

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

RECEIVED

MAY 29 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIAM CURRIE,

APPELLANT

APPELLATE CASE NO. 2015-000160

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUE ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT 5

CONCLUSION 8

PETITION TO BE RELIEVED AS COUNSEL 9

TABLE OF AUTHORITIES

Cases

<u>Anders v. California</u> , 386 U.S. 738, 87 S.Ct. 1396 (1967).....	9
<u>Barlet v. State</u> , 288 S.C. 481, 343 S.E.2d 620 (1986).....	7
<u>Bearden v. Georgia</u> , 466 U.S. 660, 103 S. Ct. 2064 (1983).....	6
<u>Douglas v. Burden</u> , 412 U.S. 430, 93 S. Ct. 2199 (1973).....	6
<u>Gagnon v. Scarpelli</u> , 411, U.S. 778, 93 S. Ct. 1756 (1973).....	6
<u>Goldberg v. Kelly</u> , 397 U.S., at 267-271, 90 S. Ct. at 1020-1022, 25 L.Ed2d 287.....	5
<u>Hyser v. Reed</u> , 115 U.S. App. D.C. 254, 318 F.2d 225 (1963).....	5
<u>Morrissey v. Brewer</u> , 408 U.S. 471, 92 S. Ct. 2593.....	5,6

STATEMENT OF ISSUE ON APPEAL

Whether the court erred in revoking appellant's probation when his violations were not willful?

STATEMENT OF THE CASE

Appellant plead guilty to reckless homicide resulting in death before the Honorable Doyet A. Early, III on September 10, 2013, in Aiken County. He was sentenced to seven (7) years suspended to 180 days of time credit and five (5) years of probation.

On November 13, 2014, appellant appeared before Judge Early for a probation revocation hearing. Appellant's probation was revoked in full. He was represented by Wallis Alves, Esq.

This appeal follows.

ARGUMENT

The court erred in revoking appellant's probation because his violations were not willful. In 1972 the United States Supreme Court handed down the opinion of Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593 setting forth minimal due process requirements for the revocation of parole. The Court noted that "revocation deprives an individual... of the conditional liberty properly dependent on observance of special parole restrictions." 408 U.S. at 480, 92 S. Ct. at 2600. The Court went on to write that there must be an orderly process before a liberty protection is terminated. 408 U.S. at 482, 92 S. Ct. at 2601. First, the Court dealt with the parolee's arrest and the need for a preliminary hearing. The Court stated:

Due process would seem to require that some minimal inquiry be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available. Cf. Hyser v. Reed, 115 U.S. App. D.C. 254, 318 F.2d 225 (1963). Such an inquiry should be seen as in the nature of a 'preliminary hearing' to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions. Cf. Goldberg v. Kelly, 397 U.S., at 267-271, 90 S. Ct. at 1020-1022, 25 L.Ed2d 287.

408 U.S. at 484, 92 S. Ct. at 2602

With respect to the preliminary hearing before this officer, the parolee should be given notice that the hearing will take place and that its purpose is to determine whether there is probable cause to believe he has committed a parole violation. The notice should state what parole violations have been alleged. At the hearing the parolee may appear and speak in his own behalf; he may bring letters, documents, or individuals who can give relevant information to the hearing officer.

408 U.S. at 486-487, 92 S. Ct. at 2603.

With respect to the revocation hearing the Court wrote:

We cannot write a code of procedure; that is the responsibility of each State. Most States have done so by legislation, others by judicial decision usually on due process grounds. Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.

408 U.S. at 488 – 489, 92 S.C. at 2604.

In Gagnon v. Scarpelli, 411, U.S. 778, 93 S. Ct. 1756 (1973) the Court made the same procedures set out in Morrissey applicable to probation revocations. A short time later the Court held that due process is violated when the state revokes probation with no evidence that probation was violated. Douglas v. Burden, 412 U.S. 430, 93 S. Ct. 2199 (1973). Then in Bearden v. Georgia, 466 U.S. 660, 103 S. Ct. 2064 (1983) the Court held that the State can not revoke a defendant's probation because he is too poor to pay a fine. A probation violation has to be willful. The South Carolina Supreme Court a short time later also held the probation could not be revoked "solely" on the ground that one on probation failed to pay fines or to make restitution (emphasis in original). Barlet v. State, 288 S.C.

481, 343 S.E.2d 620 (1986). The judge has to make a finding “on the record that the probation failed to make a bona fide effort to pay.” Id.

In this case, the affidavit to the probation violation arrest warrant alleged the following:

William Donovan Currie has failed to follow the advice and instructions of his Agent by: Failing to report since 10/28/2014 and as instructed 11/05/2014. Failing to obtain the consent of his Agent prior to changing his residence from 216 Schley St Warrentville, SC being determined during a home visit on 11/24/2014; Failing to abide by the Court order of no contact with Randy Currie as ordered by the Honorable Judge Early on 06/11/2014; Failing to pay supervision fees as instructed, current arrearage being \$80.00; Failing to pay the PSE Fee balance \$25.00 and drug test fee \$20.00 as instructed; Failing to complete PSE as instructed, balance being 393 hours which constitutes a violation of conditions 1, 2, 7, 9, 10 and special conditions of his probationary sentence.

Judge Early found that appellant was not in willful violation as to the financial aspects of his probation. But he did find that appellant was in willful violation of the failing to only do 10 hours out of 400 hours of public service since September of 2013. (Tr. p.13, l. 1-5) The judge, however, did not make a finding as to why appellant’s failing to do only 10 hours out of 400 hours of public service was willful. One of the original terms of his probation was no driving. If appellant could not drive and he was not in willful violations of the financial aspects of his probation he could probably not afford to get to the public service. Therefore, that violation was not willful.

CONCLUSION

The decision to revoke appellant's probation should be reversed.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of May, 2015.

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IN THE COURT OF APPEALS

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THE STATE,

RESPONDENT,

V.

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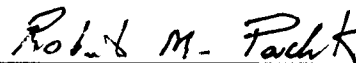
PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Currie 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 Doyet A. Early, III, which was held on January 14, 2015, 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 William Currie.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of May, 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) Indictment;
- (2) Affidavit of probation violation arrest warrant
- (3) Probation violation hearing transcript

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

May 29th, 2015

Robert M. Pachak

Robert M. Pachak
Appellate Defender

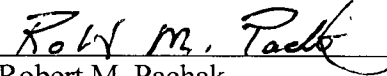
South Carolina Commission on Indigent Defense
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(803) 734-1343

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."

May 29, 2015



Robert M. Pachak
Appellate Defender

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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 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 William Currie, #115446 at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 29th day of May, 2015.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of May, 2015.

Naia Mendenhall (L.S.)

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