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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KIYWAN MASHAUD LEWIS,

APPELLANT

APPELLATE CASE NO. 2025-001885

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion by revoking Appellant's probation where there was an insufficient evidentiary basis to establish Appellant had willfully violated the conditions of his probation since the only alleged violation was Appellant's arrest for the violation of an order of protection and Appellant was under the reasonable, but mistaken, belief that the order of protection had been lifted since the no contact order that was a condition of Appellant's original sentence had been removed, and Appellant's probation agent gave Appellant permission to live with his wife, the protected person, and their children?

STATEMENT OF THE CASE

A Horry County grand jury indicted Appellant on December 18, 2024, for domestic violence of a high and aggravated nature. R. * (Indictment). Appellant pled guilty as indicted on April 1, 2025, before the Honorable David Caraker. He was sentenced to eight years suspended upon the service of 179 days' time served and three years' probation. R. * (Sentence Sheet).

On June 4, 2025, Appellant was arrested for violating the conditions of his probation. R. * (Arrest Warrant). A revocation hearing was held on September 5, 2025, before the Honorable Robert Bonds. Tr. 1. Probation Agent Carolyn Johnson appeared on behalf of the Department of Probation, Parole, and Pardon Services. James Galmore represented Appellant. Tr. 1.

At the conclusion of the hearing, Judge Bonds found Appellant had willfully violated the conditions of his probation and revoked eight years, the remainder of Appellant's sentence. Tr. 27, ll. 8-10.

This appeal follows.

STANDARD OF REVIEW

The question of whether a defendant's probation should be revoked in whole or in part is committed to the trial court's sound discretion. State v. Knapp, 338 S.C. 541, 543, 526 S.E.2d 741, 742 (Ct. App. 2000) (citing S.C. Code. Ann. § 24-21-460 and State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)). "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. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006) (citing 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." Id. at 94, 634 S.E.2d at 655-56 (citing White, 218 S.C. at 136, 61 S.E.2d at 756).

ARGUMENT

The trial court abused its discretion by revoking Appellant's probation where there was an insufficient evidentiary basis to establish Appellant had willfully violated the conditions of his probation since the only alleged violation was Appellant's arrest for the violation of an order of protection and Appellant was under the reasonable, but mistaken, belief that the order of protection had been lifted since the no contact order that was a condition of Appellant's original sentence had been removed, and Appellant's probation agent gave Appellant permission to live with his wife, the protected person, and their children.

Relevant Facts

After Appellant's arrest for domestic violence in early October 2024, his wife, Rodlyn Atkinson, the victim, obtained an order of protection from the Family Court on October 29, 2024. The order of protection protected not only Atkinson, but also her children. Tr. 3, ll. 12-17.

Before Appellant's guilty plea in April 2025, Atkinson told the victim's advocate that she wished for the order of protection to be lifted. However, Atkinson was unable to attend Appellant's guilty plea because her mother was in hospice care. Because Atkinson was unable to attend, the victim's advocate told Atkinson that she would communicate to the sentencing judge that Atkinson wanted the order of protection lifted. Tr. 9, ll. 13-18.

When Appellant pled guilty on April 1, 2025, he was ordered to have no contact with Atkinson while on probation. See R. * (Sentence Sheet). However, after the plea, Atkinson contacted Catherine Girgan, the assistant solicitor who prosecuted Appellant, and requested that this condition be removed. Accordingly, Judge Caraker, the sentencing judge, removed the no contact condition and the condition was crossed out on Appellant's sentence sheet. Tr. 12, l. 11 – 13, l. 8; R. * (Sentence Sheet).

After the no contact condition was removed by the sentencing judge, Appellant's probation agent gave Appellant permission to move into the home where his wife and children lived. The agent also conducted a home visit. The agent told the revocation judge that she was unaware of the order of protection when she gave Appellant permission to live with Atkinson. Tr. 16, l. 22 – 19, l. 22.

Once the no contact condition had been removed from Appellant's sentence and Appellant's probation agent gave Appellant permission to live with his wife and children, Appellant and Atkinson reasonably believed that the order of protection had also been lifted.

However, on May 31, 2025, Appellant was arrested for violating the order of protection after Appellant and his fifteen year old daughter had a "disagreement" and Appellant allegedly pushed her into a couch and attempted to choke her. Tr. 3, ll. 18-23; Tr. 9, ll. 2-7. This is when Appellant and Atkinson learned that the order of protection had not been lifted. Tr. 9, ll. 8-18.

