

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAR 27 2014

Appeal from Lexington County
The Honorable Thomas A. Russo, Circuit Court Judge
Case No. 2013-001993

SC Court of Appeals

THE STATE, RESPONDENT

v.

SHONDEL A. CRIM, APPELLANT

BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1343**

ATTORNEY FOR THE RESPONDENT

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

State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007)7

Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). 5

STATEMENT OF ISSUE ON APPEAL

- 1) **The Appellant failed to object at the hearing.**
- 2) **The circuit judge did not err in revoking Appellant's community supervision.**

STATEMENT OF THE CASE

On August 16, 2005, Appellant pled guilty to second offense possession with intent to distribute crack cocaine in Richland County. The Honorable L. Casey Manning sentenced Appellant to ten years and a fine of \$10,000 provided upon the service of time served, the balance was suspended with probation for four years. On December 4, 2008 Appellant's probation was revoked and he was sentenced to four years incarceration. He was subsequently placed upon community supervision upon release pursuant to the State v. McGrier decision

On September 13, 2013, Appellant was appeared before the Honorable Thomas A. Russo for a violation of community supervision. He was represented by Dayne Phillips at the hearing. The court found a willful violation of community supervision and revoked seven months. (Revocation Order dated Sept. 13, 2013).

The Appellant now brings this appeal before this court.

ARGUMENTS

- 1) **The Appellant did not raise the issue at the hearing, and the matter is not preserved for appeal.**

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

In the instant case, the Appellant failed to request a ruling on the violations. The Court found the Appellant in willful violation of the conditions of supervision. Tr. p. 17, l. 8-11. Furthermore, the presiding judge signed the revocation order also specifically stating that the Appellant willfully violated the terms of community supervision. (Revocation Order Form 1152).

The requirement that an issue must be preserved at the circuit court level is well-settled. See State v. Bryant, 383 S.C. 410, 418, 680 S.E.2d 11, 15 (Ct.App. 2009), “An issue must be raised and ruled upon in the circuit court in order to be preserved for appellate review. State v. George, 323 S.C. 496, 510, 476 S.E.2d 903, 912 (1996) (stating an issue must be raised and ruled upon in the trial court in order to be preserved for appellate review); State v. Hamilton, 333 S.C. 642, 648, 511 S.E.2d 94, 96–97 (Ct.App.1999) (stating the failure to raise the issue of willfulness at a probation revocation hearing can waive the right to appeal).”

2) The circuit judge properly found willful violations of community supervision.

The decision to revoke probation is within the sound discretion of the circuit court judge. Hamilton. 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).

In the instant case, the trial court confirmed that the Appellant had been made aware of the allegations. Tr. p.3, l.7-9. Then, after a discussion of the Appellant’s prior probation revocations and the authority that placed him on community supervision, the trial court found “that there has been a violation of the terms and conditions of community supervision and that has been a willful violation of those terms and conditions.” Tr. p.17, l. 8-11.

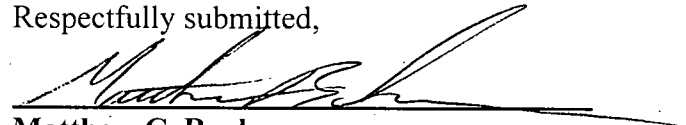
The record supports that the state showed a violation of community supervision. The warrant served on the Appellant on August 8, 2013, states that he failed to report on October 3 and 31, 2012 as scheduled; failed to notify his agent about a change in address; was absconded from supervision; failed to submit to drug screens; failed to show proof of employment; being behind on public service employment; and for numerous financial arrearages. (Warrant p. 1.).

The Respondent concedes that there was no finding of willfulness on the financial arrearages. See State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007) and Bearden v. Georgia, 461 U.S. 660, 103 S.Ct. 2064 (1983). However, the numerous other violations do not require a finding of willfulness, and therefore the court properly revoked Appellant's community supervision. Bearden at 668, 2070, fn. 9.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests that the decision of the lower court to revoke Appellant's community supervision be upheld.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

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Attorney for the Respondent

Columbia, South Carolina
March 26, 2014

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DESIGNATION OF MATTER

In addition to what Appellant has designated in the Record on Appeal, Respondent proposes the following additional information to be included in the Record on Appeal:

- 1- Revocation Order Dated September 13, 2013 (Form 1152)



Matthew C. Buchanan
General Counsel

March 26, 2014

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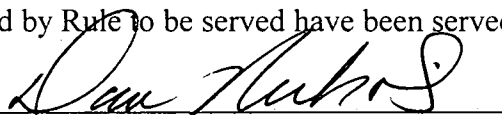
SHONDEL A. CRIM, APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Initial Brief of Respondent* dated March 26, 2014, on Appellant this 26th day of March, 2014, by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Robert Pachak, Appellate Defender
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, South Carolina 29211-1589

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


RE: State v. Shondel Crim

Dear Ms. Kitchings:

Enclosed please find the Initial Brief of Respondent, along with proof of service in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,


Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures

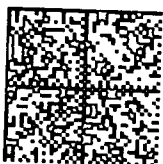
cc: Robert M. Pachak, Appellate Defender

State of South Carolina

Department of Probation, Parole, and Pardon Services

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