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Mar 26 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

D'QUAN LAMAR BOLTON,

APPELLANT

APPELLATE CASE NO. 2024-001275

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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Division of Appellate Defense
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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in revoking appellant's probation in full without a finding that appellant did not make a *bona fide* effort to pay his supervision fees, his drug test fees, and his surcharges since it is error to revoke probation where the record does not show a willful failure to make those payments?

STATEMENT OF THE CASE

A probation citation was issued on April 20, 2023 charging appellant with various financial and other violations of his probation. R. 1-2. (Probation Citation and Affidavit). Appellant appeared on July 29, 2024, for a probation revocation hearing before the Honorable R. Lawton McIntosh. William Barbieri represented appellant. Paetsa Littlejohn was the probation agent appearing for the state. R. 3.

At the conclusion of the probation revocation hearing, Judge McIntosh revoked appellant's probation in full and reduced his arrears and payments to a civil judgment. R. 11, l. 23 – 12, l. 8.

This appeal follows.

STANDARD OF REVIEW

“The decision to revoke probation is addressed to the sound discretion of the trial court.” State v. Spare, 374 S.C. 264, 268, 647 S.E.2d 706, 708 (Ct. App. 2007)(citing State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006)). The appellate 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.”” Id. (quoting State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999)).

“Probation may not be revoked solely for failure to make required payments of fines or restitution without the circuit judge first determining on the record that the probationer has failed to make a bona fide effort to pay.” Hamilton, 333 S.C. 642, 649, 511 S.E.2d 94, 97 (Ct. App. 1999) (discussing Bearden v. Georgia, 461 U.S. 660 (1983)); Nichols v. State, 308 S.C. 334, 337, 417 S.E.2d 860, 861 (1992); Barlet v. State, 288 S.C. 481, 483, 343 S.E.2d 620, 622 (1986). “Therefore, in those cases involving the failure to pay fines or restitution, the circuit judge must, in addition to finding sufficient factual evidence of the violation, make an additional finding of willfulness.” Hamilton, 333 S.C. at 649, 511 S.E.2d at 97.

“Willful failure to pay means a voluntary, conscious and intentional failure.” People v. Davis, 216 Ill.App.3d 884, 159 Ill.Dec. 841, 576 N.E.2d 510, 513 (1991); see State v. Sowell, 370 S.C. 330, 336, 635 S.E.2d 81, 83 (2006) (“A willful act is defined as one ‘done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.’ ” (quoting Spartanburg County Dep’t of Soc. Servs. v. Padgett, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988)). “The trial court may infer that the

failure to pay is intentional where a probationer has the ability to pay a fee, but does not do so.” Joseph v. State, 3 S.W.3d 627, 641 (Tex.App.1999) (citations omitted).

ARGUMENT

The court erred in revoking appellant's probation in full without a finding that appellant did not make a *bona fide* effort to pay his supervision fees, his drug test fees, and his surcharges since it is error to revoke probation where the record does not show a willful failure to make those payments.

Relevant facts

The affidavit to the probation citation stated that appellant failed to pay “monetary obligations” because he was in arrears \$450 (9 payments) on his supervision fees with an unpaid balance of \$1800. In addition, “[b]y failing to pay surcharges [and] being in arrears \$36 (9 payments) with an unpaid balance of \$128.75. By failing to pay \$20 drug test fee...” R. 2.

At the probation revocation hearing, appellant started to explain that his phone “was off at one point of the month due to my financial hardship.” R. 5, ll. 19-21. The judge interrupted and said that before appellant started explaining his financial problems, he wanted him to admit he had violated his probation. Appellant then admitted to violating his probation. R. 5, ll. 22-25.

Probation agent Littlejohn then told the judge that, as to appellant's financial violations, “Mr. Bolton failed to pay monetary obligations by failing to pay a \$20 drug test fee, being in arrears ten payments on his surcharge, six payments on his supervision fees.” R. 7, ll. 5-8. Littlejohn noted that appellant had an administrative hearing on June 12, 2024, in which the hearing officer recommended a full revocation of the 90-day sentence and to terminate appellant's probation. R. 7, ll. 20-23.

Defense counsel Barbieri then explained:

[Y]our Honor. The cause of Mr. Bolton's issues here is genuinely his financial situation. He has four children that he is currently a sole provider for. He now has a stable job, stable residence, and he does desire to complete all of his probation requirements. He has

paid monies on his probation to just about get himself -- he's getting close to back into having no money that's owed. But he would just ask that he be continued on probation. He now can afford to get into the Three Trees program and [he] does want to do that. So that's what we'd be asking today.

