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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Heath P. Taylor, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL GREGGORY YOUMAN, JR.,

APPELLANT

APPELLATE CASE NO. 2023-001609

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion when it revoked Appellant's probation where there was an insufficient evidentiary basis to establish Appellant had violated the conditions of his probation since the only alleged violation was Appellant's arrest for second degree domestic violence and the state failed to present any evidence to support the underlying allegations of the pending charge?

STATEMENT OF THE CASE

An Orangeburg County grand jury indicted Appellant on October 17, 2022 for first degree domestic violence. R. * (Indictment). On January 12, 2023, Appellant pled guilty to the lesser included offense of second degree domestic violence before the Honorable Heath P. Taylor. R. * (Sentence Sheet). He was sentenced to three years imprisonment suspended upon the service of one day time served and two years' probation. R. * (Sentence Sheet).

On July 26, 2023, Appellant was arrested for violating the terms and conditions of his probation. R. * (Warrant). He appeared before Judge Taylor on October 2, 2023 for a revocation hearing. Agent Jasmine Tyler represented the Department of Probation, Parole, and Pardon Services (the Department). Margaret Hinds represented Appellant. Tr. 1.

At the conclusion of the hearing, Judge Taylor revoked Appellant's probation and ordered Appellant serve the remainder of his original sentence. Tr. 5, ll. 17-21; R. * (Order).

This appeal follows.

STANDARD OF REVIEW

The question of whether a defendant's probation should be revoked in whole or in part is committed to the trial court's sound discretion. State v. Knapp, 338 S.C. 541, 543, 526 S.E.2d 741, 742 (Ct. App. 2000) (citing S.C. Code. Ann. § 24-21-460 and State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)). "The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation." State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006) (citing State v. King, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); State v. Hamilton, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct.App.1999)). "While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice." Id. at 94, 634 S.E.2d at 655-56 (citing White, 218 S.C. at 136, 61 S.E.2d at 756).

ARGUMENT

The trial court abused its discretion by revoking Appellant's probation when there was an insufficient evidentiary basis to establish Appellant had violated the conditions of his probation since the only alleged violation was Appellant's arrest for second degree domestic violence and the state failed to present any evidence to support the underlying allegations of the pending charge.

Relevant Facts

At the beginning of the revocation hearing, the probation agent informed the court that “per an Orangeburg County Sheriff's Office incident report” Appellant was “in possession of a firearm and pointed the firearm at the current victim of this probation case as well as her underaged son.” The agent stated that, according to the same incident report, Appellant “was heard on a recording threatening to kill her, blow her head off, and put it up her butt.” Tr. 2, ll. 9-17. The agent further alleged Appellant was in arrears on his supervision and court fees. Consequently, the agent said the state was “recommending a partial revocation of 90 days.” Tr. 2, ll. 18-21.

Appellant's counsel asked the court for a continuance because the “charge is still pending” and the “entirety of the violation pertains to the charge.” The court asked counsel whether Appellant would admit he was in violation of his probation. Counsel responded, “No. No, sir.” She explained that the only reason Appellant was “behind on the money” was because he had been in jail due to the pending charge.¹ Tr. 3, ll. 5-14.

¹ The trial court did not find that Appellant's failure to pay his supervision and court fees was willful, so Appellant's probation could not have been revoked on that ground. See Hamilton, 333 S.C. at 649, 511 S.E.2d at 97 (“Probation may not be revoked solely for failure to make required payments of fines or restitution without the circuit judge determining on the record that the probationer has failed to make a bona fide effort to pay. In the absence of such a

An unidentified victim's advocate then informed the court that she had a statement from the alleged victim of the offense for which Appellant was on probation for as well as his pending charge. In the statement, the complainant alleged Appellant pulled a gun out and threatened her in front of her eight year old son. Tr. 3, l. 17 – 4, l. 8. However, there was no indication that this statement was notarized and it was not marked as a court's exhibit. It was merely read into the record by the advocate.

When asked by the court, Appellant disagreed that he violated the terms of his probation. Tr. 4, l. 9 – 5, l. 1. Appellant's counsel again asserted that the only alleged violation was the pending charge. She argued, "It's all allegations." She told the court that Appellant maintained the complainant was "making all this up" and that Appellant "wants his day in court." Tr. 5, ll. 4-7.

The probation agent again relied on the allegations contained in the incident report. She asserted, "per the incident report, the officers did hear a recording that the victim recorded [during] the incident of him [Appellant] threatening her, to kill her." Tr. 5, ll. 8-13.

