

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

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OCT 21 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES CHADWICK LYDA,

APPELLANT

APPELLATE CASE NO 2016-000315

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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

Whether the court erred by revoking appellant's probation where his failure to report was caused by circumstances beyond his control, and did not constitute a willful violation of probation.

STATEMENT OF THE CASE

Appellant was indicted on three counts of illegal distribution of drugs, and one count of petty larceny by the Spartanburg County Grand Jury. R. 5-12. On December 29, 2015 he was sentenced following a guilty plea by the Honorable R. Keith Kelly to five-year concurrent prison sentences, suspended upon the service of ninety-days, and two years of probation

On February 12, 2016 appellant appeared before Judge Kelly for a probation violation hearing. Robert Hall represented appellant, and Agent Price represented the state. R. 1. Judge Kelly revoked appellant's probation. R. 3, ll. 17-20.

This appeal follows.

ARGUMENT

The court erred by revoking appellant's probation where his failure to report was caused by circumstances beyond his control, and did not constitute a willful probation violation.

Appellant readily admitted to Judge Kelly that he had violated the terms of his probation. However, Defense Counsel Hall explained that a tree had fallen on appellant's house. Consequently, appellant had to do repairs so that his family would have a place to live. Counsel Hall also explained that appellant missed an intervening court date because he had to make repairs, and "basically I think just panicked like a lot of people do at that point..." Hall also explained that appellant had received a tax refund check, and he wanted to meet his monetary obligations rather than being revoked and sent to prison. R. 2, l. 23 – 3, l. 12.

Appellant told the judge that he did not intentionally miss a court date or a reporting date. The judge nonetheless revoked appellant's probation. R. 3, ll. 14-20.

Discussion

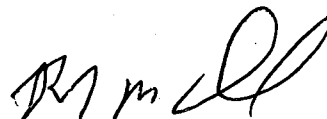
In deciding whether to revoke probation, the trial court must determine whether the state has presented sufficient evidence to establish that a probationer has violated the conditions of his probation. State v. Allen, 370 S.C. 88, 634 S.E.2d 653 (2006). This was the proper analysis of whether a willful failure to pay monetary obligations constituted a voluntary, conscious and intentional failure to pay. This same analysis respectfully should apply to missing a reporting date or court date. People v. Davis, 211 Ill. App. 3d 884, 576 N.E.2d 510, 513 (1991). Bearden v. Georgia, 461 U.S. 660 (1983); Barlet v. State, 288 S.C. 481, 483, 343 S.E.2d 620, 622 (1986).

Here, a tree fell on appellant's house, and that was simply an unavoidable act of God. It was beyond appellant's control. Appellant told the judge he did not consciously violate the terms of his probation, and asked to be continued on probation. The judge, most respectfully,

arbitrarily revoked appellant's probation for circumstances beyond his control in this case. State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1998).

CONCLUSION

By reason of the foregoing argument, the revocation of appellant's probation should be vacated.

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of October, 2016.

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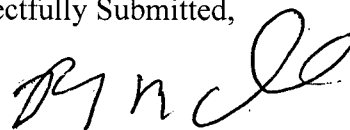
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Chadwick Lyda states:

1. He is Chief 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 probation revocation hearing before Judge R. Keith Kelly, which was held on February 12, 2016, 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 James Chadwick Lyda.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

This 21st day of October, 2016.

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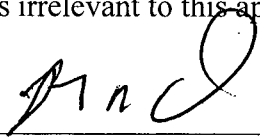
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments:
- (2) Probation Revocation Hearing Transcript (February 12, 2016)
- (3) Indictments
- (4) Sentencing Sheets
- (5) Revocation of Probation Orders

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

October 21, 2016


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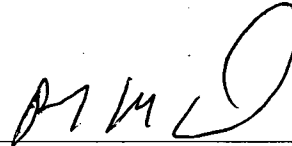
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CERTIFICATE OF COUNSEL

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 21, 2016.



Robert M. Dudek
Chief Appellate Defender

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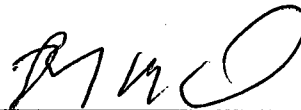
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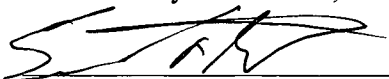
CERTIFICATE OF SERVICE

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 Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on James Chadwick Lyda, 328523, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 21st day of October, 2016.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of October, 2016.



(L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.