

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
The Honorable Steven H. John, Circuit Court Judge

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Unpublished Opinion No. 2015-UP-345 (S.C. Ct. App. Filed 7/15/2015)
Appellate Case No. 2011-GS-36-00623

S.C. SUPREME COURT

THE STATE, RESPONDENT

v.

STEVE YOUNG, PETITIONER

RETURN TO PETITION FOR WRIT OF CERTIORARI

**Matthew C. Buchanan
General Counsel**

**South Carolina Department of Probation
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250**

ATTORNEY FOR THE RESPONDENT

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QUESTION PRESENTED

Whether the Court of Appeals erred in affirming the trial court's tolling of Young's probation during his period of incarceration, when the trial court found a violation and did not revoke the probation.

STATEMENT OF THE CASE

On December 1, 2011, Petitioner Steve Young 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, Petitioner 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 Petitioner was placed on probation for the Newberry offense, so the conviction and sentence was not a violation of that probation.

On November 1, 2013, Petitioner'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. Judge John granted the request over Petitioner's objections and tolled probation. The court found that Petitioner 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.

Petitioner filed an appeal. The Court of Appeals affirmed the trial court's tolling of Young's probation during his period of incarceration on July 15, 2015. *State v. Young*, Op. No. 2015-UP-345 (Ct. App. filed July 15, 2015, rehearing denied August 20, 2015). Young has now filed a petition for certiorari.

ARGUMENT

The Court of Appeals did not err in affirming the trial court's tolling of Young's probation during his period of incarceration, where the trial court found a violation and did not revoke probation.

The Respondent contends that the Appellate Court has applied the law correctly, and has not erred in affirming the trial court's tolling of Young's probation while he served a separate incarcerative sentence.

The Petitioner challenged the trial court's order tolling his probation while he served a prison sentence for a separate, unrelated offense. When the Petitioner 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 probation while he served his prison sentence.

The Court of Appeals upheld the judge's tolling of Petitioner's probation. The trial judge ruled Petitioner 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 Petitioner's insistence that this violated the holding in State v. Miller, 404 S.C. 29, 744 S.E.2d 532 (2013), the Court of Appeals 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 Petitioner 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 Petitioner'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 Petitioner 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.

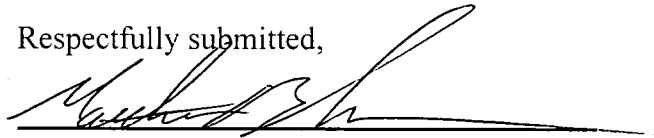
The finding of a violation is within the sole discretion of the trial court. "The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation." State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006). The Court of Appeals 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 Petitioner'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).

CONCLUSION

The Respondent respectfully submits that the Court of Appeals was correct, in its ruling and requests that Certiorari 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
September 17, 2015

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CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that this 17th day of September, 2015, I served the following documents:

1. Return to Petition for Writ of Certiorari; and
2. Certificate of Service;

by first class mail, postage prepaid as follows:

Lanelle Cantey DuRant, Appellate Defender
South Carolina Commission on Indigent Defense
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