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OCT 04 2018

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LORENZO RAGIN,

APPELLANT

APPELLATE CASE NO 2016-000287

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
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

Did the trial court err in not giving Appellant Ragin, at his guilty plea on two shoplifting charges, credit on his probation revocation for the time that he had been incarcerated on the two shoplifting charges because the probation warrant had not been served until the guilty plea although he had violated probation previously and had been incarcerated since October 28, 2015 at the time of his guilty plea on February 9-10, 2016?

STATEMENT OF THE CASE

On January 7, 2016, the Sumter County Grand Jury indicted Lorenzo Ragin on two counts of shoplifting third offense. On February 9-10, 2016, Ragin appeared before the Honorable Howard P. King and entered a guilty plea to both shoplifting charges which were found to be only second offenses after the solicitor investigated further. Tr. 3, ll. 1 – 10. Ragin was represented by Katarzyna Timmons, and the state was represented by Tyler Brown. Tr. 1. At the guilty plea, the probation officer reported that Ragin was on probation and had already violated probation before this guilty plea as he never reported for initial intake with probation. An arrest warrant for violating probation was issued on September 28, 2015. Tr. 14, ll. 2 – Tr. 15, ll. 24. The judge sentenced Ragin to thirty days on each of the shoplifting charges for which he granted time served as Ragin had been incarcerated since October 28, 2015. Tr. 26, ll. 2 – Tr. 27, ll. 10.

The judge then revoked the remainder of Ragin's previous sentence for which he was on probation. The revocation was two years and nine months as the original sentence was three years suspended to the service of ninety days and two years and nine months probation for possession of cocaine base. Tr. 14, ll. 2-15; Tr. 27, ll. 11 – 28, ll. 16; Tr. 21, ll. 2 – 25.

This appeal follows.

ARGUMENT

The trial court erred in not giving Appellant Ragin, at his guilty plea on two shoplifting charges, credit on his probation revocation for the time that he had been incarcerated on the two shoplifting charges because the probation warrant had not been served until the guilty plea although he had violated probation previously and had been incarcerated since October 28, 2015 at the time of his guilty plea on February 9-10, 2016.

Ragin was charged with shoplifting necklaces from the Reliable Pawn Shop and the Sumter Pawn Shop on February 20, 2015. According to the solicitor, Ragin would go into the shop, try on gold necklaces, and then run out of the store. He was identified through photo lineups. The Reliable Pawn Shop claimed restitution in the amount of \$1000, and the Sumter Pawn Shop claimed restitution of \$1300. Tr. 9, ll. 15 – Tr. 10, ll. 25.

Ragin was arrested October 28, 2015 in Sumter. Tr. 26, l. 2 – 8. His defense attorney told the court that Ragin turned himself in. He was still incarcerated at the time of his trial. Tr. 24, ll. 4 – 25.

At his guilty plea for the two shoplifting charges, defense counsel told the court that Ragin was currently on probation for possession of cocaine base in Richland County. Counsel said she had told him that these guilty pleas would likely be a violation of his probation. Tr. 14, ll. 2 – 15. Counsel said Ragin had three sons ages 12, 7 and 3. Tr. 13, ll. 1 – 4. He was working at Ryan's Restaurant. Tr. 5, ll. 1-2. His baby daughter was born September 10, 2015 with serious health problems. Although he was working at Ryan's, Ragin needed more money to make ends meet. Counsel said that Ragin realized he had done wrong. He had been in jail since October 28, 2015. Tr. 14, ll. 1 – 15.

The probation officer told the court that Ragin was sentenced in Clarendon by Judge Cothran on October 13, 2014 to three years suspended to the service of ninety days and the balance suspended to one year probation for possession of cocaine base. His case was transferred to Richland County because he had a Richland County address. Then it was later learned that he no longer lived at that address. Tr. 21, ll. 1 – 25; Tr. 14, ll. 2-15.

The probation officer then listed Ragin's probation violations. He said that Ragin was in violation before this guilty plea because he did not appear for his initial intake on October 21, 2014. An arrest warrant was issued September 28, 2015. The officer said Ragin was looking at two years and nine months left on his sentence that could be revoked. The judge asked if the probation warrant had been served on Ragin. The probation officer said no but that the warrant was being sent to the officer the next morning to be served. Tr. 14, ll. 16 – Tr. 15, ll. 24; Tr. 19, ll. 4 – 10. The judge said he wanted to handle sentencing and the probation revocation at the same time. Tr. 16, ll. 1 – Tr. 17, ll. 4.

