

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-000454

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MAY 13 2024

SC Court of Appeals

The State of South Carolina Respondents,

vs.

Conrad Kenneth Phillips.....Appellant.

INITIAL BRIEF OF APPELLANT CONRAD KENNETH PHILLIPS

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TABLE OF CONTENTS

Table of Authorities.....ii

Statement of Issue on Appeal1

Statement of the Case.....2

Standard of Review.....3

Argument:

 The trial court erred in revoking Phillips’ probation as there was no evidence
 he knew victim was employed at JR Cash restaurant when he entered and
 remained on the premises on December 14, 2023.....3

Conclusion.....6

TABLE OF AUTHORITIES

State v. Hamilton, 345 S.C. 299, 456 S.E.2d 673 (Ct.App. 2001).....3

State v. Proctor, 333 S.C. 642, 511 S.E.2d 94 (CtApp. 1999).....3

ISSUE ON APPEAL:

The trial court erred in revoking Phillips' probation because there was no evidence that Phillips knew the victim was employed at JR Cash Restaurant when he entered and remained on the premises on December 14, 2023 and Phillips never went to Georgia.

STATEMENT OF THE CASE

On January 10, 2022, Appellant Conrad Kenneth Phillips (Phillips) pleaded guilty to Assault and Battery 1st Degree which occurred around 2018. The Honorable R. Lawton McIntosh, Circuit Judge to sentenced Phillips to Five (5) years in prison, suspended to five (5) years probation, credit for 24 months house arrest. Phipps sentenced also included a permanent restraining order.

The Restraining Order provided as follows:

Phillips is restrained, prohibited and forbidden from abusing, threatening to abuse, or molesting the victim or members of victims family.

Phillips is restrained, prohibited and forbidden from **entering, attempting to enter victims place of residence, employment or education. (emphasis added).**

Phillips is restrained, prohibited and forbidden from communicating or attempting to communicate with the victim or members of the victims family in any way that would violate Section 16-3-1910.

On December 14, 2023 Phillips was arrested for violation of the permanent restraining order. That evening, Phillips met a friend Daniel Cooley at J.R. Cash Restaurant located at Pine Lakes Golf Course, Anderson, SC. While Phillips was in the restaurant, unbeknownst to him, the victim came into the restaurant for her shift as a server. Phillips did not recognize the victim, did not speak with the victim nor did he have any interaction with the victim, nor did Phillips know the victim was employed at J. R. Cash Restaurant. Phillips left the restaurant without incident.

The victim did not inform the manager that Phillips was in the business nor that there was a restraining order. Instead, the victim called her mother and the mother contacted law enforcement.

On January 23, 2024, Phillips attended the Administrative Hearing in which the hearing officer found Phillips had violated the terms of his probation and referred the case to the Court of

General Session for full revocation.

On February 9, 2024, the Court revoked Phillips probation and sentenced him to thirty-six (36) months in prison.

STANDARD OF REVIEW

The decision to revoke probation rests in the sound discretion of the trial court. **State v. Proctor, 345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001)**. The authority of the reviewing court to review a decision to revoke probation is limited to correcting errors of law unless the lack of a legal or evidentiary basis indicates the trial judge's decision was arbitrary and capricious. **State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)**.

ISSUE ON APPEAL

The trial court erred in revoking Phillips probation as there was no evidence that Phillips knew the victim was employed at J. R. Cash Restaurant when he entered the premises nor was there any evidence Phillips recognized victim while he was lawfully at the restaurant on December 14, 2023..

Again, on December 14, 2023 Phillips was arrested for violation of the permanent restraining order. That evening, Phillips met a friend Daniel Cooley at J.R. Cash Restaurant located at Pine Lakes Golf Course, Anderson, SC. While Phillips was in the restaurant, unbeknownst to him, the victim came into the restaurant for her shift as a server. Phillips did not recognize the victim, did not speak with the victim nor did he have any interaction with the victim, nor did Phillips know the victim was employed at J. R. Cash Restaurant. Phillips left the restaurant without

incident.

The victim did not inform the manager that Phillips was in the business nor that there was a restraining order. Instead, the victim called her mother and the mother contacted law enforcement.

On February 9, 2024, Phillips, through his attorney, moved for a continuance when the case was called. Phillips' had been arrested for violation of the restraining order. Prison time was a real possibility. Additionally, there was some two hours of video surveillance. The Court did not rule on the request for a continuance.