R. 8, ll. 5-16.

Appellant told the judge that his financial situation was bad, and he had brought in documentation from the last five or six months to prove that fact. This documentation included an eviction notice he received from his apartment complex. However, “each month I was able to make those payments to make sure me and my family have somewhere to stay, Your Honor.” R. 8, l. 18 – 9, l. 18.

Appellant said that he was attempting to make his payments, but he was facing additional financial hardships because he had “lost his car”. Appellant also offered that he had paid his probation fee of \$226 to become current and that he was only \$113 short on his payments. He was trying to get a “personal loan” so that he could become current on all of his financial obligations. R. 8, l. 18 – 9, l. 18.

When the judge questioned appellant’s about paying for telephones for his wife and children when he had a variety of other financial problems, appellant explained that his children needed their phones so he could be sure they arrived home safely from school every day. Appellant stated he was doing everything he could think of to become current on his probation obligations as well as his other bills. R. 9, l. 8 – 11, l. 16.

The judge then revoked appellant’s probation in full and reduced his arrears for probation payments to a civil judgement. When appellant attempted to interject that he could pay all his fines and become current, the judge responded “the order has already been issued and that’s it. Good luck to you.” R. 11, l. 23 – 12, l. 8.

Discussion

It is clear here that appellant's probation was revoked because of his failure to make the required fines and other payments. The other violations alleged in the probation citation were not a factor. Probation may not be revoked for the failure to make required payments of fines or restitution without the circuit court first determining on the record that the probationer has not made *bona fide* efforts to pay the financial conditions of his probation. State v. Hamilton, 333 S.C. 642, 649, 511 S.E.2d 94, 97 (Ct. App. 1999).

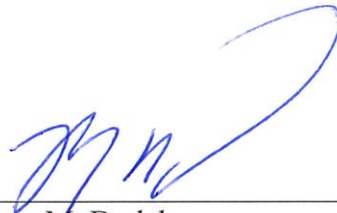
In State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007), this Court reversed the lower court's revocation of Spare's probation where there was no evidence Spare not having paid over \$40,000 in restitution was a willful failure to pay. The record showed that Spare simply did not have the ability to pay that amount of restitution. However, the record also showed Spare was making slow progress towards paying that restitution obligation even though it was extremely unlikely he would ever do so. Under these circumstances, Spare's inability to pay could not be deemed willful since he also had to pay rent, back taxes, and make payments on his other court-ordered financial obligations.

In Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986), our Supreme Court held that the judge must first determine on the record whether the probationer can pay the ordered amount of restitution. Then, the judge must make a finding that the probationer failed to make a *bona fide* effort to pay his restitution before his probation could be revoked. See also Bearden v. Georgia, 461 U.S. 660 (1983). Further, in Nichols v. State, 308 S.C. 334, 417 S.E.2d 860 (1982), the Court found defense counsel was ineffective where his client, the probationer, had his probation revoked without a proper showing and finding that he did not make a *bona fide* effort to pay.

In this case, as in Nichols, the state made no showing that appellant was not making a *bona fide* effort to pay the fees associated with his probation. Therefore, the probation revocation hearing judge erred in revoking appellant's probation.

CONCLUSION

By reason on the foregoing argument, the revocation of appellant's probation should be vacated, and this case remanded to the York County Court of General Sessions for a new probation revocation hearing.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of March, 2025.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for D'Quan Lamar Bolton states:

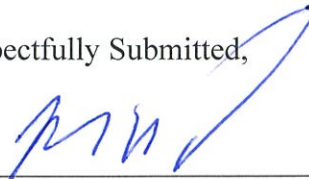
1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge _____, which was held on July 29, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He 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, he asks the Court to relieve him as counsel for D'Quan Lamar Bolton.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of March, 2025.

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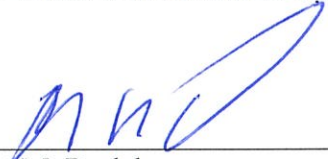
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Probation citation and affidavit;
- (2) Entire probation revocation hearing.

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



Robert M. Dudek
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This 26th day of March, 2025.

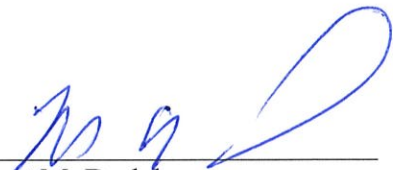
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CERTIFICATE OF COUNSEL

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 D'Quan Lamar Bolton, at his private residence, this 26th day of March, 2025.



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