

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APR 28 2015

Appeal from Spartanburg County

SC Court of Appeals

Gordon G. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EVANDOR THOMPSON

APPELLANT

APPELLATE CASE NO. 2014-002660

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 judge in revoking Appellant's probation where Appellant's probation agent admitted to the judge that her previously reported understanding of Appellant's actions underlying an arrest on new charges was inaccurate and where the judge nevertheless found a violation of the terms of probation based on the mere arrest?

STATEMENT OF THE CASE

On October 22, 2012, Appellant Evandor Keath Thompson was convicted of strong arm robbery in the Spartanburg County Court of General Sessions and sentenced to ten years' incarceration suspended to one year of with the remainder on probation. R. 10. On October 2, 2014, the County of Spartanburg issued a probation arrest warrant for Appellant. R. 1-2. On November 14, 2014, Appellant appeared at a hearing before The Honorable Gordon G. Cooper. Claire Hall represented Appellant. R. 3. After the hearing, Judge Cooper issued an order revoking Appellant's probation and directing him to serve the remaining nine years of his original sentence. R. 10.

ARGUMENT

JUDGE COOPER FAILED TO FAIRLY CONSIDER THE EVIDENCE IN THE RECORD REGARDING THE NEW CHARGES, AND THE REVOCATION OF APPELLANT'S PROBATION WAS THEREFORE ARBITRARY AND CAPRICIOUS.

STATEMENT OF FACTS

Appellant's probation arrest warrant alleged violations of certain conditions of his probation conditions, including the commission of a new crime. Specifically, Appellant's probation agent alleged in the warrant that on September 15, 2014, Appellant rode with two females to a marijuana deal that the two females had arranged. Appellant allegedly took the marijuana without payment and assaulted the dealer. The warrant alleged that Appellant had committed armed robbery, possession of a weapon by a felon, possession of a weapon during a violent crime, and assault and battery. R. 1-2.

At the probation hearing, counsel for Appellant informed Judge Cooper that Appellant reported for probation checks and made his scheduled payments. He had also had gainful employment. R. 5, line 18—R. 6, line 1. Counsel then informed Judge Cooper that she was representing Appellant for new charges and asked him not to consider those “as they are pending [and] [h]e's not been convicted. These are all allegations. They're other people who are implicated and . . . there's gonna be further investigation into that” R. 6, lines 7-12. Appellant's parole agent then told Judge Cooper that despite the allegations in the probation arrest warrant, Appellant was not facing a charge for possession of a weapon during the commission of a violent crime. R. 7, lines 9-10.

Nevertheless, in revoking Appellant's probation, Judge Cooper specifically relied on upon “the arrest for the – on 9/15/2014.” R. 7, lines 22-25.

DISCUSSION

Judge Cooper failed to fairly consider the evidence in the record regarding the new charges, and the revocation of Appellant's probation was therefore arbitrary and capricious. 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). While the trial court has the duty to determine, based on its discretion, "whether to revoke probation in whole or part," the State has the duty to "present[] sufficient evidence to establish that a probationer has violated the conditions of his probation." *State v. Allen*, 370 S.C. 88, 97, 634 S.E.2d 653, 657 (2006). *Allen*, 370 S.C. at 94, 634 S.E.2d at 655-56 (citations omitted). "While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice." *Id.* (citation omitted).

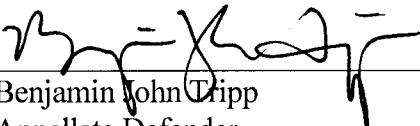
In this case, the record shows the allegations against Appellant underlying the new charges were unreliable. First, Appellant had not been convicted of any new crimes, and the arrest warrant and any indictments constituted mere hearsay. Second, the probation arrest warrant stated Appellant's two codefendants planned and orchestrated the drug deal and robbery, and nothing showed Appellant was aware of or fully understood the situation as it unfolded. Third, the allegations became unreliable to a greater degree when the probation agent admitted that despite what she alleged in the probation arrest warrant, no charge for possession of a weapon during the commission of a crime was brought against Appellant. Such an inconsistency is the hallmark of unreliability counseling for judicial restraint when considering mere allegations of a new crime in a case like this.

Counsel expressly told Judge Cooper that she was acquainted with the new charges, and she urged him not to consider them because more information than was then available existed to show whether Appellant was involved in the incident in such a way as to constitute a violation of his probation terms. Nevertheless, Judge Cooper specifically relied on upon Appellant's mere arrest in connection with the incident without any express consideration of other facts suggesting the unreliability of the allegations against him. Judge Cooper therefore failed to exercise sound restraint and discretion in evaluating the evidence in the record, and his revocation of Appellant's probation was arbitrary and capricious.

CONCLUSION

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

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of April, 2015.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Evandor Keath Thompson 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 Gordon G. Cooper, which was held on November 14, 2014, 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 Evandor Keath Thompson.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben - J. Tripp", written over a horizontal line.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of April, 2015.

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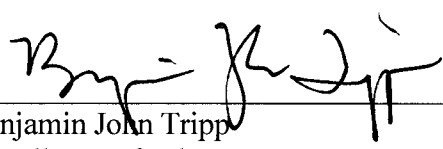
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Probation Arrest Warrant;
- (3) Transcript of November 14, 2014;
- (4) Probation revocation order.

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

April 28th, 2015



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

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."

April 28, 2015



Benjamin John Tripp
Appellate Defender

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Division of Appellate Defense
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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 Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Evandor Keath Thompson, #352929 at Kirkland Correctional Institution, this 28th day of April, 2015.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of April, 2015.

Blaine Kendall (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.