

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAY 23 2024

Appeal from Anderson County Circuit Court
The Honorable R. Lawton McIntosh, Judge

SC Court of Appeals

Appellate Case No. 2024-000454

SCDPPPSRESPONDENT

v.

Conrad Kenneth Phillips,.....APPELLANT

BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel
SC Bar 73740

**South Carolina Department of Probation,
Parole and Pardon Services**
P.O. Box 207
Columbia, South Carolina 20202
(803) 734-9220

ATTORNEY FOR RESPONDENT

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STATEMENT OF APPELLANT'S 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 RESPONDENT'S ISSUES ON APPEAL

The trial court found evidence that the Defendant violated his probation and nonfinancial violations do not require a finding of willfulness, so therefore his revocation was not in error.

STATEMENT OF THE CASE

Between August 21, 2017 and November 30, 2018, Appellant touched the genital areas of the victim aged between eleven and twelve on multiple occasions. Appellant was arrested and charged with criminal sexual conduct with a minor 3rd degree on December 10, 2018. R.*.

On January 10, 2022, Appellant pled guilty to assault and battery 1st degree and to a negotiated sentence of five years suspended with probation for five years. R. Among the special conditions imposed by the Honorable R. Lawton McIntosh was no contact with the victim or her family. R. 1.

On December 15, 2023, agents with the Department of Probation, Parole and Pardon Services issued an arrest warrant for Appellant, alleging that he violated the condition of probation of failing to refrain from entering an establishment which has the primary business of the sale and drinking of alcohol, and the special condition of probation of no contact with the victim by entering and remaining at the victim's place of employment. R. 3. Specifically, Appellant and a friend went to J.R. Cash Restaurant where the victim worked. The friend's statement to law enforcement was that Appellant made eye contact with the victim and stated that "girls look a lot older than what they really are." Tr. 11, l. 20-21. Appellant remained at the bar area of the restaurant for roughly fifty minutes and made eye contact with the victim numerous times, not leaving. Tr. 12, l. 1-4.

On February 9, 2024, Appellant appeared before Judge McIntosh in a hearing regarding the probation violation. After a full hearing in which testimony from the probation agent, Anderson County Sheriff's deputy, and victim were offered into the record. After hearing all the arguments, Judge McIntosh found that Appellant violated his probation and revoked him in full. Tr. 24, l. 6.

Appellant filed a motion for reconsideration on February 14, 2024. R. 6. This motion was denied in an order filed March 11, 2024. R. 7. Appellant filed the instant appeal arguing that there

was no evidence to show that he knew the victim worked at the bar when he arrived. Respondent would submit that willfulness is not required, and that there was sufficient evidence to show by a preponderance of the evidence that Appellant violated the terms of his probation. Respondent's brief follows.

Standard of Review

The decision to revoke probation is addressed to the discretion of the circuit judge. *State v. White*, 218 S.C. at 134–35, 61 S.E.2d at 756; *State v. Proctor*, 345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001); *State v. Hamilton*, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999). A reviewing court will only reverse this determination when it is based on an error of law or a lack of supporting evidence renders it arbitrary or capricious. *Proctor*, 345 S.C. at 301, 546 S.E.2d at 674. The court has much discretionary authority in dealing with guilty persons who are in a probationary status. *Shannon v. Young*, 272 S.C. 61, 248 S.E.2d 914 (1978).

Argument

- 1. The trial court did not err because there was evidence Appellant violated the conditions of probation and willfulness is not required in non-financial probation violations.**

Appellant's main argument is the same one he argued unsuccessfully at the violation hearing and in his subsequent motion for reconsideration: he didn't know the victim was employed at the restaurant when he went there. This argument fails on two levels: one, that his knowledge of the victim's employment is immaterial because violations of probation do not have to be willful; and two, the trial court clearly found that there was evidence of contact and that Appellant's denials of not recognizing the victim were not credible.

a. Violations of probation do not have to be willful.

Appellant maintains that he did not know that the victim worked at the restaurant and did not recognize her when he saw her at the restaurant. However, it is clear from the evidence, and Appellant does not dispute, that he did attend the restaurant where the victim worked and remained in the restaurant for nearly an hour.