Lastly, before the court ruled, counsel stated, "Your Honor, again, I'm not at a point where I can defend his case. I need to work that one out [the pending charge] before we get to the probation." The court ultimately refused to continue the hearing until the pending charge was resolved. It stated, [T]his is serious. I gave him [Appellant] a chance back in January, so I'm going to revoke him in full." Tr. 5, ll. 17-21.

determination, a defendant's due process rights are contravened by the deprivation of his constitutional freedom. Therefore, in those cases involving the failure to pay fines or restitution, the circuit judge must, in addition to finding sufficient factual evidence of the violation, make an additional finding of willfulness."); See also State v. Williamson, 356 S.C. 507, 510 n.2, 589 S.E.2d 787, 788 n.2 (Ct. App. 2003). Notably, Appellant's counsel indicated the only reason Appellant was "behind on the money" was because he had been incarcerated. Tr. 3, ll. 9-14.

Discussion

The trial court abused its discretion by revoking Appellant's probation when there was an insufficient evidentiary basis to establish Appellant had violated the conditions of his probation since the only alleged violation was Appellant's arrest for second degree domestic violence. Importantly, Appellant had not been convicted of the offense and the state failed to present any evidence to support the underlying allegations of the pending charge. The probation agent merely repeated allegations contained in an incident report.

“Probation is a matter of grace; revocation is the means to enforce the conditions of probation.” State v. Williamson, 356 S.C. 507, 510, 589 S.E.2d 787, 788 (Ct. App. 2003) (quoting State v. Hamilton, 33 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999)) (internal quotation marks omitted). “However, the authority of the court to revoke probation may not be capriciously or arbitrarily exercised, but should always be predicated upon an evidentiary showing of fact tending to establish violation of the conditions.” Id. (citing State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950)). “Before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions.” Id. (quoting Hamilton, 333 S.C. at 648–49, 511 S.E.2d at 97) (internal quotation marks omitted).

In Williamson, the defendant was arrested for criminal domestic violence of a high and aggravated nature. As a result of his arrest, he was charged with violating the conditions of his probation. The trial court, relying largely on the complainant's affidavit and photographs of her injuries, found Williamson had violated his probation and revoked a portion of his suspended sentence. Id. at 509, 589 S.E.2d at 788. Williamson argued on appeal that there was an insufficient evidentiary basis to establish that he had violated the conditions of his probation

because he had not been convicted of the criminal domestic violence charge. Id. at 509-10, 589 S.E.2d at 788. This Court disagreed.

The Court held the trial court did not abuse its discretion when it revoked Williamson's probation because there was a sufficient evidentiary basis to support the finding that Williamson committed an act of violence against his mother. In support of its holding, this Court emphasized that during the revocation rehearing, the state introduced the mother's affidavit, her voluntary statement, and photographs of her injuries. In the documents, the mother stated Williamson had cut her on the arm with a knife. Id. at 510-11, 589 S.E.2d at 788-89.

In this case, Appellant's only alleged violation was his arrest for second degree domestic violence. At the time of Appellant's revocation hearing, Appellant had not been convicted of the charge. It was still pending. The state, through the probation agent, merely recited the allegations contained in the incident report related to Appellant's arrest. The agent claimed officers heard a recording of Appellant threatening to harm the complainant. However, neither the officers' testimony nor the recording was presented to the trial court. Additionally, the victim's advocate read aloud a statement written by the complainant in which she claimed Appellant pulled a gun out and threatened to kill her in front of her child. However, again the state did not present the complainant's testimony during the hearing. Additionally, there was no evidence the complainant's statement was notarized or sworn.

This case is significantly different than Williamson since in Williamson the state presented the mother's affidavit (a sworn statement) and photographs of her injuries as evidence Williamson committed criminal domestic violence and therefore violated the conditions of his probation. No such evidence was presented here.


Both Appellant's counsel and Appellant personally denied he violated the terms and conditions of his probation. Counsel asserted, "It's all allegations. Mr. Youman would tell the Court that . . . she's making all his up and that he wants his day in court." Counsel argued the pending charge needed to be resolved before the probation case since the only alleged violation was Appellant's pending charge. See State v. Gleaton, 172 S.C. 300, 304-05, 174 S.E 12, 14 (1934) (stating that, when issue is whether probationer has committed a later crime which should result in revocation of probation, trial court may determine probationer's guilt on the charge, or impanel a jury to decide the issue, or hold the revocation matter in abeyance until the probationer is tried on the charge in the usual course, with the final option as the preferred and safest course to pursue).

Respectfully, this Court should hold the trial court abused its discretion by revoking Appellant's probation since there was an insufficient evidentiary basis to establish Appellant violated the conditions of his probation and remand for a new probation revocation hearing.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court hold the trial court abused its discretion by revoking his probation and remand for a new revocation hearing.

Respectfully submitted,


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Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of May, 2024.