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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Carmen T. Mullen, Circuit Court Judge
Case No. 2013-002401

THE STATE, RESPONDENT

v.

TONJA MCALLISTER, APPELLANT

BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 11589
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ATTORNEY FOR THE RESPONDENT

TABLE OF CONTENTS

Table of authorities 3

Statement of issue on appeal 4

Statement of facts 5

Arguments

Did the circuit judge err in revoking Appellant’s probation for failing to pay restitution
without a finding of willfulness. 5

Conclusion 7

TABLE OF AUTHORITIES

CASES

Bearden v. Georgia, 461 U.S. 660, 103 S.Ct. 2064 (1983)6

State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006)..... 5

State v. Coker, 397 S.C. 244, 723 S.E.2d 619 (Ct. App. 2012) 6

State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (1999)..... 5, 6

State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007)6

STATUTES

S.C. Code Ann. § 17-25-3236

S.C. Code Ann. § 24-21-4406

STATEMENT OF ISSUE ON APPEAL

Did the Trial Court err in revoking Appellant's probation based upon her non-willful failure to pay restitution?

STATEMENT OF FACTS

Respondent has no objections to the Petitioner's statement of facts.

ARGUMENT

Did the circuit judge err in revoking Appellant's probation for failure to pay restitution?

The decision to revoke probation is within the sound discretion of the circuit court judge. State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (1999). The Appellate court's authority is only to review the circuit court's decision to correct errors of law or if the evidence indicates the judge acted in an arbitrary or capricious manner. Id.

"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).

Appellant argues the circuit court erred because it did not find a willful failure to pay restitution. In the instant case, Appellant was brought before the circuit court on a citation which compelled her to appear and "show the Court why he/she has not kept his/her probation agreement to pay." Citation p.2.

South Carolina Code Section 17-25-323(A) and (B) keeps jurisdiction over court-ordered payments with the trial court and, upon default, requires the probation agent to request a hearing before the court, "to require the defendant to show cause why his default should not be treated as a civil judgment." Id.

Pursuant to the hearing, Appellant related to the Court that she would not be able to complete the payments before her probation expired. Furthermore, her probation had already been extended to the full five years, and the Court was without authority to extend it further.

("The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended within the above limit." Section 24-21-440.)

While the trial court was correct in its decision to convert the moneys owed to a civil judgment, the Respondent cannot argue that the Court was correct in revoking Appellant's probation. The citation itself did not allege a willful violation. Furthermore, the agent did not allege a violation at the hearing, nor request a revocation. Tr. p.6.

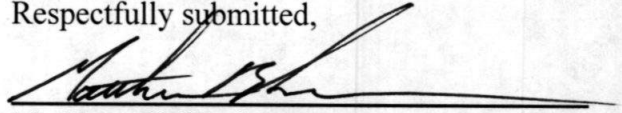
An examination of South Carolina and national jurisprudence reveals that it is clearly well-settled that an offender may not be revoked solely for an inability to pay fines or restitution. See State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007), State v. Coker, 397 S.C. 244, 723 S.E.2d 619 (Ct. App. 2012), and Bearden v. Georgia, 461 U.S. 660, 103 S.Ct. 2064 (1983). "[I]n 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 (emphasis added.)

Consequently, the Respondent cannot in good faith argue that the circuit court did not abuse its discretion when it revoked Appellant's probation.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully declines to argue that the circuit court properly revoked Appellant's probation.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
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Attorney for the Respondent

Columbia, South Carolina
March 19, 2014

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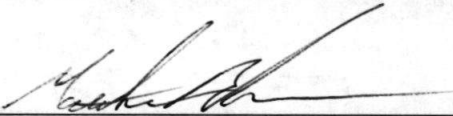
THE STATE, RESPONDENT

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DESIGNATION OF MATTER

Respondent proposes no additional information to be included in the Record on Appeal.



Matthew Buchanan
General Counsel

March 19, 2014

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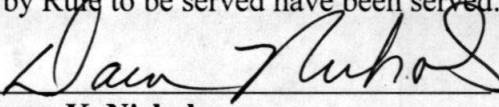
TONJA MCALLISTER, APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Initial Brief of Respondent and Designation of Matter* dated March 19, 2014, on Appellant this 19th day of March, 2014, by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Jim Brown, Esquire
PO Box 592
Beaufort, South Carolina 29901-0592

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


Dawn K. Nichols
Executive Administrative Assistant

South Carolina Department of Probation,
Parole, and Pardon Services
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March 19, 2014

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street- 5th Floor
Columbia, South Carolina 29201

RE: State v. Tonja McAllister

Dear Ms. Kitchings:

Enclosed please find Respondent's Initial Brief and Designation of Matter, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Buchanan".

Matthew Buchanan
General Counsel

MCB:dn

Enclosures

cc: Jim Brown, Esquire

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