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Oct 30 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VINCENT DWIGHT,

APPELLANT.

APPELLATE CASE NO. 2024-000522

ANDERS BRIEF OF APPELLANT

SARAH E. SHIPE
Appellate Defender

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

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STATEMENT OF ISSUE ON APPEAL

Whether the lower court erred by revoking appellant's release under the Community Supervision Program where there was insufficient evidence presented that his violations were willful?

STATEMENT OF THE CASE

On May 13, 2015, an Orangeburg County grand jury indicted appellant for criminal sexual conduct (CSC), second degree. R. 1-2. On September 1, 2016, appellant pled guilty and was sentenced to fifteen years' imprisonment. R. 3.

After his release on parole on November 1, 2022, appellant began his two year term under the Community Supervision Program (CSP). R. 5. On February 26, 2024, Tiffany Williamson, signed a Community Supervision Affidavit for Arrest Warrant stating appellant violated the conditions of CSP. R. 9-11.

On March 27, 2024, a revocation hearing was held before the Honorable Maite Murphy. R. 14-22. Robert Mellard represented appellant and Tiffany Williamson represented the state. R. 14. At the conclusion of the hearing Judge Murphy revoked appellant's CSP. R. 21, l. 8. Judge Murphy signed an order finding appellant violated the terms of the CSP and ordered he be held in the custody of South Carolina Department of Corrections for one year. R. 23.

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 by revoking appellant's release under the Community Supervision Program where there was insufficient evidence presented that his alleged violations were willful.

Relevant facts

At the revocation hearing Tiffany Williamson from Probation Pardon and Parole, told the court appellant failed to complete sex offender counseling. R. 15, ll. 13-17. Williamson explained appellant's successful completion of sex offender counseling was mandatory under his CSP guidelines. R. 4; 15, ll. 15-17. She also stated appellant had been living at unsuitable residences as they were not approved by his agent. Williamson contended appellant was unable to maintain an approved residence throughout the time he was under her supervision. R. 15, l. 20—17, l. 2. Williams asked the court revoke appellant. R. 17, ll. 5-7.

Counsel Doug Mellard asked the court to allow Reverend Kim Robinson to present "mitigation" on appellant's behalf. R. 18, ll. 17-20. Reverend Robinson declared appellant had potential to do better if he was in the right environment. The Reverend told the court he would provide a place for appellant to stay and a job to support appellant's success under CSP. R. 19, l. 4—20, l. 21.

Ultimately the court revoked appellant and ordered he be remanded to the custody of the department of corrections for one year. R. 21, l. 8; 23.

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).

The decision of whether an alleged violation was willful and the decision of whether to

revoke community supervision are discretionary. The trial court will not be reversed unless the appellant has shown an abuse of that discretion. *See State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006) (applying an abuse of discretion standard of review to the related context of an appeal from an order revoking probation). Where there is any evidence to support the court's factual findings, there is no abuse of discretion. *Id.*

The statute on CSP provides in part:

(A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, any sentence for a “no parole offense” as defined in Section 24-13-100 must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole, and Pardon Services. No prisoner who is serving a sentence for a “no parole offense” is eligible to participate in a community supervision program until he has served the minimum period of incarceration as set forth in Section 24-13-150. Nothing in this section may be construed to allow a prisoner convicted of murder or a prisoner prohibited from early release, discharge, or work release by any other provision of law to be eligible for early release, discharge, or work release.

S.C. Code Ann. § 24-21-560(A).

(C) If the department determines that a prisoner has violated a term of the community supervision program and the community supervision should be revoked, a probation agent must initiate a proceeding in General Sessions Court. The proceeding must be initiated pursuant to a warrant or a citation issued by a probation agent setting forth the violations of the community supervision program. The court shall determine whether: (1) the terms of the community supervision program are fair and reasonable; (2) the prisoner has complied with the terms of the community supervision program; (3) the prisoner should continue in the community supervision program under the current terms; (4) the prisoner should continue in the community supervision program under other terms and conditions as the court considers appropriate; (5) the prisoner has wilfully violated a term of the community supervision program.

If the court determines that a prisoner has wilfully violated a term or condition of the community supervision program, the court may impose any other terms or conditions considered appropriate and may continue the prisoner on community supervision, or the court may revoke the prisoner's community supervision and impose a sentence of up to one year for

violation of the community supervision program. A prisoner who is incarcerated for revocation of the community supervision program is not eligible to earn any type of credits which would reduce the sentence for violation of the community supervision program.

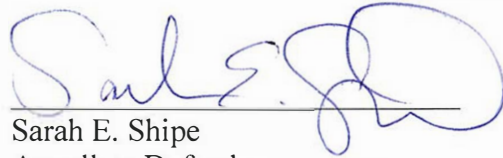
S.C. Code Ann. § 24-21-560(C).

Here, there was insufficient evidence presented that appellant's alleged violations were willful. Most of the discussion of appellant's alleged violations were regarding his choice of residence. The nature of appellant's conviction disallows him to reside within one thousand feet of places visited frequently by children including: church, school, playground, etc. Comporting to this restriction is extremely difficult and nearly impossible. Reverend Robinson assured the court that this issue would be resolved going forward as he would provide a suitable location for appellant to reside and a job. Additionally, other than Williamson's assertion, no evidence was presented regarding appellant's alleged failure to complete counseling.

The state, via Williamson, never asserted appellant's alleged violations were willful as required by the statute. *See State v. Garrard*, 390 S.C. 146, 151, 700 S.E.2d 269, 272 (Ct. App. 2010) (Holding "In order to prove a willful violation in this case, the State was required to prove that Garrard voluntarily and intentionally went within one thousand feet of a school, and that he knew doing so was a violation of a term of the community supervision program."). The court erred finding appellant willfully violated the terms of the CSP.

CONCLUSION

Based on the foregoing, appellant respectfully requests that the Community Supervision Program revocation decision be reversed.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of October, 2024.

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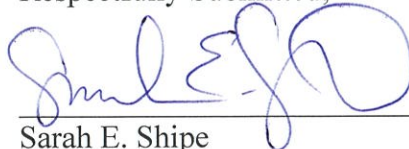
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Vincent Dwight 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 revocation hearing before Judge Maite Murphy, which was held on March 28, 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 Vincent Dwight.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

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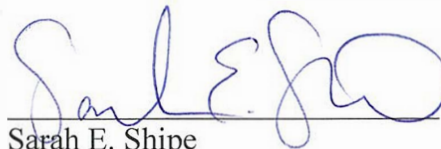
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment: 2015-GS-38-0687
- (2) Sentence Sheet
- (3) Signed SCDPPPS Form 1401
- (4) Community Supervision Program Certificate
- (5) Violation Report
- (6) Arrest Warrant
- (7) Citation
- (8) Revocation Hearing Transcript Dated March 27, 2024
- (9) Revocation Order

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



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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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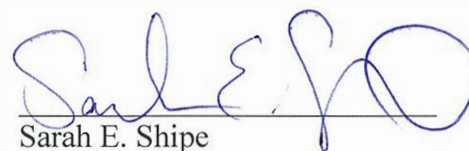
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CERTIFICATE OF SERVICE

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 Vincent Dwight, #249973, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 30th day of October, 2024.



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