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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY DARNELL WASHINGTON,

APPELLANT

APPELLATE CASE NO. 2024-000292

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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ISSUE ON APPEAL

Whether the lower court erred in revoking Appellant's probation where the circuit court judge did not determine on the record that there was sufficient evidence to establish that Appellant had violated the terms of his probation?

STATEMENT OF THE CASE

In July 2019, Appellant was indicted by the Lexington County grand jury for one count of burglary first degree. R. 24-25. On August 23, 2022, Appellant pled guilty to the lesser included offense of burglary second degree before the Honorable William P. Keesley. Judge Keesley sentenced Appellant to five years imprisonment suspended upon the service of thirty-three days imprisonment and three years on probation. Additional conditions of probation included intensive supervision for six months, random drug/alcohol testing, and substance abuse counseling. R. 27-28, 32-34.

In April 2021, Appellant was arrested in Pickens County for domestic violence of a high and aggravated nature. R. 22-24. On May 24, 2021, Appellant waived presentment of the indictment to the grand jury and pled guilty to the lesser included offense of domestic violence first degree before the Honorable Letitia H. Verdin. Judge Verdin sentenced Appellant to five years of imprisonment suspended upon the service of one year imprisonment and two years on probation. Additional conditions of probation included substance abuse counseling and random drug/alcohol testing at Haven of Rest, and a required twenty-six-week batterers treatment course. R. 26, 29-31.

On February 9, 2024, Appellant was brought before the Honorable R. Lawton McIntosh for a probation violation hearing. Appellant was represented by Matthew Bradley. R. 1. Judge McIntosh revoked Appellant's probation in both cases for a minimum of thirty months to be served on house arrest with the condition that while on house arrest, Appellant must complete an approved batterers treatment program within that time. Judge McIntosh clarified that Appellant would remain on house arrest for longer if he failed to complete an approved treatment program during the thirty-month period. R. 17, l. 18-R. 18, l. 6; R. 35-36.

STANDARD OF REVIEW

The determination of whether or not to revoke probation is within the trial court's discretion. State v. Proctor, 345 S.C. 299, 301, 546 S.E.2d 673, 674 (Ct.App.2001). 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). 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 in revoking Appellant's probation where the circuit court judge did not determine on the record that there was sufficient evidence to establish that Appellant had violated the terms of his probation.

Relevant Facts

Appellant denied willfully violating his probation at the start of the revocation hearing. R. 4, ll. 13-18. Agent Helling with the Department of Probation, Parole, and Pardon Services (PPP) informed the court that Appellant was initially doing well on probation until he moved out of the home that he shared with the complainant of the domestic violence charge. After he left that residence, Agent Helling had trouble "pinning [Appellant] down..." R. 3, l. 21-R. 4, l. 8. Agent Helling further informed the court that Appellant had failed to complete an approved batterers treatment program. Appellant had attended one-on-one counseling sessions with a pastor from his church, and he had provided a handwritten note that he had completed those counseling courses, but it was not accepted by Agent Helling's supervisor. R. 4, l. 9- R. 5, l. 17.

Agent Helling reported in both cases that Appellant had failed to report, failed to notify his agent of a change of residence, failed to follow the advice and instructions of his agent, and failed to pay all the fines and fees. Regarding the domestic violence probation, Agent Helling asserted that Appellant had also failed to complete an approved batterers treatment program. R. 29-31, 32-34. Agent Helling recommended that Appellant be fully revoked on both cases. R. 9, ll. 9-15.

Appellant told the court that he had been on probation before and that this was the first time he ever had problems while on probation. He stated that he went to see his pastor for the batterers counseling because he ran a small business and did not have time to stop for an hour in

the middle of the day to go to a class. Tr. 5, l. 18-Tr. 6 l.22. He maintained that he regularly showed up for appointments with PPP and kept in contact with members of the office. R. 12, ll. 10-16. Agent Helling stated that Appellant had been on probation four times previously and had been revoked each time. R. 12, ll. 1-5.

