

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Clifton Newman, Circuit Court Judge

RECEIVED

JUL 31 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DANIEL HARGADON,

APPELLANT

APPELLATE CASE NO. 2015-000575

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief 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

The probation revocation judge erred in revoking in full appellant's probation sentence partly for failure to pay fines and fees because there was no evidence presented at the hearing or any finding placed on the record establishing that the nonpayment was a willful failure to pay.

STATEMENT OF THE CASE

Appellant Daniel A. Hargadon was convicted of forgery and second degree burglary during the May 2012 term of the Sumter County General Sessions Court before Judge George James. Appellant was sentenced to imprisonment for a period of five years, suspended upon the service of five years and probation for a period of five years.

A probation revocation hearing was convened on March 6, 2015, at the Sumter County Courthouse before Judge Clifton B. Newman, who revoked appellant's probation in full. Appellant was present at the hearing and represented by Katarzyna Timmons. Probation Agent Melissa Israel appeared on behalf of the South Carolina Department of Probation Pardon and Parole Services. Appellant appealed his probation revocation. This brief follows.

ARGUMENT

The probation revocation judge erred in revoking in full appellant's probation sentence partly for failure to pay fines and fees because there was no evidence presented at the hearing or any finding placed on the record establishing that the nonpayment was a willful failure to pay.

The probation agent outlined the case for the probation revocation request as follows:

Probation Agent Israel: Please the Court, Your Honor; Mr. Hargadon is on probation for forgery, value less than ten thousand dollars and burglary second. He was sentenced back in May of 2012. He stands before you today for failing to report, failing to pay on his financial obligations and he does has restitution, failing to complete public service employment, and being terminated from Court ordered drug court. Basically Mr. Hargadon has done nothing while he's been under supervision. Mr. Hargadon is just not a good candidate for probation. Tr. 3, lines 11 – 23.

During the probation revocation hearing, appellant admitted that he did not report to or participate in drug court as required of him. Tr. 4, l. 3 – p. 5, l. 14; Tr. 5, l. 17 - 24. However, with respect to the payment of fees and fines, appellant's counsel informed the judge that "the reason he was not paying [was because] he didn't work and [when] he was working for his landlord...he just didn't have enough money to pay." Tr. 5, l. 15 – 19.

Clearly, the evidence presented did not support a full revocation of appellant's probation because although appellant violated his drug court participation condition of probation, there was no showing at the hearing and no finding made on the record by the judge that appellant willfully failed to pay fees and fines, which was also a condition of his probation. Therefore, only a partial revocation was supported by the record in this case.

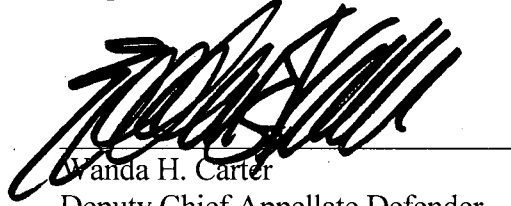
In probation revocation cases, the state must present sufficient evidence to establish that a probationer has violated the conditions of his probation based on an evidentiary hearing; and in cases involving the failure to pay fines, the judge must in addition to finding sufficient factual evidence of the violation, make an additional finding of willfulness. State v. Spare, 372 S.C. 264, 647 S.E.2d 706 (2007), citing to State v. Hamilton, 33 S.C. 642, 511 S.E.2d 94 (S.C. Ct. App. 1999). In Spare, the Court vacated Spare's probation revocation because the trial judge failed to make the requisite inquiry into "[his] ability to pay, his reasons for failing to pay, and whether his failure to pay was willful," particularly in light of the fact that it did not appear that Spare made a voluntary, conscious, and intentional decision not to pay. A willful failure to pay means a voluntary, conscious, and intentional failure to pay. State v. Spare, *supra*, citing to People v. Davis, 216 Ill. App. 3d 884, 159 Ill. Dec. 841, 576 N.E.2d 510 (1991). Compare also Bartlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986), and Nichols v. State, 308 S.C. 334, 417 S.E.2d 860 (1992), where "the petitioner flatly asserted his inability to pay restitution because he was unemployed."

Here, appellant's failure to pay was not willful. Thus, the probation revocation judge abused his discretion in violation of S.C. Code Ann. §24-21-460 and §24-21-430 in revoking petitioner's probation in full partly for failure to pay fees when there was no evidence indicating that the failure to pay was willful and no finding placed on the record regarding the same.

CONCLUSION

Based on the foregoing argument, counsel for appellant requests that the probation revocation be vacated and the case remanded to the lower court for a hearing on the issue of whether the nonpayment of fees was willful.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of July, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Daniel Anthony Ralph Hargadon states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on March 6, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Daniel Anthony Ralph Hargadon.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of July, 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) Probation Revocation Hearing Transcript
- (2) Indictments
- (3) Probation Revocation Citation
- (4) Probation Revocation Order

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

July 31st, 2015



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Deputy Chief Appellate Defender

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Attorney for Appellant

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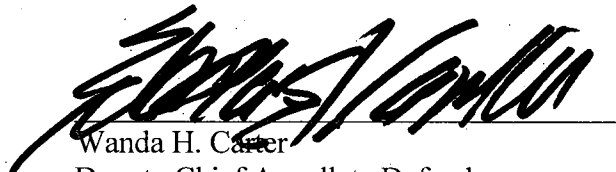
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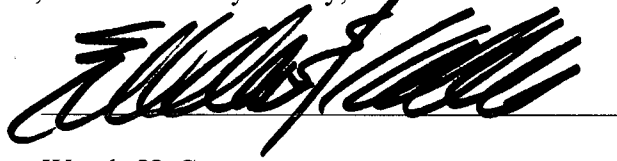
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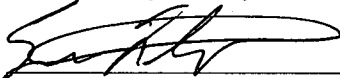
CERTIFICATE OF SERVICE

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 Daniel Anthony Ralph Hargadon, #363287, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, on this 31st day of July, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of July, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.