

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Orangeburg County Circuit Court
The Honorable Heath Taylor, Judge

Appellate Case No. 2023-001609

THE STATERESPONDENT

v.

MICHAEL YOUMAN, JR.,APPELLANT

FINAL BRIEF OF RESPONDENT

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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion when it revoked Appellant's probation after finding that Appellant had violated the conditions of his probation based on Appellant's arrest for second degree domestic violence and the statements supporting the underlying facts of the pending charge?

STATEMENT OF THE CASE

On August 28, 2022, Appellant committed an act of domestic violence, resulting in his arrest and prosecution. He subsequently pled guilty to domestic violence second degree on January 12, 2023 before the Honorable Heath Taylor. Judge Taylor sentenced him to three years incarceration provided upon the service of one day with the balance suspended to probation for two years. (R.p 12-p. 15).

On January 26, 2023, two weeks since he was placed on probation, Appellant was alleged to again to have committed domestic violence. The victim told Orangeburg County Sheriff's deputies that Appellant had threatened her with a firearm in the presence of the victim's son. Furthermore, the victim recorded Appellant making threats to her, which were played to the deputy. After learning of these allegations, a probation violation arrest warrant was issued on July 24, 2023. (R.p.7-p.8).

On October 2, 2023, Appellant appeared before Judge Taylor at a hearing regarding the probation violation. At the hearing, Appellant's attorney moved for a continuance because the new arrest charge was still pending. (R. p. 3, l. 6-7). Judge Taylor heard the allegations and then from the victim's advocate, who read a statement from the victim into the record. (R. p. 3, l. 17-p. 4, l. 8). Judge Taylor then denied the motion for a continuance and revoked Appellant's probation in full. (R. p. 5, l. 17-20).

Appellant filed the instant appeal arguing that the state failed to present a sufficient evidentiary basis that he had violated his probation. Respondent would submit 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 sufficient evidence Appellant violated the conditions of probation.**

Appellant's main argument is that there was not enough evidence that he had violated the terms of his probation. Respondent would submit that Appellant is attempting to raise the level of proof to one far closer to that found within a trial than that of a probation violation. Clearly, the trial court was convinced he violated probation through the evidence presented.

“[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.* Statements from the victim read into the record, statements that he possessed

a firearm, and a report that the officer heard a recording of Appellant threatening to blow the victims' head off clearly are evidence of violations of probation.

The United States Supreme Court emphasized "there is no thought to equate this second stage of parole¹ revocation to a criminal prosecution in any sense," when discussing the due process requirements of revocation hearings. *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972). "It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial." *Id.*

Clearly, the letter from the victim read into the record and the incident report referred to by the agent falls within the scope of letters and affidavits. The trial court was certainly within its authority to review the information presented and to determine that facts "tending to establish" a violation existed. *Williamson*, 356 S.C. at 510, 589 S.E.2d at 788. 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 presented and subsequently determined facts tending to establish a violation existed. With this information being plainly in the record, Respondent respectfully would submit that this Court is therefore bound to accept the lower

¹ Probation violation hearings are "constitutionally indistinguishable from the revocation of parole." *Gagnon v. Scarpelli*, 411 U.S. 778, 782 fn. 3 (1973).

court's factual findings. Consequently, this Court should uphold the decision of the lower court and dismiss this appeal.

Conclusion

Appellant argues that there was not a sufficient evidentiary basis for the revocation of his probation. However, statements from the victim that plainly reflect violations, as well as the information underlying Appellant's arrest for domestic violence, show sufficient evidence that he violated probation. Because of this, the trial court's decision should be affirmed.

Respectfully submitted,



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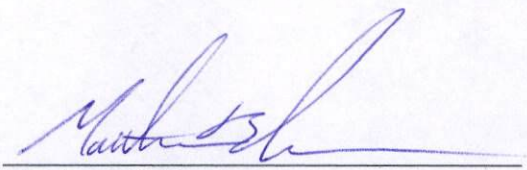
v.

MICHAELYOUMAN, Jr.....APPELLANT

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent filed June 19, 2024, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

June 19, 2024



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