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Sep 17 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KADIDAS REACO GOSSETT,

APPELLANT.

APPELLATE CASE NO. 2024-000743

ANDERS BRIEF OF APPELLANT

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The lower court erred where there was insufficient evidence
presented at the hearing to revoke appellant’s probation.....4

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL8

TABLE OF AUTHORITIES

Cases

Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987) 6

State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)..... 3, 5

State v. King, 221 S.C. 68, 69 S.E.2d 123 (1952)..... 5

State v. Lee, 350 S.C. 125, 564 S.E.2d 372 (Ct. App. 2002)..... 5

State v. Miller, 122 S.C. 468, 115 S.E. 742 (1923)..... 5

State v. Proctor, 345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001) 5

State v. White, 218 S.C. 130, 61 S.E.2d 754 (1950)..... 5

Statutes

S.C. Code § 24-21-450..... 5

S.C. Code Ann. § 24-21-460..... 5

STATEMENT OF ISSUE ON APPEAL

Did the lower court err where there was insufficient evidence presented at the hearing to revoke appellant's probation?

STATEMENT OF THE CASE

Appellant was charged with two counts of attempted murder and one count discharging a firearm in a dwelling. R. 14-19. He pled guilty to two counts of assault and battery, first degree and one count discharging a firearm in a dwelling. R. 20-25. Appellant was sentenced to concurrent terms of ten years' imprisonment, suspended to five years' probation under the youthful offender act. R. 20-25.

On April 26, 2024, appellant appeared before the Honorable R. Keith Kelly for a probation revocation hearing. He was represented by Charles Snyder, an unnamed probation agent prosecuted the matter on behalf of the state. R. 6; 9. At the conclusion of the hearing Judge Keith revoked appellant's probation in full. R. 10, ll. 1-2.

This appeal follows.

STANDARD OF REVIEW

The appellate court's authority to review a decision revoking probation is 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. *State v. Hamilton*, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999).

ARGUMENT

The lower court erred where there was insufficient evidence presented at the hearing to revoke appellant's probation.

Relevant facts

Appellant's probation revocation hearing is contained in its entirety in two and a half pages. Appellant appeared before the court. R. 8-10. The court asked appellant if he had reviewed the matter with his attorney and whether he violated probation. Appellant answered, "yes, sir" to both questions. R. 8, ll. 5-10. Defense counsel explained the violation stemmed from an alleged possession of a firearm, which appellant's brother later claimed was his. R. 8, ll. 12-22. Counsel went on to say that there was another alleged incident with a gun, which appellant was disputing and asked the court not to revoke appellant in full but impose a "brief" incarceration and allow counsel to resolve any pending charges. R. 9, ll. 1-4.

The probation agent asserted there were two separate incidences where appellant was in violation of his probation conditions. He stated the first was in November 2023 and the second was in January 2024. R. 9, ll. 10-20.

Defense counsel contended the January incident was the aforementioned situation where the gun belonged to appellant's brother who was living with appellant at the time. Counsel stated the gun law enforcement found was in the brother's room and asked the court to consider all of this when making a decision. R. 9, ll. 21-25.

At the conclusion of the hearing, without any findings or reasoning the court stated, "(h)e's revoked in full." R. 10, ll. 1-2

Discussion

Probation is a matter of judicial grace, and revocation is committed to the sound discretion

of the trial court. S.C. Code §§ 24-21-450, *et. seq.*; *State v. Lee*, 350 S.C. 125, 564 S.E.2d 372 (Ct. App. 2002); *State v. White*, 218 S.C. 130, 61 S.E.2d 754 (1950). Nevertheless, a circuit court should not order revocation unless "predicated upon an evidentiary showing of fact tending to establish violations of conditions." *Id.*; *State v. Hamilton*, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999) (emphasis added).

The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court. *State v. Miller*, 122 S.C. 468, 474-75, 115 S.E. 742, 745 (1923); *State v. Proctor*, 345 S.C. 299, 301, 546 S.E.2d 673, 674 (Ct.App.2001); S.C. Code Ann. § 24-21-460 (1989). 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. 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." *White*, 218 S.C. at 136, 61 S.E.2d at 756. "This court's authority to review such a decision is 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 647, 511 S.E.2d at 96.

An appellate court will not reverse the trial court's decision unless that court abused its discretion. *White*, 218 S.C. at 135, 61 S.E.2d at 756; *Hamilton*, 333 S.C. at 647, 511 S.E.2d at 96. An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of

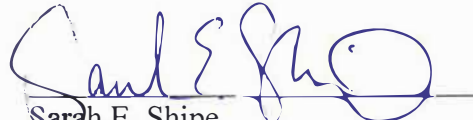
permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. *Fontaine v. Peitz*, 291 S.C. 536, 539, 354 S.E.2d 565, 566 (1987).

There was not sufficient evidence presented by the state to support the revocation. The unnamed probation officer made a brief statement alleging two violations. Defense counsel took exception to one of the incidents, explaining the gun did not belong to appellant but to his brother who resided with appellant. Thus, the judge abused his discretion in revoking appellant's probation.

Moreover, the perfunctory hearing did not give appellant a full and fair chance to be heard in this matter. The court after hearing extremely scant evidence from the state summarily revoked appellant's probation in full. The court in this case failed to exercise discretion, and as a result, the decision to revoke appellant's probation was arbitrary and capricious.

CONCLUSION

Based on the foregoing, Appellant respectfully requests that the probation revocation decision be reversed.


Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of September, 2024.

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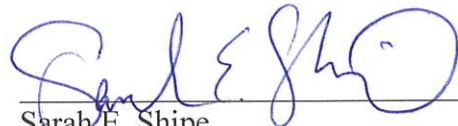
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kadidas Reaco Gossett states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Keith Kelly, which was held on April 26, 2024, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Kadidas Reaco Gossett.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of September, 2024.

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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) Incident Report,
- (2) Arrest Warrant,
- (3) Transcript of Probation Revocation Hearing dated April 26, 2024, pages 1-6,
- (4) Standard Conditions of Probation,
- (5) Order Revoking Probation,
- (6) Indictments and Sentence Sheets.

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


Sarah E. Shipe
Appellate Defender

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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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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 Kadidas Reaco Gossett, #388212, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 17th day of September, 2024.



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