“It is only when probation is revoked *solely* for failure to pay fines or restitution that a finding of willfulness is mandatory.” *Hamilton*, 333 S.C. at 648, 511 S.E.2d at 97 (emphasis in original). In *Hamilton*, the probationer had argued his violations were not “intentional” because he believed his probationary period had terminated. *Id.* The Supreme Court corrected the trial court’s assumption that the circuit court judge was required to find willfulness. Instead, all the court requires is a “sufficient factual basis” that the conditions have been violated to support the decision to revoke probation. *Id.* at 650, 511 S.E.2d at 97.

A similar situation unfolded in the instant case. Appellant argues, in essence, that his contact with the victim was unintentional and therefore non-willful. This argument does not stand against the fact that willfulness is not required when the violation is other than financial. Because Appellant’s argument goes to whether he willfully violated probation in the face of obvious contact with his victim, the trial court’s decision should be upheld and this appeal should be dismissed.

b. The judge, as the finder of fact, did not find Appellant’s statements credible.

Even though willfulness is not required to show a violation, Respondent concedes it might be inappropriate to revoke probation for truly inadvertent contact with a victim. However, that contact would have to be brief and incidental for the probationer to be afforded such consideration, as defendants with special conditions to have no contact with victims must take the utmost care to avoid any encounters with the victims.

“[T]he 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.” *State v. Williamson*, 356 S.C. 507, 510, 589 S.E.2d 787, 788 (Ct. App. 2003) (citing *State v. White*, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950)).

Note that all it takes are facts “tending to establish” a violation for the court to properly revoke probation. *Id.* Arriving at the victims’ place of work, making repeated eye contact, commenting about her age, and remaining at the location for nearly an hour are all facts that clearly persuaded the trial court in determining that there was a violation.

Furthermore, the judge weighed Appellant’s assertion that the contact was inadvertent and that he did not recognize the victim, and did not believe it.¹ The appellate court’s authority to review revocations of probation are “confined to correcting errors of law unless the lack of a legal or evidentiary basis indicates the circuit judge’s decision was arbitrary and capricious.” *Hamilton*, 333 S.C. at 96, 511 S.E. 2d at 647 (citations omitted). Furthermore, appellate courts are bound by the lower court’s factual findings and are to only review errors of law, unless the factual findings are “clearly erroneous.” *State v. Garris*, 394 S.C. 336, 344, 714 S.E.2d 888, 893 (Ct. App. 2011) (citing *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)).

Contrary to Appellant’s assertions that there was no evidence to support his revocation, Respondent would submit that the trial court weighed the evidence and the credibility of Appellant, and subsequently determined facts tending to establish a violation existed.

¹ “MR. BYRHOLDT: He didn’t even recognize her, Your Honor.
THE COURT: I don’t believe that.

...

I don’t believe that at all.

MR. BYRHOLDT: Okay. All right.

THE COURT: You know, I know you’re doing your thing, but there’s no way he did all this and didn’t recognize that girl. That’s not – that’s malarky.” Tr. P.8, l 24-25 – P. 9, l. 1-6.

Conclusion

Appellant relies on his own assertion that he did not know the victim worked at the restaurant, and that he did not recognize her even though he made repeated eye contact with her when he argues that there was no evidence of a violation. Not only did the trial court find this assertion not credible, but non-financial violations do not require willfulness. Because of this, the trial court's decision should be affirmed.

Respectfully submitted,



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May 20, 2024

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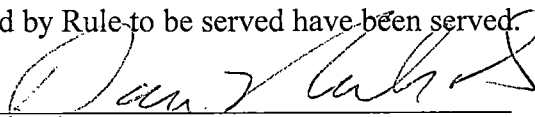
Conrad Kenneth Phillips,.....APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within *Initial Brief of Respondent and Designation of Matter* dated May 20, 2024, on Appellant the 20th day of May, 2024, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Bruce Byrholdt, Esquire
2315 N. Main Street, Suite 117
Anderson, SC 29621

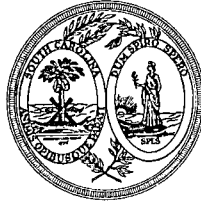
I further certify that all parties required by Rule to be served have been served.



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State of South Carolina
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HENRY McMASTER
Governor



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Acting Director

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May 20, 2024

The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: State v. Conrad Phillips
24-000454

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter, along with proof of service in the above referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan", written over a horizontal line.

Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures

cc: Bruce Byrholdt, Esquire

State of South Carolina

Department of Probation, Parole, and Pardon Services

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