

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 05 2015

SC Court of Appeals

THE STATE, RESPONDENT

v.

STEVE YOUNG, APPELLANT

APPELLATE CASE NO. 2013-002417

Appeal from Lexington County

The Honorable Steven H. John, Circuit Court Judge

Opinion No. 2015-UP-345

RETURN OF PETITION FOR REHEARING

The Respondent, the State of South Carolina by and through its attorney does hereby make this return to the Appellant's July 23, 2015 Petition for Rehearing. The State respectfully requests that Appellant's Petition for Rehearing be denied and dismissed.

Pursuant to the Appellate Court Rules, a party is only entitled to a rehearing if there are points that have been overlooked or misapprehended by the Court. The Respondent contends that

the Court has applied the law correctly and has not overlooked nor misapprehended any law or issue that was necessary to make a valid decision in this case.

The Appellant challenged the trial court's order tolling his probation while he served a prison sentence for a separate, unrelated offense. When the Appellant was placed on probation, he had a pending charge for reckless homicide. After being sentenced to prison for that offense, his probation agent brought him before the circuit court requesting an order tolling his probation while he served his prison sentence.

This Court upheld the judge's tolling of Appellant's probation. The trial judge ruled Appellant had violated his probation for being behind in his supervision fees and restitution and used that violation as the basis for tolling his probation and extending his probation for one additional year to the statutory maximum of five years.

Despite the Appellant's insistence that this violated the holding in State v. Miller, 404 S.C. 29, 744 S.E.2d 532 (2013), this Court properly distinguished Miller from the facts in this case. Miller held that tolling an offender's probation is only appropriate on fault-based grounds. In that case, the appellant had been committed involuntarily to the state's Sexually Violent Predator program. Therefore, tolling was not permissible.

In the present case however, the Appellant was convicted of Reckless Homicide and sentenced to a term of incarceration. Even though both involve confinement, the distinguishing factor is the criminal nature of Reckless Homicide – it's the Appellant's misconduct that caused him to be imprisoned, instead of Miller's mental illness that resulted in his commitment.

Furthermore, 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

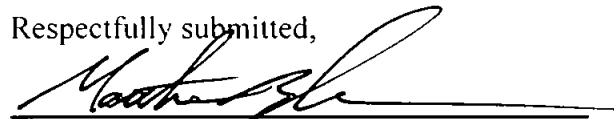
probation. “[W]e conclude that the tolling of probation must be premised on a violation of a condition of probation or a statutory directive.” Miller, at 37, 537.

The finding of a violation is within the sole discretion of the trial court. “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). This Court properly determined that the trial court’s finding of a violation was in its discretion. Therefore, with the finding of a violation, the trial court had the authority to toll the Appellant’s probation under Miller.

Furthermore, the trial court only tolled the Appellant’s probation, and did not revoke any portion of it. Bartlett v. State, 288 S.C. 481, 343 S.E.2d 620 (1986) only prohibits the revocation of probation for non-willful failure to pay financial obligations. Bartlett is silent on other measures that the court may take in order to see that the offender pays those obligations. In fact, the court is expected to review restitution cases that have fallen into arrears regardless of willfulness. “The department, through its agents, must initiate legal process to bring every probationer, whose restitution is six months in arrears, back to court, regardless of willful failure to pay. The judge shall make an order addressing the probationer’s failure to pay.” S.C. Code Ann. §17-25-322(C).

WHEREFORE, the Respondent respectfully submits that this Court was correct in its ruling and requests that the Appellant’s Petition for Rehearing be denied.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Attorney for the Respondent

Columbia, South Carolina
August 4, 2015

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CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that this 4th day of August, 2015, I served the following documents:

- 1. Return to Petition for Rehearing; and
- 2. Certificate of Service;

by first class mail, postage prepaid as follows:

LaNelle DuRant, Appellate Defender
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589



Dawn K. Nichols,
Executive Administrative Assistant

S. C. Department of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

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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: **The State v. Steve Young**

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Return to Petition for Rehearing, along with proof of service, for filing in your office.

Thank you for your assistance.

Sincerely,

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

Matthew C. Buchanan
General Counsel

MCB/dn

cc: LaNelle Cantey DuRant, Appellate Defender