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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Appellate Case No. 2024-001992

The Honorable Jennifer McCoy, Circuit Court Judge

State of South Carolina.....Respondent,

v.

Casey Lee Combs.....Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Casey Combs was placed on probation on September 9, 2022, by the Honorable Bentley Price after his guilty plea to Domestic Violence, 1st and 2nd Degree, and Harassment 2nd Degree in the Charleston County Court of General Sessions. 2022-GS-10-6236, 6234, 6232. He was sentenced to 10 years' probation, suspended on the service of 5 years' probation. On February 27, 2024, he was alleged to have violated the terms and conditions of probation by being arrested on new charges. See Revocation Cover Sheet. An administrative hearing was held on March 26, 2024, before an Administrative Hearings Officer who recommended a revocation of 2 years and 266 days on the Domestic Violence, 2nd Degree and Harassment charges, and a 3-year revocation, but continued on probation, for the Domestic Violence 1st Degree charges. See Summary of Administrative Hearing.

Combs had his probation violation hearing on November 18, 2024. He was represented by Kerry W. Koon and Michael P. O'Connell. The Honorable Jennifer McCoy revoked him in full for 10 years.

This appeal timely follows.

ARGUMENT

The circuit court judge abused her discretion in revoking Combs's probation in full, and imposing a 10-year sentence, when she did so on the basis of a mere arrest for a hotly contested factual dispute and without making any findings of fact or applying any standard of review regarding that new arrest.

Casey Combs was given a 10-year sentence based on new allegations of criminal conduct in a mere 10-page transcript that did not include any findings of fact or any identification of applicable law or application of it. Indeed, the circuit court simply disregarded even the probation office's requested relief, which was half of the sentence she imposed here. This Court should reverse the probation violation.

Casey Combs was issued a warrant for the violation of his probation on February 27, 2024. See Revocation Warrant. Incarcerated the whole time, he finally had his hearing on November 18, 2024.¹ He was on probation for Domestic Violence First Degree for which he received a sentence of 10 years suspended on the service of 5 years' probation; Domestic Violence Second Degree, for which he received a sentence of 5 years upon the service of 5 years' probation; and Harassment, Second Degree, for which he was sentenced to 1 year, suspended on the service of 5 years' probation. See Revocation Warrant. This sentence had been negotiated by Assistant Solicitor Catherine Fries and Combs' lawyer.²

¹ Judge Bentley Price, who had retained jurisdiction over the case, vacated his seat in June 2024.

² The fact this probationary sentence was negotiated by the Solicitor's Office appears not have been part of the narrative underlying the outrage in some quarters surrounding this case. <https://www.fitsnews.com/2024/02/22/another-south-carolina-system-fail/> (last visited 1/7/25).

Probation requested a full revocation of 2 years and 266 days for two of the offenses and a partial revocation of 3 years and to continue on probation for the Domestic Violence First Degree charge, see revocation warrant, after a hearing before Neil Collier, an Administrative Hearings Officer. This was after Combs had been arrested on February 17, 2024, for an aggravated assault. See Revocation report.

At the probation hearing, Combs's counsel requested the circuit court hold the case in abeyance pending the resolution of the underlying charges which, counsel argued, were "hotly contested." Tr. 5-6. Apparently, the purported victim of the February 17, 2024, charges provided documentation that she wants the charges dropped and that Combs had permission to enter her home. Tr. 6, 9. As to the second complainant, counsel indicated he had a significant criminal history and pending charges himself. Tr. 6-7. He has recently picked up additional charges. See public index. The circuit court then issued her ruling:

THE COURT: Okay. I'm going to revoke his probation based on this new rearrest. I know that probation doesn't require another conviction to violate, only the rearrest given the facts and circumstances and the new charges, as well as most substantially the fact and circumstances surrounding the previous set of charges, the sentence is very specific from Judge Price previously.

The, I'm going to revoke ten years, and then continue him after that where he will still have to complete the requirements that were laid out in the first, first sentencing; substance abuse counseling, anger management, and the others. All right?

Tr. 10.

The circuit court judge abused her discretion by revoking Combs's probation for a full 10 years based on this new arrest when the underlying facts are hotly disputed and when she did not make any affirmative findings of fact or apply any legal standards at all.

The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court. *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006). The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation. *Id.* See also *State v. King*, 221 S.C. 68, 73 69 S.E.2d 123, 125 (1952). “While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made a victim of whim or caprice. *State v. White*, 218 S.C. 130, 136, 61 S.E.2d 754, 756.

The circuit court judge did not make any findings of fact or apply, it appears, any legal standards when revoking Combs in full. She rejected the administrative hearing judge’s recommendation, but did not offer any reasons for doing so. Without some evidentiary basis evident in the record, it is far from clear that Combs has not been a “victim of whim or caprice.” This is especially so given the underlying basis for the revocation— a new arrest—was disputed at the probation hearing. Combs did not admit to the underlying violation, only that he was arrested.

In *Jackson v. State*, the Court of Appeals of Indiana, reversed a probation violation and found the trial court abused its discretion when the court did not find, by a preponderance of the evidence, that the defendant actually committed a new crime. 6 N.E.3d 1040 (Ct. App. 2014). Also, the Court of Appeals of Kansas similarly found an abuse of discretion when the court revoked probation based on a defendant’s merely being bound over for new charges. The Court found that the probable cause standard for a new arrest is not as high as the preponderance of evidence standard required to revoke a defendant of probation and therefore the trial court erred in revoking the defendant’s probation. *State v. Lloyd*, 52 Kan. App. 2d 780 (2016). Accord *Nelson v. State of Alabama*, 331 So.3d 1194 (2021) (a ‘mere’ arrest is not sufficient for revoking one’s probation). See

also Lewis v. Sims, 277 Ga. 240, 587 S.E.2d 646 (2003) (Georgia Supreme Court acknowledging that the court applies a preponderance of the evidence standard in determining whether probation was violated).

The circuit court here abused its discretion in violating Combs's probation and imposing the maximum possible sentence without making any findings of fact or articulating any legal standard of review. On this record, it appears the court's decision was based on mere whim or caprice and this Court should reverse.

CONCLUSION

This Court should reverse Combs's probation violation.

Respectfully submitted,

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