The other violations included failure to report at any time; failure to gain consent to move residence from Elgin to an unknown location and thus absconded supervision; failed to work at a lawful occupation; failed to notify agent of his arrests on March 11, 2015 in Florence for shoplifting and in Manning on April 18, 2015 for shoplifting. He also failed to pay supervision fees. Tr. 19, ll. 4 – 25.

The probation officer served Ragin with the arrest warrant at the guilty plea. Tr. 18, ll. 1 – 25.

The judge found Ragin in violation of his probation, and revoked the remaining two years and nine months. Defense counsel then asked the judge if he would be willing to give Ragin credit for the time served since October 28, 2015 on the probation violation. The judge

responded that he could not because the probation warrant was just served that day. Tr. 27, ll. 11-16. Tr. 28, ll. 16.

The Fourteenth Amendment provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

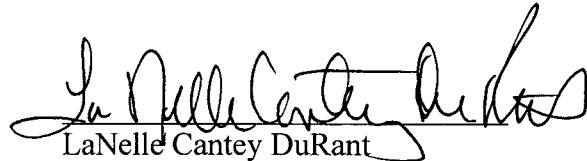
In State v. Hill, 368 S.C. 649, 630 S.E.2d 274 (2006), the Supreme Court held that a probationer charged with a probation violation must be afforded minimal due process.

South Carolina Code Section 24-21-450 provides that at any time during the period of probation or suspension of the sentence, the court, or the court within the venue of which the violation occurred, 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 the sentence.

Ragin was denied his due process rights when the probation agent waited until Ragin's guilty plea to serve the probation warrant causing Ragin to lose credit for the approximately three and one-half months he was incarcerated on the two shoplifting charges. Tr. 28, ll. 9 – 16. The warrant had been "active" since September 29, 2015 when Ragin did not appear for his initial intake with probation. Tr. 14, ll. 16 – Tr. 15, ll. 24. The agent checked the jail names and knew he was in jail in Sumter. Tr. 15, ll. 20 – 24. The probation agent could have served the probation warrant before the court appearance on February 9-10, 2016 on Ragin. If the agent had, Ragin could have accumulated some credit towards his two years and nine months of time revoked. This was prejudicial to Ragin.

CONCLUSION

Based on the above, the probation revocation should be vacated, and the case remanded for a new probation hearing.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of October, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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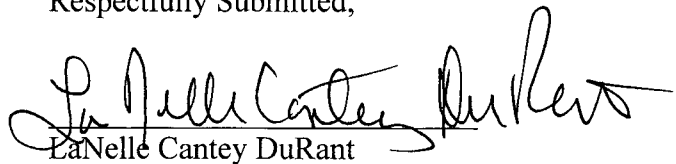
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lorenzo Ragin states:

1. She is an 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 Howard P. King, which was held on February 10, 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 Lorenzo Ragin.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of October, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable Howard P. King, Circuit Court Judge

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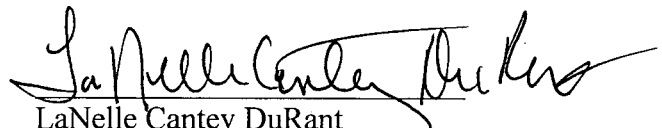
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) Sentence Sheets
- (3) February 9-10, 2016 Transcript
- (4) Probation Order
- (5) Probation Arrest Warrant 9/26/2015

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

October 4, 2016


LaNelle Cantey DuRant
Appellate Defender

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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."

October 4, 2016.


LaNelle Cantey DuRant
Appellate Defender

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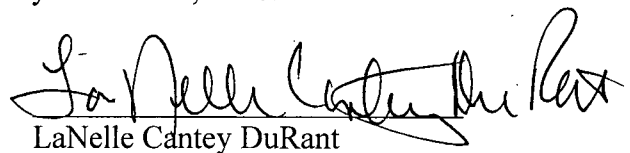
V.

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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 Lorenzo Ragin, 231577, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 4th day of October, 2016.



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of October, 2016.

 (L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.