Counsel Bradley informed the court that he had only received the violation report for the burglary probation and had not discussed the domestic violence probation case with Appellant. R. 7, l.20-R. 8, l. 11. Agent Helling agreed that he had accidentally sent the same violation report twice. The court offered to continue the probation violation hearing until the following month to allow Appellant to consult with counsel on the domestic violence probation violations. Appellant chose to continue with the revocation hearing. R. 9, l. 1-R. 10, l. 25.

Counsel Bradley stated that Appellant had been homeless and transient, moving between hotel rooms, for a time. Although he had completed six months of counseling, Appellant was willing to do another batterers program that PPP approved. Regarding the financial violations, Appellant was only in arrears¹ on his regular supervision fees and the Public Defender fees. R. 14, l. 4-R. 15, l. 10. Counsel Bradley requested that Appellant be able to serve any revocation on house arrest. R. 16, ll. 3-19.

In revoking Appellant's probation the court stated,

I tell you what, though. I don't agree with you or whatever about your batterer's intervention program...You should have done what you were supposed to. You did – you've been through this program four times. You haven't made it. It's not real credible, you come up here now and blame this officer. I've been knowing this officer a long time. He's a good officer, and he's an honest officer. What I'm going to do is revoke you and I'm going to put you on house arrest...Until such time as he – a minimum of thirty months, during which time you will continue your – you will finish your batterer's treatment. If he hasn't

¹ Of the \$6,798.70 in fines and fees Appellant was responsible for paying, he was only in arrears approximately \$1,450. R. 29-31, 32-34.

completely finished it by thirty months, he will stay on house arrest until he's finished.

R. 17, l. 15-R. 18, l. 6.

Discussion

Appellate courts only sit to consider errors of law in relation to probation revocations and “[a] finding of fact by the court of general sessions as to a breach of the conditions of a suspended sentence is final.” State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950). Therefore, “before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions.” State v. Hamilton, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct. App. 1999). “[T]he authority of the court of general sessions to revoke such suspension of sentence should always be predicated upon an evidentiary showing of fact tending to establish violations of the conditions.” White at 135, 61 S.E.2d at 756 (1950).

The requirement that a lower court make findings of fact and determinations on the record to support its legal conclusions is well settled in South Carolina jurisprudence. See e.g., Timothy C. Doughtie Advertising, Inc. v. Nelsen Steel and Wire Co., Inc. 384 S.C. 27, 324 S.E.2d 329 (Ct. App. 1984) (holding remand proper where the trial judge failed to set forth any findings of fact to support its legal conclusions, thereby precluding review by appellate courts); Gandy v. Gandy, 297 S.C. 411, 377 S.E.2d 312 (1989) (finding remand proper where trial judge failed to make any specific findings regarding the character, fitness, attitude and inclinations of the parents in a custody proceeding); Kiawah Property Owners Group v. Public Service Com’n of South Carolina, 338 S.C. 92, 525 S.E.2d 863 (1999) (ordering remand where an administrative body failed to make findings sufficiently detailed to enable a reviewing court to determine whether the findings were supported by the evidence and whether the law had been applied

properly to those findings); In re Treatment and Care of Luckabaugh; 351 S.C. 122, 568 S.E.2d 338 (2002) (holding a new commitment hearing was required where the trial court order did not contain any facts to support its legal conclusions).

As stated in Luckabaugh, “[w]e do not require a lower court to set out findings on all the myriad factual questions arising in a particular case. But the findings must be sufficient to allow this Court, sitting in its appellate capacity, to ensure the law is faithfully executed below. The absence of factual findings makes our task of reviewing the court order impossible because the reasons underlying the decision [are] left to speculation.” Luckabaugh at 133, 568 S.E.2d at 343 (2002) (internal citations and quotations removed). In the context of a probation revocation, a circuit judge is not required to make a finding that a violation of probation was willful unless the case only involves the failure to pay fines or restitution. Then a circuit judge must, in addition to finding sufficient factual evidence of the violation, make an additional finding of willfulness. See Hamilton at 649; 511 S.E.2d at 97.