Appellant's failure to abide by the conditions of the order of protection was the only alleged violation apart from his failure to pay "court costs." Tr. 3, l. 10 – 4, l. 4; See R. * (Arrest Warrant). Defense counsel argued that Appellant did not willfully violate the conditions of his probation because Appellant and Atkinson reasonably believed the order of protection had been lifted. Counsel presented the revocation judge with Appellant's sentence sheet where the no contact condition had been crossed out. He also presented the judge with an email from Assistant Solicitor Girgan, which indicated that Appellant was "not under a restraining order." Tr. 5, l. 4 – 6, l. 3; See R. * (Email). Lastly, defense counsel showed the revocation judge the incident report regarding Appellant's arrest for violating the order of protection, which indicated that Atkinson told the arresting officer she thought the order had been lifted, but it was "still in the computer system." Tr. 10, ll. 7-13; See R. * (Incident Report).

The revocation judge then requested the parties obtain a copy of the order of protection from the Family Court. Tr. 13, l. 14 – 14, l. 2. After the order was obtained, the revocation judge stated Appellant "absolutely knew about" the order of protection because, based on a review of the order, it appeared Appellant was present at the Family Court hearing and consented to the order. Tr. 14, ll. 16-25.

Defense counsel acknowledged that Appellant knew about the order of protection when it was put in place, but argued Appellant reasonably believed that the order had been lifted after Appellant pled guilty to domestic violence, was told that the no contact condition had been lifted, and was given permission to live with his wife and children by his probation agent. Counsel maintained that there was "ambiguity" and any ambiguity should err on the side of Appellant. Tr. 15, l. 1 – 16, l. 15.

When questioned by the revocation judge, Appellant's probation agent stated that she was unaware of the order of protection until Appellant's arrest on May 31, 2025. Tr. 19, ll. 16-22. However, the agent stated that even if she had been aware of the order of protection, she likely still would have allowed Appellant to live with Atkinson and their children because the order does not state Appellant cannot live with them.[1] Tr. 20, l. 18 – 21, l. 2. Instead, according to the agent, the order says that Appellant "is restrained from assaulting, threatening, abusing, harassing, following, interfering, or stalking the protected person, and/or the child of the protected person." Tr. 18, l. 22 – 19, l. 7.

Another agent interrupted and told the judge, "Even if there were no order of protection at all, he [Appellant] choked a 15-year-old girl." The judge then asked the agent "what violation

[1] This is incorrect. The order of protection states Appellant was "temporarily restrained, prohibited, and *forbidden to communicate or attempt to communicate with Petitioner/Victim* in any way *or to enter or attempt to enter Petitioner/Victim's place of residence*, employment, education or the following locations _____." R. * (Order of Protection) (emphasis added).

is that in probation" because the agent made "reference to the numbers" in the violation report, including "terms number one, terms number four, terms number seven." The agent stated such conduct would be a violation of domestic violence condition number nine, which states the offender "will comply with and abide by all restraining orders and/or orders of protection issued by the Court." Defense counsel immediately asserted that Appellant was not alleged to have violated domestic violence condition number nine. The revocation judge agreed. He stated that Appellant was only alleged to have violated conditions four, seven, nine, and ten of the standard conditions. The judge asked, "I guess what I'm saying is, what did he [Appellant] do wrong on the four, seven, nine, and ten? Because I - - - I can't - - - that's what I'm trying to reconcile." Tr. 21, l. 5 – 23, l. 1.

The probation agent explained that violating domestic violence condition number nine was alleged on Appellant's probation arrest warrant, but due to a clerical error, was not listed on the violation report. Tr. 23, ll. 2-19. However, another agent maintained, "We don't have to write it down, but he's not allowed to choke 15-year-old girls." Tr. 24, ll. 10-11.

Before the judge ruled, defense counsel emphasized that Appellant had not been convicted of violating the order of protection and that the probation department did not provide sufficient notice of the alleged violation since domestic violence condition number nine was not alleged in the violation report. Tr. 24, ll. 12-23.

The judge found Appellant willfully violated the conditions of his probation. The judge stated that he took into account that Appellant was given permission to live with his wife and children. However, he also found that Appellant was present during the hearing when the order of protection was issued and agreed to the terms of the order. Despite acknowledging that "it's

just allegations" since Appellant had not been convicted, the judge determined Appellant willfully violated his probation and revoked eight years. Tr. 25, l. 20 – 27, l. 10.

