

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable, Circuit Court Judge

ORIGINAL

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SFP 15 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MATTHEW SMOAK,

APPELLANT.

APPELLATE CASE NO 2016-001383

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) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The probation revocation judge erred in revoking appellant's probation in part for failure to pay fines/fees owed as a violation of probation because the record indicated that appellant did not willfully fail to pay on his accounts.

STATEMENT OF THE CASE

Appellant Matthew Smoak pled guilty to resisting arrest (S.C. Code. Ann. §16-9-320 (B)) during the April 2014 term of the Lexington County General Sessions Court before Judge William P. Keesley. Appellant was sentenced to imprisonment for a period of eight years, suspended upon the service of thirty-nine days and five years probation. When appellant was terminated from drug court, a probation revocation citation was issued against him. A probation revocation hearing held during the January 2015 term of the Lexington County General Sessions Court Judge Russ who continued appellant's probation.

On June 24, 2016, a second probation revocation hearing was held at the Lexington County Courthouse before Judge Frank R. Addy. David M. Mauldin represented appellant at the hearing and Probation Agent Lugos appeared on behalf of SCDPPP. Judge Addy revoked appellant's probation by seven years and terminated the case.

Appellant appealed Judge Addy's probation revocation order. This brief follows.

ARGUMENT

The probation revocation judge erred in revoking appellant's probation in part for failure to pay fees/fines owed as a violation of probation because the record indicates appellant did not willfully fail to pay on his accounts.

The state alleged that appellant was cited for failure to make his probation payments owed. Tr. 5, lines 10 – 11. Tr. 6, l. 20.

Defense counsel explained the circumstances surrounding appellant's failure to pay the money owed. Counsel informed the judge that shortly after appellant's probation was continued in January 2015, he (appellant) was "run over by a car" in February/March of 2015. Thereafter, appellant had "three or four surgeries" and was unable to walk during that same year. Tr. 3, l. 12 – 24; Tr. 7, l. 5 – 17. As a result, he was unable to attend and "didn't have the money to attend substance abuse" programs. Counsel added that one month prior to the instant probation revocation hearing, appellant obtained a job as a subcontractor at Griffin Pools and subsequently paid \$430.00 a week on the money owed after he started working again. Tr. 7, l. 18 – 24; Tr. 9, l. 6 – 12. Prior to becoming employed, appellant had no money to pay the fines/fees owed.

Appellant explained during the hearing that he had "paid up all the money he owed on probation...[and that he was] broke now." Appellant stated that "[he] hadn't been able to work, so [he] hadn't been able to pay," and that his supervision was in effect supposed to work something out about his payment. Tr. 10, lines 7 – 9.

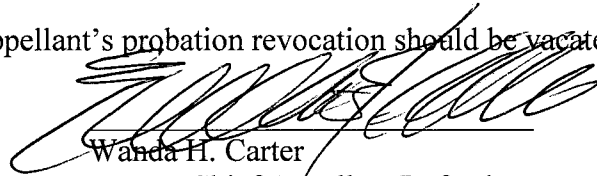
Clearly, the evidence presented regarding the failure to pay fees did not support the probation revocation judge's ruling in the matter. In cases involving the failure to pay fines or restitution, the circuit judge must, in addition to finding sufficient factual evidence of the violation, make an additional 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 abused its discretion in violation of S.C. Code Ann. §24-21-460 and §24-21-430 by revoking petitioner's probation in part because of this failure to pay money owed due to the insufficient evidentiary basis offered in support of the revocation.

CONCLUSION

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



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of September, 2016.

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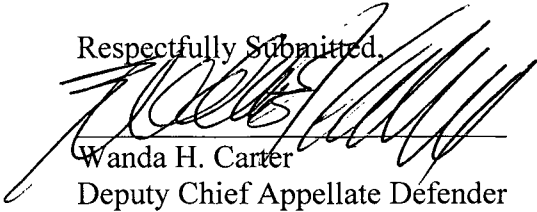
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Matthew Smoak 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 , which was held on June 23, 2016, 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 Matthew Smoak.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 15th day of September, 2016.

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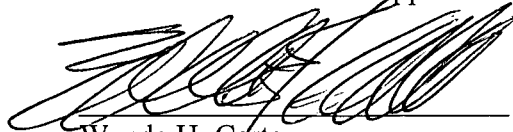
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Transcript dated June 24, 2016
- (2) Probation Citation
- (3) Probation Order
- (4) True-billed indictment:
- (5) Sentence Sheet
- (6) Rule 203(B) Explanation

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

September 15, 2016



Wanda H. Carter
Deputy Chief Appellate Defender

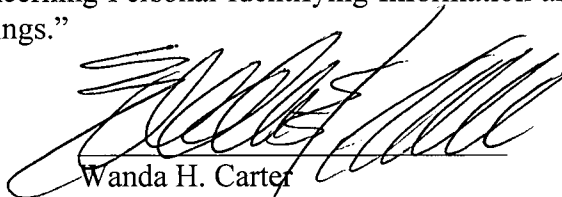
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ATTORNEY FOR APPELLANT

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."

September 15, 2016.



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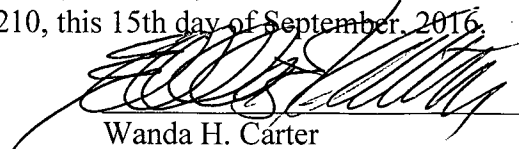
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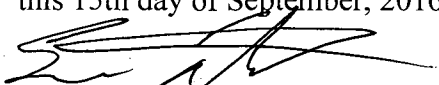
APPELLANT

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 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 have been served on Matthew Smoak, #309929, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 15th day of September, 2016.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

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

 (L.S)
Notary Public for South Carolina
My Commission Expires: 10/30/2022