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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVE FRANKLIN GRAYSON,

APPELLANT

APPELLATE CASE NO. 2013-002260

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the lower court err in revoking Appellant's probation where Appellant explained to the court he could not pay probation costs and fees because his employer fired him, he lost his housing and car, and he was unable to find work thereafter?

STATEMENT OF THE CASE

On January 13, 2013, the Spartanburg County Grand Jury indicted Appellant Steve F. Grayson on a charge of failure to stop motor vehicle when signaled by a police officer. R. 15-16. Appellant was on probation for assault and battery of a high and aggravated nature, having been sentenced to ten years suspended to five with three years of probation. R. 4, lines 17-23. On October 8, 2013, Appellant appeared at a plea hearing before The Honorable Frank R. Addy, Jr. James Cheek represented Appellant and Brittany Scott represented the State. R. 1. At the conclusion of the hearing, the plea judge sentenced Appellant to ninety days incarceration to run concurrent with his standing sentence. He also found that Appellant was in willful violation of his probation, revoked the remainder, and sentenced him to five years' incarceration. R. 12, line 24—R. 13, line 12.

ARGUMENT

THE LOWER COURT'S REVOCATION OF APPELLANT'S PROBATION CONSTITUTED REVERSIBLE ERROR BECAUSE THE COURT FAILED TO MAKE THE FINDINGS PRESCRIBED BY LAW BASED ON THE EVIDENCE IN THE RECORD.

STATEMENT OF FACTS

The State alleged that on May 26, 2012, Appellant was speeding in Spartanburg County when a Welford police officer turned on his blue lights and siren. Appellant allegedly did not stop until he had travelled one and a half miles further down the road. R. 6, lines 16-20. The plea judge engaged him in a routine plea colloquy and accepted the plea. R. 5, line 10—R. 6, line 13; R. 7, line 5—R. 9, line 11.

Appellant's probation officer stated that Appellant failed to report as scheduled on March 15, 2013 and October 9, 2012. He also changed his address without consent, failed to pay costs and fees, and failed to complete a psycho-sexual evaluation. R. 10, line 5—R. 11, line 16. In response, Appellant told the court before he moved, his employer fired him, and he lost his housing. He was unable to find work thereafter and also lost his car. R. 11, line 20—R. 12, line 11.

DISCUSSION

The lower court's revocation of probation constituted reversible error because the court failed to make the findings prescribed by law based on the evidence in the record. The lower court has the duty to determine, based on its discretion, "whether to revoke probation in whole or part." *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 655-56 (2006) (citations omitted). Although "[p]robation is a matter of grace," the court may only revoke probation "upon an evidentiary showing of fact tending to establish a violation of the conditions." *State v. Hamilton*, 333 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App.

1999). In *State v. Spare*, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007), this Court held a circuit court may only revoke probation on the basis of a failure to pay money by making the following findings based on sufficient evidence in the record: (1) The State has established that the probationer has violated the conditions of his probation. (2) The probationer's failure to pay was wilful insofar as he either had the funds and chose not to or did not make a bona fide effort to acquire the funds. (3) If the probationer could not acquire the funds despite a bona fide effort, no alternate measures are adequate to meet the State's interests in punishment and deterrence. See generally *State v. Coker*, 397 S.C. 244, 245-46, 723 S.E.2d 619, 620 (Ct. App. 2012).

At Appellant's hearing below, the lower court failed to make the second and third findings based on evidence in the record. With regard to the second finding, Appellant told the court before he moved, his employer fired him, and he lost his housing. He also lost his car and was unable to find work. Thus, the evidence shows Appellant's failure to pay was not willful. The lower court did not make the proper inquiry into willfulness as prescribed under *State v. Spare*. Further, the proper ensuing inquiry was whether any measures besides revoking probation were adequate to punish Appellant if called for and to deter future noncompliance with the probation conditions. Again, the lower court failed to make this inquiry contrary to the mandate of *Spare*.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the ruling of the plea court and remand for a new hearing.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of July, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVE FRANKLIN GRAYSON,

APPELLANT

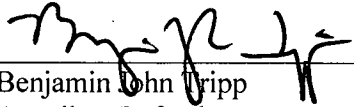
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Steve Franklin Grayson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Frank R. Addy, which was held on October 10, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Steve Franklin Grayson.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of July, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVE FRANKLIN GRAYSON,

APPELLANT

APPELLATE CASE NO. 2013-002260

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Probation Violation Transcript (October 8, 2013)

I certify that this designation contains no matter which is irrelevant to this appeal.

July 30, 2014



Benjamin John Tripp
Appellate Defender

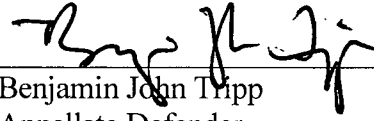
South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 30, 2014



Benjamin John Tripp
Appellate Defender

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Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

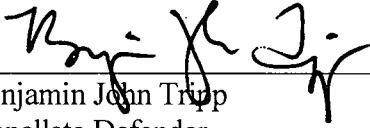
V.

STEVE FRANKLIN GRAYSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Matthew Buchanan, Esquire, at the South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250; ; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Steve Franklin Grayson, #174182 at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 30th day of July, 2014.



Benjamin John Trupp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of July, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022 .