The victim was allowed to read a letter to the Court essentially complaining about how entire the case was handled in court. (Tr. p. 5 l. 12 – p. 7, l. 10). This case was finalized with a negotiated plea to Assault and Battery 1st Degree and the sentence set forth hereinabove. (Negotiated Plea sentence sheet). At the probation violation hearing, the victim nor her mother were sworn nor were they subject to cross-examination.

Probation Agent Washburn, in response to Judge McIntosh's question concerning the nature of the communication with the victim, testified Phillips went to victim's place of business. (Tr. p. 7 l. 13 – p.8 l. 12). This infers that Phillips knew the victim worked at J. R. Cash Restaurant located at Pine Lakes Golf Course. There is no evidence to support this testimony or conclusion. Phillips never spoke to the server. Phillips had no interaction with the server/victim. Phillips and his friend Cooley were served by another server.

There is no evidence Phillips knew the victim was the server at J.R. Cash Restaurant. The

victim came on shift, the victim did not notify her manager of any problem and Phillips was never requested to leave the restaurant. After finishing his time with his friend, Phillips left the restaurant on his own accord.

At no time, did Phillips knowingly enter the victim's place of employment. He went to the restaurant at the invitation of his friend, Daniel Cooley. The victim was a teen at the time of the offense. Phillips had no contact with the victim since his negotiated plea in 2022.

There is no way Phillips knew where the victim worked or even if she was employed. The record is devoid of any evidence Phillips knew of even could have known where the victim was employed and Phillips had no contact with the victim.

Phillips left the restaurant and was arrested shortly thereafter at Sugar Hill Tap Room, Belton, SC. Phillips and his wife live in Belton, SC. (Tr. p. 13 l. 2-4).

Following Officer Purdy's statement, Judge McIntosh stated:

What I'm going to do, I'm going to put you on GPS monitoring and curfew.... (Tr. p. 13, l. 18 – 19).

The victim's mother: Judge – "I beg you, I plead with you. . . . Today it can matter. So again she was brave for you. Not for an ankle bracelet. . . . Please show .. that her life does matter... Please don't let her pleas go unnoticed at this time. It was not assault and battery. It was sexual assault." Mother complains now but was an integral part of the negotiated plea in 2022. Victim and her mother were unhappy with the negotiated plea and used the unaware contact at JR's restaurant to seek punishment victim and victim's mother believed should have been imposed

at the time of his negotiated plea. (Tr. Pages 14, l. 6 – 21 l. 130. Victim's mother complained that the judge and judicial system had failed the victim even though this was a negotiated plea and sentence which was done with all parties consent.

The Court erred in revoking Phillips' probation because the decision was not based upon evidence but conjecture. There is no evidence that Phillips went to JR's restaurant knowing the victim worked there. **Phillips did not and does not have any way of knowing where the victim was employed, will be employed in the future of if the victim is ever employed.**

The Court was clearly erroneous when its decision was based upon passion or prejudice following the testimony of victim and her mother and their complaints about the judicial system. The Court's finding that Phillips went to Georgia is without any evidentiary support and also clearly erroneous. (Tr. p. 23, l. 18-20).

CONCLUSION

Appellant Conrad Kenneth Phillips respectfully requests the Court reverse the revocation of probation, and reinstate Phillips' probation with any condition the Court deems appropriate.

s/ Bruce A. Byrholdt
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May 11, 2024

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF GENERAL SESSIONS

State,

vs.

Conrad Phillips,

Defendant.

AFFIDAVIT OF SERVICE

2019-GS-04-00743

This is to certify that on April 1, 2024, I, Bruce A. Byrholdt, of the Law Firm of **BYRHOLDT DRAWDY**, attorney for Defendant, did serve a copy of the Designation of Material to be Included in Record on Appeal, Initial Brief of Appellant and Affidavit of Service by placing a copy of same in the United States Mail, with proper postage prepaid and return address to the address(es) below:

Via mail and email at matthew.buchanan@ppp.sc.gov

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I further certify that all parties required to be served have been served.

s/ Bruce A. Byrholdt

Dated: May 11, 2024

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May 11, 2024

Via email and U.S. Mail

Hon. Jenny Abbott Kitchings
Clerk of Court
PO Box 11629
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**Re: State v. Conrad Kenneth Phillips
Appellate Case No. 2024-000454**

Dear Ms. Kitchings:

Enclosed for filing is the a copy of Appellant Conrad Kenneth Phillips Initial Brief; Designation of Material to be Included in Record on Appeal, and Affidavit of Service. Thank you for your assistance.

Sincerely yours,
BYRHOLDT DRAWDY, LLC


Bruce A. Byrholdt
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