Discussion

The trial court abused its discretion by revoking Appellant's probation since the state failed to present a sufficient evidentiary basis to establish Appellant willfully violated the conditions of his probation. The only alleged violation was Appellant's arrest for violation of an order of protection and Appellant was under the reasonable, but mistaken, belief that the order of protection had been lifted since the no contact order that was a condition of Appellant's original sentence had been removed, and Appellant's probation agent gave Appellant permission to live with his wife, the protected person, and their children. Moreover, as the revocation judge acknowledged, Appellant had not been convicted of violating the order of protection and it was "just allegations."

"Probation is a matter of grace; revocation is the means to enforce the conditions of probation." State v. Williamson, 356 S.C. 507, 510, 589 S.E.2d 787, 788 (Ct. App. 2003) (quoting State v. Hamilton, 33 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999)) (internal quotation marks omitted). "However, the authority of the court to revoke probation may not be capriciously or arbitrarily exercised, but should always be predicated upon an evidentiary showing of fact tending to establish violation of the conditions." Id. (citing State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950)). "Before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions." Id. (quoting Hamilton, 333 S.C. at 648–49, 511 S.E.2d at 97) (internal quotation marks omitted).

In Williamson, the defendant was arrested for criminal domestic violence of a high and aggravated nature. As a result of his arrest, he was charged with violating the conditions of his probation. The trial court, relying largely on the complainant's affidavit and photographs of her injuries, found Williamson had violated his probation and revoked a portion of his suspended sentence. Id. at 509, 589 S.E.2d at 788. Williamson argued on appeal that there was an insufficient evidentiary basis to establish that he had violated the conditions of his probation because he had not been convicted of the criminal domestic violence charge. Id. at 509-10, 589 S.E.2d at 788. This Court disagreed.

The Court held the trial court did not abuse its discretion when it revoked Williamson's probation because there was a sufficient evidentiary basis to support the finding that Williamson committed an act of violence against his mother. In support of its holding, this Court emphasized that during the revocation rehearing, the state introduced the mother's affidavit, her voluntary statement, and photographs of her injuries. In the documents, the mother stated Williamson had cut her on the arm with a knife. Id. at 510-11, 589 S.E.2d at 788-89.

In this case, Appellant's only alleged violation was his arrest for violating an order of protection. At the time of Appellant's hearing, Appellant had not been convicted of this offense. It was still pending. Appellant presented significant evidence that he and his wife, Rodlyn Atkinson, were unaware that the order of protection was still in place. At Atkinson's request, the sentencing judge removed the no contact condition that was a part of Appellant's original sentence. Atkinson had also requested that the order of protection be lifted. Appellant and Atkinson both reasonably believed that the order of protection was lifted when the no contact order had been removed and Appellant's probation agent gave Appellant permission to live with Atkinson and their children. Appellant's confusion was caused in large part by his agent who

misled Appellant and told Appellant he could live with his family. While Appellant's agent maintained she was unaware of the order of protection, a simple NCIC search would have showed the order of protection was in place. Accordingly, the state failed to establish that Appellant willfully violated his probation because Appellant did not know the order of protection was still in place.

Moreover, the state failed to present sufficient evidence that even if Appellant knew or reasonably should have known that the order of protection had not been lifted, that Appellant violated the order. The state only provided the revocation judge with the incident report outlining the *allegations* of Appellant's arrest. When the judge questioned Atkinson about the allegations, she merely stated that Appellant and their daughter had a "disagreement" and Appellant "pushed hard." See Tr. 9, ll. 4-7. Appellant's daughter, despite being present in the courtroom, was never questioned.

This case is significantly different than Williamson since in Williamson the state presented the mother's affidavit (a sworn statement) and photographs of her injuries as evidence Williamson committed criminal domestic violence and therefore violated the conditions of his probation. No such evidence was presented here.

Appellant denied he violated the conditions of his probation and presented considerable evidence that he was unaware that the order of protection was still in place. Respectfully, this Court should hold the revocation judge abused his discretion by revoking Appellant's probation since there was an insufficient evidentiary basis to establish Appellant violated the conditions of his probation and remand for a new revocation hearing.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court hold the trial court abused its discretion by revoking his probation and remand for a new revocation hearing.

Respectfully submitted,

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Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of May, 2026.