

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Ninth Circuit, Charleston County
The Honorable Jennifer McCoy, Circuit Court Judge

Appellate Case No.: 2024-001992

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APR 18 2025
SC Court of Appeals

THE STATE,

RESPONDENT

v.

CASEY LEE COMBS,

APPELLANT

INITIAL BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel, SC Bar#73740

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220**

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

Whether a circuit court considering a probation violation abuses its discretion when it determines the facts underlying a new arrest as grounds for a revocation?

STATEMENT OF THE CASE

On or about June 3, 2022, the Appellant was charged with domestic violence in the first degree. Before that, Appellant was also facing a charge of harassment in the second degree from a series of incidents on or about April 8, 2021, and domestic violence in the second degree from May 12, 2021. On September 9, 2023, he pled guilty to these charges before the Honorable Bentley Price, who sentenced him to a negotiated ten years incarceration on the domestic violence first degree, a consecutive three years for the domestic violence second degree, and a consecutive one year on the harassment charge. The sentences were all suspended to five years of probation, with the first year intensive, ordered anger management, and no contact with the victims.

On February 17, 2024, officers with the Charleston Police Department received a report that Appellant had invaded a home and assaulted an individual by striking him with a pistol. The reporting officer observed a laceration to the inside and outside of the victim's upper lip. R.* Following the investigation, Appellant was charged with first degree burglary, possession of a firearm during the commission of a violent crime, assault and battery first degree, and assault and battery of a high and aggravated nature. R.*. As a result of these violations, agents with the Department of Probation, Parole and Pardon Services (SCDPPPS) issued a warrant charging him with violation of his probation.

On March 26, 2024, an administrative hearing was held before a SCDPPPS hearing officer who referred the matter to General Sessions court with a recommendation of revocation. R.*. On November 18, 2024, a violation hearing was held before the Honorable Jennifer B. McCoy. After hearing from both sides including Appellant's attorneys who stated that Appellant did not admit to the violations, the court found that the "facts and circumstances" of the new charges showed Appellant violated the terms of his probation. R. * (p.10, l.10-11). The court revoked the ten year

sentence for domestic violence first degree, but continued Appellant on the remaining suspended sentences. R. * (p.10, l. 15-16).

Appellant filed a Notice of Appeal on November 21, 2024. Appellant filed his initial Brief on January 31, 2025. In his Brief, he argues that the probation court abused its discretion by revoking a portion of his suspended sentence without a finding of fact that he violated the conditions of his probation. In response, Respondent would submit that the circuit court did make a finding of fact, and that the proof required of a violation is the preponderance of the evidence. Respondent's Brief follows.

STANDARD OF REVIEW

An appellate court will not disturb the Circuit Court's decision to revoke probation unless the decision was influenced by an error of law, was without evidentiary support, or constituted an abuse of discretion. State v. Archie, 322 S.C. 135, 470 S.E.2d 380 (Ct.App.1996); *see also* State v. White, 218 S.C. 130, 135, 61 S.E.2d 754 (1950) (stating that upon review of revocation of probation, question is not one of formal procedure respecting either notice, specifications of charges or trial thereon, but is simply whether trial court abused its discretion; review therefore must be determined in accordance with principles governing exercise of judicial discretion). The decision to revoke probation is addressed to the discretion of the circuit judge. White, 218 S.C. at 134–35, 61 S.E.2d at 756; State v. Proctor, 345 S.C. 299, 546 S.E.2d 673 (Ct.App.2001); State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct.App.1999). A reviewing court will only reverse this determination when it is based on an error of law or a lack of supporting evidence renders it arbitrary or capricious. Proctor, 345 S.C. at 301, 546 S.E.2d at 674. The court has much

discretionary authority in dealing with guilty persons who are in a probationary status. Shannon v. Young, 272 S.C. 61, 248 S.E.2d 914 (1978).

ARGUMENT

1. The circuit court did not abuse its discretion when it found evidence establishing that Appellant violated the conditions of his supervision and revoked his probation.

Appellant argues that the circuit court abused its discretion when it revoked a portion of his probation. Respondent in reply would submit that the court did not err or abuse its discretion when it determined that he violated one or more terms of his supervision.

“Instead of requiring proof beyond a reasonable doubt, probation is properly revoked upon an evidentiary showing of facts *tending to establish* a violation. State v. Hill, 368 S.C. 649, 658, 630 S.E.2d 274, 279 (2006) (citing White, 218 S.C. at 136, 61 S.E.2d at 756) (emphasis in the original).

