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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CRYSTAL RENAE BAKER,

APPELLANT

APPELLATE CASE NO. 2015-002463

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the lower court err in revoking Appellant's probation after hearing the allegations of the State's probation agent without making specific findings as to Appellant's culpability and merely summarily concluding that the alleged violations were "substantial"?

STATEMENT OF THE CASE

The York County Court of General Sessions convicted Appellant Crystal Baker of exploitation of a vulnerable adult allegedly occurring on May 3, 2014 and sentenced her on August 27, 2014 to five years' incarceration suspended to ninety days with three years of probation. R. 1. On February 11, 2015, the York County Court of General Sessions ordered Appellant to attend inpatient care as a term of her probation. R. 1.

The Kershaw County Court of General Sessions also convicted Appellant of two counts of first-degree burglary allegedly occurring on July 16, 2013, for which the court sentenced her on April 16, 2015 to concurrent sentences of five years' incarceration suspended to thirty months of probation. R. 4—R. 5.

On October 14, 2015, a probation arrest warrant was issued in York County for Appellant. R. 7—R. 8. On November 16, 2015, Appellant appeared at a probation hearing before The Honorable John C. Hayes, III. Toni Johnson represented Appellant and Alicia Richardson represented the South Carolina Department of Probation, Pardon and Parole. R. 9. At the conclusion of the hearing, Judge Hayes revoked both of Appellant's probationary sentences. R. 16, lines 16-17; R. 4-6.

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 probation arrest warrant alleged violations of Appellant's terms of probation including failure to report, failure to complete in-patient treatment, and failure to refrain from violation of state law. R. 7—R. 8. At the probation hearing, Appellant told the lower court that she was involuntarily discharged from her inpatient treatment facility because of a chronic cough, which instructors claimed was disrupting their classes. R. 13, lines 15-24. Appellant also stated that she left messages with her probation agent letting her know that she had been discharged. R. 14, lines 2-3. Finally, she told the court that she had pled guilty to a charge for shoplifting in August of 2015, but she did not personally take anything and was facing liability under the hand-of-one-hand-of-all doctrine. R. 13, lines 4-16. Judge Hayes revoked her probation after finding that the alleged violations were "substantial." R. 13, line 25—R. 14, line 2.

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. "A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice." *State v. Singleton*, 395 S.C. 6, 15, 716 S.E.2d 332, 336 (Ct. App. 2011) (quoting *State v. Hornsby*, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997)). "The Due Process Clause of the Fourteenth Amendment imposes procedural and substantive limits on the revocation of the conditional liberty created by

probation.” *Black v. Romano*, 471 U.S. 606, 610, 105, S.Ct. 2254, 2257 (1985). The procedural limits include affording a probationer a number of rights:

The probationer is entitled to written notice of the claimed violations of his probation; disclosure of the evidence against him; an opportunity to be heard in person and to present witnesses and documentary evidence; a neutral hearing body; and a written statement by the factfinder as to the evidence relied on and the reasons for revoking probation. . . . The probationer is also entitled to cross-examine adverse witnesses, unless the hearing body specifically finds good cause for not allowing confrontation.

Id. at 611-12 (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973)). Accord *State v. Allen*, 370 S.C. 88, 97, 634 S.E.2d 653, 657 (2006). “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.” *State v. Allen*, 370 S.C. at 94, 634 S.E.2d at 655-56 (citations omitted).

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.” *Allen*, 370 S.C. at 94, 634 S.E.2d at 655-56 (citations omitted).

In *State v. Allen*, the South Carolina Supreme Court held that a probation condition prohibiting association with a person having a criminal record “implicitly requires a finding that the probationer knew the person in question had a criminal record during the period of association, and that the association was not simply an unknowing or incidental encounter.” *Id.* at 101, 634 S.E.2d at 659. The court cited cases holding that due process protects a probationer against conditions that “unnecessarily or excessively trample[] upon First Amendment rights of free association.” *Id.* at 97-98, 634 S.E.2d at 657. Thus, such cases have held that “[t]he evidence must show . . . that the probationer knew about the person’s

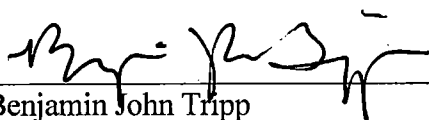
criminal record during the period of association before the condition may be applied to revoke probation.” *Id.* at 99, 634 S.E.2d at 658.

At Appellant’s hearing below, the lower court failed to make any specific findings in writing or otherwise to support the revocation of probation. The State’s agent did nothing more than allege that Appellant failed to report, complete in-patient treatment, and refrain from violation of state law. The agent submitted no witness testimony or other evidence to support the allegations. On the other hand, Appellant told the court that she left messages with the agent letting her know that she had been discharged. She also told the court that she was involuntarily discharged from her inpatient treatment facility because of a chronic cough. The court’s revocation of probation based on the bare allegations in the record without the support of any discernable inferences amounts to unfair treatment resulting from whim or caprice and a denial of due process. Moreover, like in *Allen*, the evidence in the record that Appellant pled guilty to criminal charge was not sufficient to establish that Appellant knowingly and willingly violated a probation condition. She told the court that she did not personally break any law but was facing liability under the hand-of-one-hand-of-all doctrine. Without more evidence and specific findings, the court could not conclude that Appellant was involved any more than through an unknowing or incidental encounter with the codefendant.

CONCLUSION

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

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of March, 2016.

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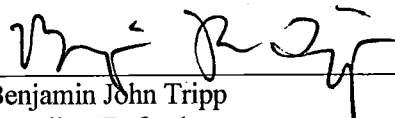
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Crystal Renae Baker 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 John C. Hayes, III, which was held on November 16, 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 Crystal Renae Baker.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of March, 2016.

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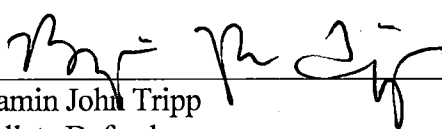
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Order dated February 11, 2015;
- (3) Arrest Warrant dated October 27, 2014;
- (4) Probation revocation order dated November 16, 2015;
- (5) Probation revocation order dated November 16, 2015;
- (6) Probation revocation order dated November 16, 2015;
- (7) Arrest Warrant dated October 14, 2015.

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

March 7th, 2016


Benjamin John Tripp
Appellate Defender

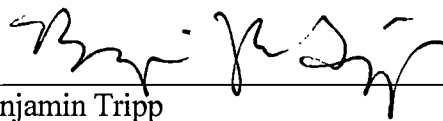
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Attorney for Appellant

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."

March 8th, 2016



Benjamin Tripp
Appellate Defender

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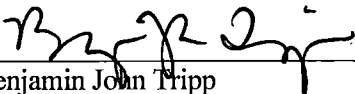
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CERTIFICATE OF SERVICE

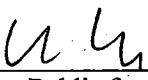
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Matthew Buchanan, Esquire, at The South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Crystal Renae Baker, #366154 at Leath Correctional Institution, this 8th day of March, 2016.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of March, 2016.



(L.S.)
Notary Public for South Carolina
My Commission Expires: May 12, 2025.