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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Aiken County

Honorable Doyet A. Early, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANNIE VICTORIA WILSON,

APPELLANT

APPELLATE CASE NO. 2015-002028

ANDERS BRIEF OF APPELLANT

Robert M. Pachak
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUE ON APPEAL

Whether all of appellant's probation violations were willful?

STATEMENT OF THE CASE

Appellant pled guilty to burglary in the third degree in November of 2011 in Aiken County before the Honorable Doyet A. Early, III. She was sentenced to five (5) years suspended on five (5) years probation and 250 hours of public service. On July 25, 2015, she was served with a probation violation arrest warrant. A probation violation hearing was held on September 8, 2015, before Judge Early. Appellant was represented by Bradley McMillian, Esquire. Respondent was represented by the probation agent, Ashley Finch. Appellant's probation was revoked in full.

This appeal follows.

ARGUMENT

All of appellant's probation 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 Morrisey 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 cannot 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.

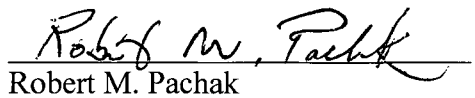
481, 343 S.E.2d 620 (1986). The judge has to make a finding "on the record that the probationer failed to make a bona fide effort to pay." Id.

In appellant's case in May of 2012, she failed to pay her fines and fees. In September of 2012, she failed to pay her financial obligations. She failed to pay restitution in March of 2013. She failed to pay fines and fees in January of 2014. Since June of 2015, she again failed to pay her fines and fees. (R. p. 4, line 10 – p. 5, line 18) As can be seen from above, she was too poor to pay her fines and fees and her probation should not have been revoked for that reason.

CONCLUSION

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

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of July, 2016.

STATE OF SOUTH CAROLINA

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THE STATE,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Annie V. Wilson 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, which was held on September 8, 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 Annie V. Wilson.

Respectfully submitted,

Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 14th day of July, 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) Probation Revocation Transcript Dated September 8, 2015;
(2) Indictment
(3) Sentencing Sheet
(4) Probation Violation and Arrest Warrant

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

July 14, 2016

Robert M. Pachak
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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."

July 14, 2016

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