

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

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Howard P. King, Circuit Court Judge

FEB 20 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

April Denise Legree,

APPELLANT

APPELLATE CASE NO. 2015-002225

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
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

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STATEMENT OF ISSUE ON APPEAL

Whether appellant's failure to pay a surcharge and restitution were willful probation violations?

STATEMENT OF THE CASE

Appellant waived presentment on an indictment for obtaining money or goods by false pretenses at the May 2010 term of the Sumter County Grand Jury. On May 26, 2010, she pled guilty to the charge. She was sentenced to five (5) years suspended upon service of two (2) years with two (2) years probation thereafter. On September 7, 2015, appellant was served with a probation violation arrest warrant. On October 16, 2015, she appeared before the Honorable Howard P. King for a probation revocation hearing. Her probation was revoked in full.

This appeal follows.

ARGUMENT

Appellant's failure to pay a surcharge and restitution were not willful probation violations.

One of the violations alleged against appellant was a failure to pay a surcharge and restitution. (R. p.3, ll 20-22). Appellant explained her financial situation:

THE DEFENDANT: First of all, I want to tell you, what happened was, I was staying with my mom, and after the death of my husband, I did kind of shut down. I had to pay for his funeral bills. And when I got the money to pay for the funeral bill, and then my granddaughter died right after him. And I just couldn't give her what she wanted me to give her back then, because I had to pay the funeral bill, two funeral bills. And when she told me I had to leave, I went to my daughter's house. And then I went to my brother's house, and to my sister's house. I couldn't give her no money, because I didn't have no money, not right at the time. And I explained that to her. The whole time I was living there when I was on probation, I was giving her money. I was getting her jobs. And I was doing. And all of a sudden after all that, she just put me out because I couldn't give her no money. I told her I couldn't give her what I didn't have. Because I had to pay two funeral bills after I got the---

(R. p.9, l.6 – p.10, l.1).

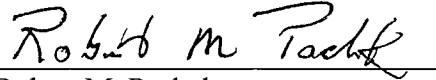
The court erred in this case in revoking appellant's probation. In Bearden v. Georgia, 466 U.S. 660, 103 S. Ct. 2064 (1983) the Court held that the State can not revoke a defendant's probation because he is too poor to pay a fine. A probation violation has to be willful. The South Carolina Supreme Court a short time later also held that probation could not be revoked "solely" on the ground that one on probation failed to pay fines or to make restitution (emphasis in original). Bartlet v. State, 288 S.C. 481, 343

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

CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink that reads "Robert M. Pachak". The signature is written in a cursive style and is positioned above a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of February, 2016.

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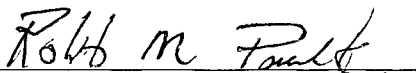
PETITION TO BE RELIEVED AS COUNSEL

Counsel for April Denise Legree 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 Howard P. King, which was held on October 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 April Denise Legree.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of February, 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) Entire Trial Transcript
- (2) Probation Revocation Arrest Warrants

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

February 29th, 2016

Robert M. Pachak

Robert M. Pachak
Appellate Defender

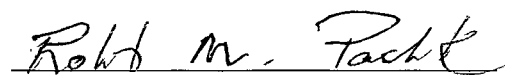
South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1343

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."

February 29, 2016



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
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 and Record on Appeal 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 April Denise Legree, at Leath Correctional Institution 2809 Airport Road Greenwood, SC 29649, this 29th day of February, 2016.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of February, 2016.

Marie Lumbard (L.S.)

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