Appellant’s repeated description of the allegations as “hotly contested” does not change the analysis, nor the burden of proof. So long as there was a showing of facts tending to establish a violation, a court properly revokes probation no matter how “hotly contested” the defendant professes the allegations to be. Respondent would urge this Court not to take such hyperbole as anything more than the advocacy of Appellant’s attorney. Zealous, to be sure, but in no way changing the burden of proof.

Furthermore, when one looks to the full record of the proceedings, the court had an evidentiary showing that supported its determination that he had violated his probation. The incident report showed that the investigating officer observed an injury on the complaining witness’s face. R.*. Even though the homeowner later informed officials she wanted charges dropped, she admitted that she was asleep during the assault and did not witness it. R.*.

When the court finds evidence of a violation, the court does not abuse its discretion when it revokes probation, even when the probationer has not yet been convicted of a new arrest. State v. Williamson, 356 S.C. 507, 511-512, 589 S.E.2d 787, 789 (Ct. App. 2003). In this case, the probation court found that the facts and circumstances of the new charges were sufficient proof which warranted revocation. R. * (p.10, l. 10-12).

Appellant also argues that the court abused its discretion by revoking ten years of the suspended sentence. This is incorrect. When probation is “properly revoked upon an evidentiary showing of facts *tending to establish* a violation,” a court is within its authority to revoke up to the full amount of the suspended sentence. Hill, 368 S.C. at 658, 630 S.E.2d at 279. Appellant’s point that the court ignored the recommendation of the hearing officer similarly does not indicate abuse of discretion. This Court in Hamilton applied the rule regarding the court’s discretion to accept or reject plea bargains to the disposition of probation violations. Hamilton, 333 S.C. at 650, 511 S.E.2d at 98 (citations omitted). By this same analysis, it would stand that because a trial judge does not have to accept a sentence recommendation by the State during sentencing, a probation judge does not have to accept a recommendation from the hearing officer. See State v. Riddle, 278 S.C. 148, 292 S.E.2d 795 (1982).

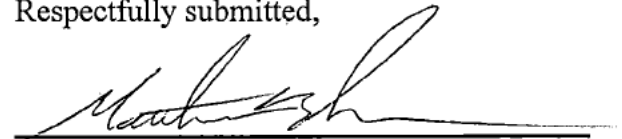
Further, the court does not abuse its discretion when it takes into consideration the severity of the original offenses. “Probation is an act of grace extended to one already convicted of a crime at a trial in this state providing the full protection of due process of law. A proceeding for the revocation of this privilege of probation is more in the nature of an extension of the original proceedings than it is a separate criminal prosecution.” State v. Franks, 276 S.C. 636, 638, 276 S.E.2d 227, 228 (1981). Consequently, the court does not abuse its discretion when it revokes

probation when the severity of the original offense outweighs the actions which violate the conditions of supervision.

CONCLUSION

Based on the foregoing arguments, the Department respectfully requests Appellant's arguments be dismissed and the final decision of the probation violation court be affirmed.

Respectfully submitted,



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General Counsel

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Columbia, South Carolina
April 16, 2025

STATE OF SOUTH CAROLINA
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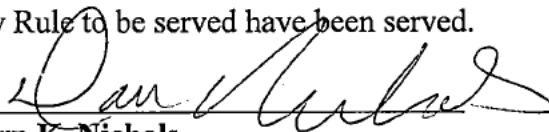
APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within *Motion to File Amended Initial Brief and Amended Initial Brief* on Appellant this 16th day of April, 2025, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Elizabeth Franklin-Best, Esquire
3710 Landmark Drive, Suite 113
Columbia, SC 29204

I further certify that all parties required by Rule to be served have been served.



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April 16, 2025


The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

RE: State v. Casey Combs
Appellate Case No.: 2024-001992

Dear Ms. Kitchings:

Please find enclosed the Respondent's Motion to File Amended Initial Brief and Amended Initial Brief in the above referenced matter. Thank you for your assistance in this matter.

Sincerely,


Matthew C. Buchanan
General Counsel

MCB:dn
Enclosures

cc: Elizabeth Franklin-Best, Esquire

State of South Carolina

Department of Probation, Parole, and Pardon Services

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