

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAR 15 2016
SC Court of Appeals

Appeal from Sumter County
George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

Jeffrey Bryan June,

APPELLANT

APPELLATE CASE #2015-002247

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

TABLE OF CONTENTS

TABLE OF CONTENTS1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT

The trial court lacked subject matter jurisdiction to revoke
appellant’s probation because the warrant was not served
until after appellant’s probation had expired5

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL8

TABLE OF AUTHORITIES

Cases

State v. Brown, 349 S.C. 414, 563 S.E.2d 340 (Ct.App.2002)..... 6

State v. Crouch, 355 S.C. 355, 585 S.E.2d 288 (2003) 5

State v. Hutto, 252 S.C. 36, 165 S.E.2d 76 (1968)..... 6

Statutes

S.C. Code § 24-21-450..... 5

S.C. Code Ann. § 24-21-450 (Supp.2002),..... 5

STATEMENT OF ISSUE ON APPEAL

Whether the trial court lacked subject matter jurisdiction to revoke appellant's probation because the warrant was not served until after appellant's probation had expired?

STATEMENT OF THE CASE

On November 4, 2010, appellant appeared in court in Sumter County and pled guilty to distribution of a controlled substance. He was sentenced to five (5) years suspended to two (2) years probation.

On July 17, 2015, appellant was served with a probation violation arrest warrant. A probation revocation hearing was held on August 14, 2015, before the Honorable George C. James, Jr. Probation was revoked and appellant was ordered to serve four (4) years of his original sentence. On August 14, 2015, a motion to reconsider the sentence was filed. On October 16, 2015, a hearing was held on appellant's motion to reconsider. Judge James denied the motion.

This appeal follows.

ARGUMENT

The trial court lacked subject matter jurisdiction to revoke appellant's probation because the warrant was not served until after appellant's probation had expired?

Appellant was originally sentenced on November 4, 2010. A probation violation arrest warrant was not served on appellant until July 17, 2015, well after the 2 year probationary sentence had expired. S.C. Code § 24-21-450 covers arrests for violation of probation. It provides:

At any time during the period of probation or suspension of sentence the court, or the court within the venue of which the violation occurs, or the probation agent may issue or cause the issuing of a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer or other agent with power of arrest, upon the request of the probation agent, may arrest a probationer. In case of an arrest, the arresting officer or agent must have a written warrant from the probation agent setting forth that the probationer has, in his judgment, violated the conditions of probation, and such statement shall be warrant for the detention of such probationer in the county jail or other appropriate place of detention, until such probationer can be brought before the judge of the court or of the court within the venue of which the violation occurs. Such probation agent must forthwith report such arrest and detention to the judge of the court, or of the court within the venue of which the violation occurs, and submit in writing a report showing in what manner the probationer has violated his probation. Provided, that any person arrested for the violation of the terms of probation must be entitled to be released on bond pending a hearing, and such bond shall be granted and the amount thereof determined by a magistrate in the county where the probationer is confined or by the magistrate in whose jurisdiction the alleged violation of probation occurred.

In State v. Crouch, 355 S.C. 355, 585 S.E.2d 288 (2003) the court explained:

Under S.C. Code Ann. § 24-21-450 (Supp.2002), an arrest warrant for violation of terms of probation may be issued

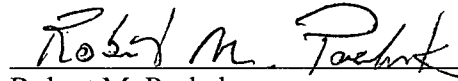
“[a]t any time during the period of the probation or suspension of sentence.” The statute “authorizes the court to issue or cause the issuing of a warrant only during the period of probation and, in the absence of the timely issuance of such warrant, the court is without authority to revoke the probation after the probationary period has passed, even though the violation occurred during such period.” *State v. Hutto*, 252 S.C. 36, 45-46, 165 S.E.2d 72, 76 (1968). Because the warrant implicates the trial court’s subject matter jurisdiction, the issue can be raised at any time. *Id.*

A decision “to revoke probation generally rests within the circuit court’s discretion, [however] an appellate court should reverse when that decision is based on an error of law or lacks supporting evidence.” *State v. Brown*, 349 S.C. 414, 417-18, 563 S.E.2d 339, 340 (Ct.App.2002). The Newberry County probationary sentences expired approximately five months prior to the issuance of the probation arrest warrant. We need not reach the tolling issue since the judge did not have subject matter jurisdiction to revoke the Newberry County sentences because a probation arrest warrant was not issued during the probationary period. We vacate the judge’s purported revocation of the Newberry sentences.

CONCLUSION

As can be seen the decision to revoke appellant's probation should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Pachak". The signature is written in a cursive style with a horizontal line underneath it.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of March, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY B. JUNE

APPELLANT

APPELLATE CASE #2015-002247

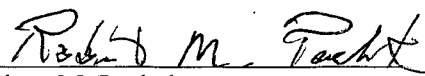
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeffrey Bryan June 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 George C. James, Jr., which was held on August 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 Jeffrey Bryan June.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY B. JUNE

APPELLANT

APPELLATE CASE #2015-002247

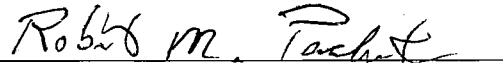
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment;
- (2) Probation violation arrest warrant;
- (3) Probation violation hearing;
- (4) Motion for reconsideration;
- (5) Reconsideration hearing;
- (6) Order denying reconsideration

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

March 15th, 2016



Robert M. Pachak
Appellate Defender

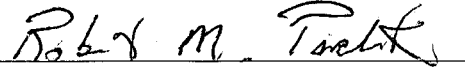
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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 15, 2016



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

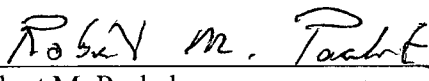
JEFFREY B. JUNE

APPELLANT

APPELLATE CASE #2015-002247

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant, 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, Designation of Matter, and Record on Appeal have been served on Jeffrey Bryan June, #365121 at Walden Correctional Institution 4340 Broad River Road, Columbia, SC 29210, this 15th day of March, 2016.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of March, 2016.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2026.