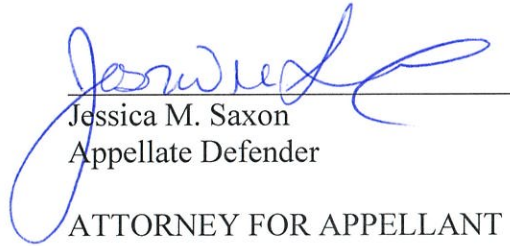
In revoking Appellant’s probation, the circuit court found that Appellant had not completed an approved batterers treatment program. However, the court did not make any factual findings on any of the other grounds asserted for the domestic violence probation and made no findings on the violations for the burglary case. While the condensed finding regarding the batterers program may be sufficient to allow the domestic violence probation revocation to stand, the record wholly lacks the reasoning for the court’s violation of Appellant’s burglary probation.

Admittedly, a court is not required to find that a probationer has willfully violated their probation unless the court is dealing solely with a financial violation. However, a court is required to make sufficient factual findings on the record to support a finding of revocation,

regardless of the nature of the violations. In Appellant's case, the court did not make the necessary factual findings prior to revocation Appellant's probation. This was error.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court reverse the revocation of his probation.


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 17th day of September, 2024.

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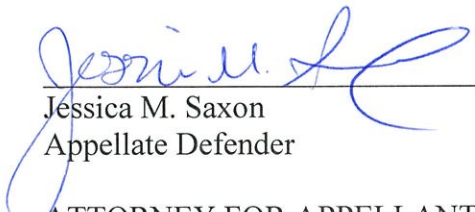
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Terry Darnell Washington 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 probation revocation before Judge R. Lawton McIntosh, which was held on Feb. 9, 2024, and, in her opinion, the appeal is without legal merit sufficient to warrant a new hearing.
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 probation revocation hearing.

Wherefore, she asks the Court to relieve her as counsel for Terry Darnell Washington.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 17th day of September, 2024.

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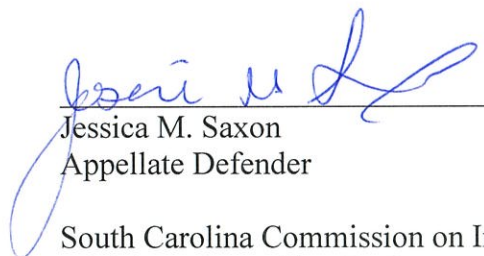
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment: 2019-GS-32-02331, Indictment: 2021-GS-39-1223, & Sentencing Sheets;
- (2) Probation Revocation Hearing Transcript dated February 9, 2024;
- (3) Probation 1109 violation reports for warrant/citation numbers C-04-23-0086 & W-04-23-0376;
- (4) Form 9 sentencing sheets dated February 9, 2024.

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



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This 17th day of September, 2024.

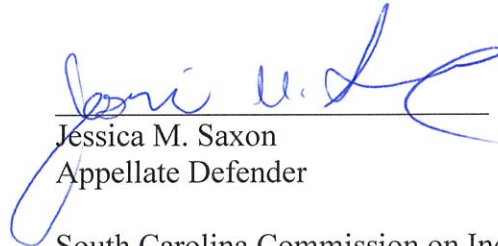
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CERTIFICATE OF COUNSEL

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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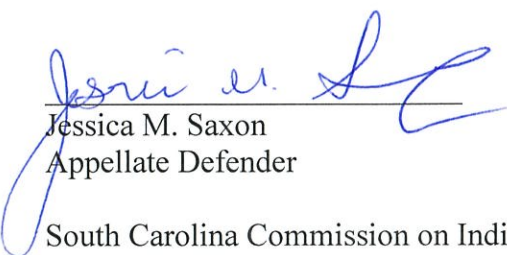
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APPELLATE CASE NO. 2024-000292

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 Terry Darnell Washington at 807 Glenn Street, Anderson, SC 29625, this 17th day of September, 2024.



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