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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FELICIA DANIELLE TURNAGE,

APPELLANT.

APPELLATE CASE NO. 2024-000225

ANDERS BRIEF OF APPELLANT

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the lower court err revoking appellant's probation where she made great efforts to conform and to take advantage of opportunities to better herself during her prehearing incarceration?

STATEMENT OF THE CASE

On November 12, 2020, a York County grand jury indicted appellant for, possession with intent to distribute methamphetamine and possession with intent to distribute heroin. R. 1-4. On September 2, 2021, appellant pled guilty and was sentenced to ten years' imprisonment, suspended upon the service of three years' probation. R. 5-8.

On December 14, 2023, a York County grand jury indicted appellant for possession of methamphetamine. R. 9-10. Appellant pled guilty as indicted before The Honorable Daniel D. Hall on February 8, 2024. After her guilty plea Judge Hall held a probation revocation hearing. R. 17-27. Appellant was represented by Ugonu Udogwu and the state was represented by assistant solicitor, Amber Holt. R. 17.

At the conclusion of the hearing Judge Hall sentenced appellant to time served for possession of methamphetamine. R. 11-12; 25, ll. 18-20. Judge Hall ordered appellant's probation revoked for five years of her earlier sentence and terminated the balance. R. 25, ll. 20-22; 28-29.

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 revoking appellant's probation where appellant made great efforts to conform and to take advantage of opportunities to better herself during her prehearing incarceration.

Relevant facts

At appellant's guilty plea and probation revocation hearing, the state alleged that on September 19, 2023, appellant was arrested for shoplifting at a Walmart in York County and after a search of her person law enforcement found a glass pipe containing .2 grams of methamphetamine. R. 20, ll. 18-22. Appellant had two prior convictions, both drug crimes. R. 20, ll. 22-25. The unnamed probation agent requested the court revoke appellant's probation in full. R. 21, ll. 17-21.

Defense counsel told the court appellant was an addict and requested she be allowed to go to a drug rehabilitation center to get the help she needed. R. 22, ll. 2-25. Appellant's family was present at the hearing. R. 22, l. 23—23, l. 18. Appellant addressed the court. Appellant stated that during her time in jail she had completed multiple Bible studies and would soon to complete "Celebrate Recovery." R. 23, l. 25 – 24, l. 22.

The court acknowledged appellant was a "severe addict," and commended her for taking advantage of the programs available to her. R. 25, ll. 7-9; R. 25, ll. 23-25. However, the court ultimately revoked appellant to five years' active incarceration and terminated the balance. R. 25, ll. 18-22.

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.

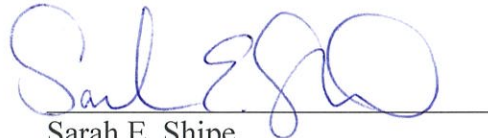
An appellate court will not reverse the trial court's decision unless that court abused its discretion. *White*, 218 S.C. at 135, 61 S.E.2d at 756; *Hamilton*, 333 S.C. at 647, 511 S.E.2d at 96. An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application 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).

Here the court erred revoking appellant's probation. Instead of using its discretion the court made a quick judgement and revoked appellant. Appellant was found with a very small amount of drugs. Appellant admittedly suffered from addiction. However, appellant showed great strides were made prior to the hearing. She successfully completed multiple courses as well as attending classes to aid in her sobriety. Appellant's family was at the hearing and offered support for appellant. Appellant needed to enter treatment at a rehabilitation facility and demonstrated she could be successful if offered the opportunity. 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 1st day of November, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Felicia Danielle Turnage 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 hearing before Judge Daniel D. Hall, which was held on February 8, 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 hearing.

Wherefore, she asks the Court to relieve her as counsel for Felicia Danielle Turnage.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

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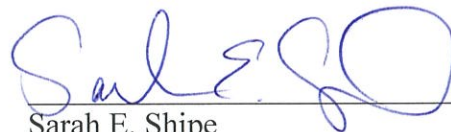
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s): 2023-GS-46-05422, 2020-GS-46-06874, 2020-GS-46-0875
- (2) Sentence Sheets
- (3) Probation Violation Report
- (4) Probation Citation
- (5) Transcript dated February 8, 2024
- (6) 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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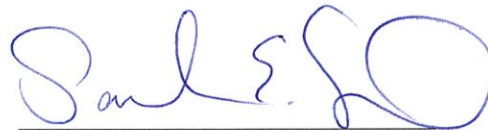
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CERTIFICATE OF SERVICE

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 Felicia Danielle Turnage, #393332, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 1st day of November, 2024.



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