

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

FINAL BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

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ATTORNEY FOR THE RESPONDENT

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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." (Amended R.p.11-p.12).

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. (R. p.20).

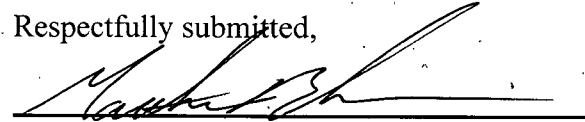
An examination of South Carolina and national jurisprudence reveals that it is clearly well-settled that an offender may not be revoked solely for an inability to pay fines or restitution. See State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007), State v. Coker, 397 S.C. 244, 723 S.E.2d 619 (Ct. 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,



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June 13, 2014

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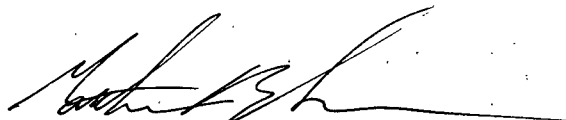
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.



Matthew C. Buchanan
General Counsel

June 13, 2014

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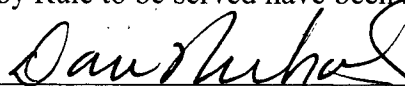
TONJA MCALLISTER, APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent* dated June 13, 2014, on Appellant this 13th day of June, 2014, by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Robert Dudek, Esquire
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
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SC Court of Appeals

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Department of Probation, Parole and Pardon Services

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June 13, 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 the original and fourteen (14) copies of the Final *Brief of Respondent*, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Matthew Buchanan".

Matthew C. Buchanan
General Counsel

MCB:dn
Enclosures
cc: Robert Dudek, Esquire

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