

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUL 20 2026

Appeal from Greenville County
The Honorable Robert J. Bonds, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2025-001885

THE STATERESPONDENT

v.

KIYWAN MASHAUD LEWIS,.....APPELLANT

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

1. Did the lower court err when it revoked Appellant's probation based on facts tending to establish a violation and where a court is not required to make a finding of willfulness in order to revoke probation?

STATEMENT OF THE CASE

On April 1, 2025, Appellant pled guilty to domestic violence of a high and aggravated nature (DVHAN) before the Honorable David P. Caraker, Jr., in Horry County. Judge Caraker sentenced Appellant to eight years, suspended to probation for three years. (R.p.44). Along with the standard conditions of probation, he was ordered to have no contact with the victim and to complete the domestic violence intervention program. (R.p37; p.44). On the sentence sheet, not only was the box checked that read, “No Contact with Victim,” but on a separate line for other conditions, it was written, “no victim contact during probation.” (R.p.44). However, on request of the victim, Judge Caraker crossed out the handwritten no contact order some number of days after the plea. (R.p. 16-17, ll. 24-2).

On June 4, 2025, agents with the Department arrested Appellant for violating his probation, specifically for being arrested by Horry County Police on May 31, 2025, for an incident in which he was reported to have choked the fifteen-year-old daughter of the victim of the DVHAN (R.p.34-p.36; R.p.39-p.40). Further, it was also alleged by Horry County Police that Appellant had violated a protection order in place restraining him from assaulting the victim of the DVHAN and her children imposed by the family court in October of 2024. (R.p.30-p.33).

Appellant’s violation hearing was heard on September 5, 2025 before the Honorable Robert J. Bonds. At the hearing, Appellant argued that he had not willfully violated his probation because of the confusion regarding the no contact condition being lifted by Judge Caraker. After hearing the evidence and the arguments by Appellant’s counsel, Judge Bonds found that Appellant had violated his probation and revoked his suspended sentence. (R.p.41). Appellant filed his notice of appeal on September 10, 2025. Respondent’s brief follows.

Standard of Review

The authority of the revoking court should always be predicated upon an evidentiary showing of fact tending to establish a violation of the conditions. *State v. White*, 218 S.C. 130, 134–35, 61 S.E.2d 754, 756 (1950); *State v. Miller*, 122 S.C. 468, 475, 115 S.E. 742, 745 (1923). 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). Only when probation is solely revoked for failure to pay fines or restitution is a finding of willfulness required. *Hamilton*, 333 S.C. at 649, 511 S.E.2d at 97. 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.

Arguments

- 1. The trial court did not err when it revoked Appellant's probation when it found a sufficient evidentiary basis showing facts tending to establish a violation, and further a court is not required to make a finding of willfulness unless the revocation is solely for nonpayment of financial obligations.**

Appellant argues that the trial court abused its discretion by revoking him when the facts presented at the hearing did not prove that he had willfully violated his probation. Respondent would argue that Appellant misstates the evidentiary standard for probation violations, as a finding of willfulness is not a predicate for a violation unless the sole violation is failure to meet financial obligations.

“It is only when probation is revoked *solely* for failure to pay fines or restitution that a finding of willfulness is mandatory.” *Hamilton*, 333 S.C. at 649, 511 S.E.2d at 97 (emphasis in the

original). In the case of *Hamilton*, the probationer told the court that he mistakenly believed his probation had terminated and for that reason failed to comply with supervision conditions. That was not persuasive, as the conditions he failed to meet were not financial in nature. “Hamilton was charged with failure to report to his probation agent and failure to perform [public service employment]. Therefore, the circuit judge was not required to find evidence of willfulness.” *Id.*

Respondent would submit that the instant case is equivalent to the situation in *Hamilton*. Appellant informed the court he had mistakenly believed that when the sentencing judge lifted the no-contact condition, the family court protection order was also resolved. Even further, Appellant’s probation agent, who had not been aware of the family court protection order, had allowed Appellant to return to his home and have contact with the victim. (R.p. 18, ll. 13-15).

Just as in *Hamilton*, this mistaken belief does not prevent a circuit court from finding Appellant had violated his probation. As Judge Bonds stated, “I find he was present at the Family Court hearing. I find that he agreed to the terms of the order. He was on notice of the terms of these orders.” (R.p. 26, ll. 12-15).

Appellant may argue that he was “set up” to fail by his agent allowing him to return to the residence while the family court protection order was still in place. Appellant even points out that the agent could have discovered the protection order’s existence. Brief of Appellant, p. 10. Respondent would submit that this is immaterial because the protection order was discovered *after he was alleged to have choked the victim’s daughter*. The probation violation warrant was issued after the new criminal charges of further domestic violence by Appellant. His own actions brought the information about the protection order to light.

The reported assault and the violated protection order should be upheld as sufficient evidence to support the finding of a violation of probation. “[T]he authority of the court of general

sessions to revoke such suspension of sentence may not be capriciously or arbitrarily exercised, but should always be predicted upon an evidentiary showing of fact tending to establish violation of the conditions.” *White*, 218 S.C. at 135, 61 S.E.2d at 756.

White was relied upon by the Court in *Hamilton*, which reiterated the “evidentiary showing of fact tending to establish a violation” language, and further stated, “before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions.” *Id.*, 333 S.C. at 648-649, 511 S.E.2d at 97. This was done by the circuit court in this case.

Furthermore, this Court’s role is not to make judgments on the evidentiary findings of the circuit court. Appellate courts may only overturn a circuit court’s decision to revoke probation if a lack of evidentiary support renders the circuit court’s decision arbitrary and capricious. *Hamilton*, 333 S.C. at 647, 511 S.E.2d at 96, citing *White*, 218 at 135, 61 S.E.2d at 756. There should be no concern for a lack of evidence of violations in the record when it the court clearly held that Appellant violated the protection order after looking at the totality of the circumstances. (R.p. 25 ll. 23 - 26, ll. 23-4).

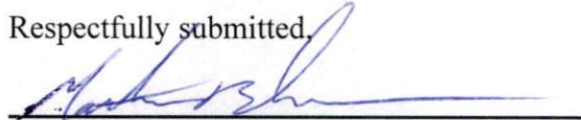
Appellant points out that this Court in *State v. Williamson*, 356 S.C. 507, 589 S.E.2d 787 (Ct. App. 2003), held that probation can be revoked based on a new criminal charge provided that there is a sufficient evidentiary basis to support the violation. Respondent agrees with this reading of *Williamson*. Appellant, however, argues that *Williamson* should be distinguished because the circuit court failed to find sufficient evidentiary basis of a willful violation. However, as stated earlier, willfulness is not required when the violation is not for financial nonpayment. Judge Bonds considered the totality of the circumstances – the violation of the protection order and “some type of violent episode with her daughter. And quite frankly, that just speaks volumes about the

situation.” (R.p. 26, ll. 9-11). The trial court’s evidentiary findings supported the revocation and did not make the revocation arbitrary and capricious. Reversal of the revocation is not warranted.

Conclusion

Appellant places great weight on whether the lower court found sufficient evidence of him willfully violating his probation and the family court protection order. However, willfulness is only required when probation is revoked solely for nonpayment of financial obligations. Through that lens, the evidence supporting a violation was sufficient and the lower court’s decision was not arbitrary or capricious. Therefore, this Court should dismiss the appeal and uphold the lower court’s decision.

Respectfully submitted,



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July 15, 2026

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 15th day of July, 2026.


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