

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

RECEIVED
AUG 12 2016
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DANIEL HURT,

APPELLANT

APPELLATE CASE NO 2016-000710

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The probation revocation judge erred in denying appellant's request for the continuation of his probation so that he could be admitted into a drug rehabilitation facility rather than placed into SCDC because the probation revocation that resulted in a sentence of incarceration violated the prohibition against cruel and unusual punishment.

STATEMENT OF THE CASE

Appellant Daniel Mason Hurt was convicted of second degree burglary on August 11, 2015, at the Greenwood County General Sessions Court before Judge Frank R. Addy, and received a sentence of imprisonment for a period of ten years, suspended upon the service of one year and five years probation. Appellant was released from prison on October 1, 2015, and appeared at the probation office as scheduled on October 8, 2015, but failed to return there again.¹ Thereafter, an arrest warrant was issued for appellant's arrest due to allegations of numerous probation violations.

A probation revocation hearing was held on appellant's behalf on March 18, 2016, at the Greenwood County Courthouse before Judge Addy, who revoked appellant's probation in full. Patricia A. Bolen represented appellant at the hearing.

Appellant appealed. This brief follows.

¹ Appellant tested positive for methamphetamine on October 8, 2015.

ARGUMENT

The probation revocation judge erred in denying appellant's request for the continuation of his probation so that he could be admitted into a drug rehabilitation facility rather than placed into SCDC because the probation revocation that resulted a sentence of incarceration violated the prohibition against cruel and unusual punishment.

Appellant was released from serving his one-year (suspended) sentence on October 1, 2015. He checked in with his probation agent one time on October 8, 2015, before disappearing from the SCPPP radar. It was revealed that appellant tested positive for the drug methamphetamine present in his system on October 8, 2015. Tr. 21, l. 12 – 23. Then, appellant was scheduled to appear in Court on October 12, 2015, but he failed to do so.

During the probation revocation hearing, appellant asked for the continuation of his probation so that he could attend a drug addiction program instead. Appellant apprised the judge on the availability of drugs at SCDC as follows:

Appellant: I'm asking for help. I done (sic) been to prison three times and I've done more dope in prison than I done on the streets...[and] every time I come home I'm just as big an addict as I was before I went [into SCDC]. I need help. R. 8, lines 5 – 9.

Also, during the probation hearing, trial counsel advised the court that appellant has a “very, very bad addiction problem...that he really needs help with”....[such as] “a really intensive program such as the Miracle Hill Program in Greenville.” R. 4, l. 3 – 9; R. 4, l. 25 – R. 5, l. 2.

After appellant pleaded with a heartfelt “[can] you put me back on probation” (R. 9, l. 22), the trial judge denied the request based on the following rationale:

The Court: No Sir. When I talked to you back in August, I told you that the Court was going to come down hard on you if you

violated probation. You showed up one time on your probation. You could have gone to them and said, yeah I got a drug problem...get me into rehab... I need to go to rehab...R. 9, l. 23 – R. 10, l. 3.

Ultimately, the probation revocation judge revoked appellant's probation in full.

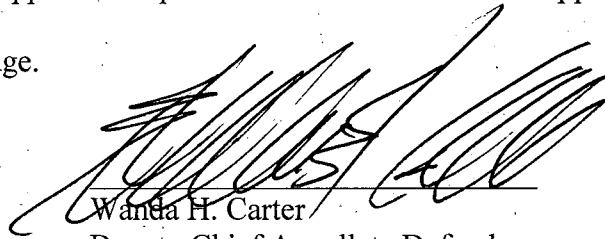
The purpose of a probation hearing is to determine whether the probationer is guilty of violating probation; and if so, whether he should be continued on probation or be imprisoned. United States v. Workman, 585 F.2d 1205 (4th Cir. 1978). See also Alternative Courts and Drug Treatment: Finding a Rehabilitative Solution for Addicts in a Retributive System, 84 Fordham Law Review 855 (November 2015), where the feasibility study of sentencing an addict for a crime he committed while suffering under a drug addiction when rehabilitation would yield more productive results begged the question of why retributive or punitive measures should be used in such cases. Apparently, drug treatment programs that are community based like the program in Greenville would have benefitted appellant had his probation been continued. Compare the dissent in Robinson v. State of California, 370 U.S. 660 (1962), which suggested that criminal penalties should not be inflicted upon a person for being in a condition he or she is powerless to change due to an addiction. Note that appellant stated that the burglary he committed never would have happened but for his drug addiction. The Robinson Court held that a person could not be punished for being a narcotic addict as a status due to his or her condition. Compare Powell v. Texas, 392 U.S. 514 (1968), where the Court held that the defendant's conviction for public drunkenness was not cruel and unusual punishment based on his alcohol issues because of the unanswered question of whether alcoholism led to his conviction.

Here, appellant's criminal actions were in effect not based on any mens rea per se, but rather due to his inability to function under our laws as a result of his drug addiction, which in turn meant that it was error to punish appellant by incarcerating him rather than placing him in

a drug rehabilitation program via the continuation of his probation. The lower court erred in denying appellant's request that his probation be continued and rehabilitation ordered because the incarceration that emanated from the probation revocation violated the cruel and unusual punishment prohibition under the Eighth and Fourteenth Amendments to the United States Constitution.

CONCLUSION

Based on the foregoing argument, appellant requests that this Court vacate appellant's probation revocation by the circuit court judge.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of August, 2016.

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DANIEL HURT,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Daniel Hurt 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 Frank R. Addy, which was held on March 18, 2016 (Probation Violation Hearing), 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 Hurt.

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 12th day of August, 2016.

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IN THE COURT OF APPEALS

Appeal from Greenwood County
Honorable Frank R. Addy, Circuit Court Judge

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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
- (2) Clerk of Court Records

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

August 12, 2016



Wanda H. Carter
Deputy Chief Appellate Defender

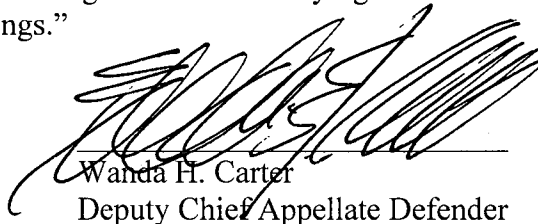
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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(803) 734-1330

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."

August 12, 2016.



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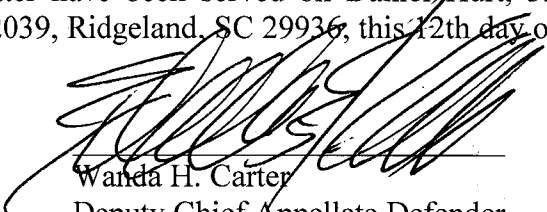
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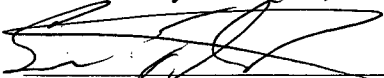
APPELLANT

CERTIFICATE OF SERVICE

The undersigned 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 office of DPPPS, PO Box 50666, Columbia, SC 29250; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Daniel Hurt, 333818, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 12th day of August, 2016.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of August, 2016.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.