe, #340500, at Trenton Correctional Institution, 84 Greenhouse Road, 84 Greenhouse Road, Trenton, SC 29847, this 26th day of August, 2022.

s/David Alexander
Appellate Defender

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ATTORNEY FOR APPELLANT

From: [Stock, Chris](#)
To: MATTHEW.BUCHANAN@PPP.SC.GOV; [SC - NICHOLS DAWN](#)
Cc: [Alexander, David](#); [Matthews, Lindsey](#)
Subject: 2021-001532 The State v. Jacob Ryan Aljoe - Anders Brief of Appellant & Record on Appeal
Date: Friday, August 26, 2022 4:10:00 PM
Attachments: [2021-001532 The State v. Jacob Ryan Aljoe - Anders Brief of Appellant.pdf](#)
[2021-001532 The State v. Jacob Ryan Aljoe - Record on Appeal.pdf](#)
[Letter to Matthew C. Buchanan 8.26.2022.pdf](#)

Mr. Buchanan,

Please find attached for service the Anders Brief of Appellant, Designation of Matter, and Record on Appeal for Jacob Ryan Aljoe's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

Chris Stock

Administrative Assistant
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