

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from Lexington County
Robert E. Hood, Circuit Court Judge

MAY 06 2016
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

Nelapold S. Daniels,

APPELLANT

APPELLATE CASE NO. 2015-001806

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

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUE ON APPEAL..... 3

STATEMENT OF THE CASE..... 4

ARGUMENT

The probation revocation judge erred in revoking
appellant’s probation in part due to the failure to pay fines
and fees owed without making a finding of whether appellant
willfully neglected to meet the financial conditions of his
probation..... 5

CONCLUSION 6

PETITION TO BE RELIEVED AS COUNSEL..... 7

TABLE OF AUTHORITIES

Cases

Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986)..... 5

Nichols v. State, 308 S.C. 334, 417 S.E.2d 860 (1992)..... 5, 6

State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (1999)..... 5

Statutes

S.C. Code Ann. § 24-21-430..... 6

S.C. Code Ann. § 24-21-460 6

STATEMENT OF ISSUE ON APPEAL

The probation revocation judge erred in revoking appellant's probation in part due to the failure to pay fines and fees owed without making a finding of whether appellant willfully neglected to meet the financial conditions of his probation.

STATEMENT OF THE CASE

On January 13, 2014, Nelapold Daniels pled guilty to second degree burglary (non-violent) in the Richland County General Sessions Court before Judge Donald Hocker, who sentenced him to five years, suspended upon three years probation and restitution owed in the amount of \$2,500.00.

A probation revocation hearing was held on July 31, 2015, at the Richland County General Sessions Court before Judge Robert E. Hood, who revoked appellant's probation sentence. John Tate represented appellant at the hearing and Probation Agent Duckett appeared on behalf of the state.

Appellant appealed. This brief follows.

ARGUMENT

The probation revocation judge erred in revoking appellant's probation in part due to the failure to pay fines and fees owed without making a finding of whether appellant willfully neglected to meet the financial conditions of his probation.

During the probation revocation hearing held in the case, Agent Duckett alleged that appellant failed to take a drug test, and that he had failed to pay supervision fees and restitution owed. R. 3, lines 10 – 20.

Apparently, appellant's failure to pay money owed per the conditions of his probation was not a willful failure to pay. Counsel for appellant explained as follows:

[Appellant] tells me that he keeps up with his restitution as best he can...he is paying something on it...he is working....he pays \$50.00 a month...he works at McDonald's....he's got seven children four of which live with him. R. 4, lines 18 – 24.

Clearly, appellant attempted to pay all fines and fees owed, but became frustrated by the arrears as evidenced by his comment that he would always be behind on his payments. R. 5, l. 17 – 19. Appellant's difficulty in remaining current with his financial obligations did not translate into a willful failure to pay money owed. To the contrary, appellant worked and made a good faith effort to pay the fees and fines owed.

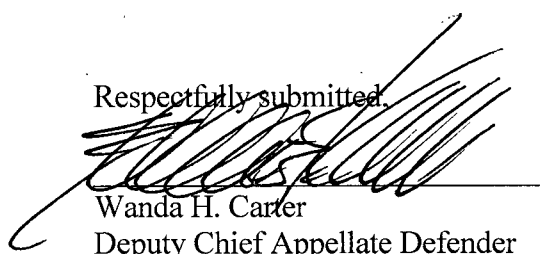
Here, the evidence presented regarding the failure to pay fees was inconsistent with the probation revocation judge's decision to revoke appellant's probation. In cases involving the failure to pay fines or restitution, the circuit judge must, in addition to finding sufficient factual evidence of the violation, make an additional finding of willfulness as defendants cannot be punished for being poor. State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (1999). Here, appellant's failure to pay was not willful. Compare Barlet 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.” In the case at bar, the probation revocation judge erred in violation of S.C. Code Ann. §24-21-460 and §24-21-430 by revoking appellant’s probation.

CONCLUSION

Based on the foregoing argument, appellant’s probation revocation sentence should be vacated.

Respectfully submitted,

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

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of May, 2016.

STATE OF SOUTH CAROLINA

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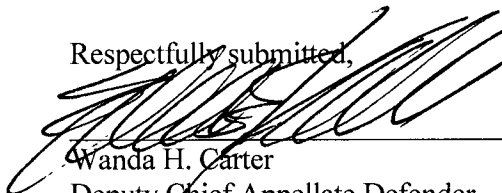
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Nelapold Daniels 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 Robert E. Hood, which was held on July 31, 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 Nelapold Daniels.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of May, 2016.

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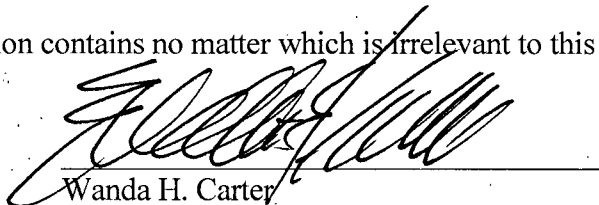
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Probation Revocation Transcript Dated July 31, 2015
- (2) Second Degree Burglary Sentence Sheet
- (3) Conditions of Probation Sheet
- (4) Probation Citation & Affidavit dated November 6, 2014
- (5) Probation Order dated December 4, 2014
- (6) Probation Arrest Warrant and Affidavit dated May 21, 2015
- (7) Probation Order dated July 31, 2015
- (8) SCDPPP Probation Violation Report

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

May 6th, 2016



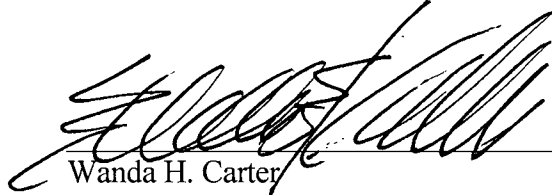
Wanda H. Carter
Deputy Chief Appellate Defender

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

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."

May 6, 2016

A handwritten signature in black ink, appearing to read "Wanda H. Carter", written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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Columbia, South Carolina 29211-1589

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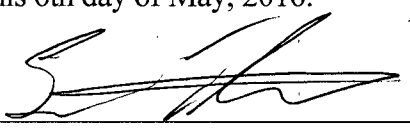
CERTIFICATE OF SERVICE

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 and Pardon Services, at 2221 Devine Street, Suite 600, P.O. 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 Nelapold Daniels, #301149 at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 6th day of May, 2016.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of May, 2016.


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