

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Steven H. John, Circuit Court Judge
Case No. 2013-002417

THE STATE, RESPONDENT

v.

STEVE YOUNG, APPELLANT

INITIAL BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
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ATTORNEY FOR THE RESPONDENT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

- 1) **The Trial Court properly tolled the Appellant's probation through the finding of willful actions of the Appellant.**

STATEMENT OF THE CASE

On December 1, 2011, Appellant was sentenced to ten years suspended to four years probation for the offense of assault and battery in the first degree in Newberry County. A special condition of probation was that supervision could end early if he paid his financial obligations in full. In August of 2012, after serving almost nine months on probation, Appellant pled guilty in Union County to reckless homicide and leaving the scene of an accident. He received a sentence of ten years incarceration. The Union County offenses occurred before the Appellant was placed on probation for the Newberry offense, so the conviction and sentence was not a violation of that probation.

On November 1, 2013, Appellant's probation agent brought him before the Honorable Steven H. John to request a tolling of his probation during his incarceration on the Union County offenses. Appellant's attorney objected; however, Judge John granted the request and tolled his probation. The court found that Appellant violated probation because he was behind on his supervision fees, three payments behind on restitution, and had not paid into the Public Defender Fund or his drug test fees.

The Appellant now brings this appeal before this Court.

ARGUMENT

1) The Trial Court properly tolled the Appellant's probation because of the wrongful actions of the Appellant.

"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." §24-21-440.

“South Carolina’s appellate courts have expressly recognized the general authority of the circuit court to toll probation.” State v. Miller, 404 S.C. 29, 744 S.E.2d 532 (2013).

Tolling a defendant’s probation is appropriate when a defendant absconds from supervision. See State v. Hackett, 363 S.C. 177, 609 S.E.2d 553 (Ct.App.2005) (relying on United States v. Green, 429 F.Supp. 1038 (W.D.Tex.1977)).

Although the Appellant did not abscond in this case, he was placed into a situation that prevented his supervision by his own wrongful acts; those being his acts of reckless homicide and leaving the scene of an accident where death was involved.

Appellant relied on Miller because the Supreme Court held that the probationer’s supervision could not be tolled while he was involuntarily committed into the state’s Sexually Violent Predator program. But the Supreme Court focused on the involuntary nature of Miller’s commitment.

“The general rule applied in most jurisdictions is that the tolling of probation is appropriate where the authorities could not supervise the defendant due to the defendant’s wrongful acts. It is based on the principle that a defendant should not be allowed to profit from his own misconduct which prevents supervision by probationary authorities.” Miller, at 37, 537, *citing* 24 C.J.S. Criminal Law § 2153 (2006).

In the instant case, the trial court appropriately found that Appellant had violated probation. He was substantially behind on his financial obligations, and because of his incarceration due to his own wrongdoing, he was unlikely to be able to become current before the expiration of his probation. “[W]e conclude that the tolling of probation must be premised on a violation of a condition of probation or a statutory directive.” 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). Therefore, it is the court that determines if a violation exists based on the information provided to the court by the probation agent. Even though the agent did not allege a violation in the citation, the court asked if Appellant was current on his fees. After the agent detailed Appellant’s financial arrearages, the court determined him to be in violation. Tr. 8, ll. 20-Tr. 10, ll. 1.

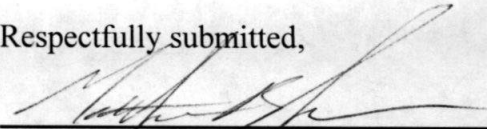
Appellant’s reliance on Bartlett v. State, 288 S.C. 481, 343 S.E.2d 620 (1986) is not appropriate. The Supreme Court in Bartlett ruled that probation could not be *revoked* when the only grounds is a non-willful failure to pay financial obligations. While Appellant is correct that Bartlett forbids a revocation of his probation, the trial court in this instance did nothing of the sort. The judge *toll*ed Appellant’s probation for the period of time while he is incarcerated. The incarceration faced by Appellant was from another sentence entirely.

Instead, the court found that Appellant violated his probation by falling behind on his financial obligations.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully submits that the Trial Court properly tolled probation for the duration of Appellant's incarceration.

Respectfully submitted,



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Attorney for the Respondent

Columbia, South Carolina
May 7, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Steven H. John, Circuit Court Judge
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THE STATE, RESPONDENT

v.

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DESIGNATION OF MATTER

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



Matthew C. Buchanan
General Counsel

May 7, 2014

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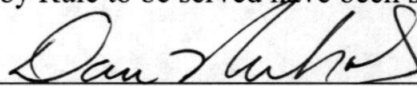
STEVE YOUNG, APPELLANT

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 May 7, 2014, on Appellant this 8th day of May, 2014, by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Lanelle Cantey DuRant, 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

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May 8, 2014

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

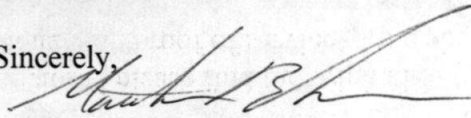
RE: State v. Steve Young

Dear Ms. Kitchings:

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

Thank you for your cooperation in this matter.

Sincerely,


Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures

cc: Lanelle Cantey DuRant, Appellate Defender

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