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JUN 24 2016
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JUSTIN CAMERON HARDEN,

APPELLANT

APPELLATE CASE NO. 2016-000217

ANDERS BRIEF OF APPELLANT

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the probation revocation judge erred in failing to make any inquiry to determine whether Appellant's violations of the terms of his probation were willful or not willful?

STATEMENT OF THE CASE

On July 18, 2009, Appellant Justin Cameron Harden pled guilty to possession of methamphetamine less than one gram before the Honorable J. Cordell Maddox, Jr. Harden was sentenced to three years suspended upon the service of three years probation. R. 13 – 15.

On July 19, 2012, the Harden pled guilty to unlawful carrying of a pistol before the Honorable William P. Keesley. Harden was sentenced to one year suspended upon the service of time-served of 56 days, with three years probation. Judge Keesley ordered the probation be tolled “while [Harden was] incarcerated on YOA charge”¹ and that Harden complete in-patient drug addiction treatment as part of his probation. R. 16 – 18.

On December 16, 2015, arrest warrants were issued for Harden for violating the conditions of his probation. The warrant alleged that Appellant failed to report from October 21, 2015 until November 4, 2015, failed to obey all laws as evidenced by his subsequent convictions, failed to notify agent of arrest for drug charge on November 17, 2015, and failed to pay supervision fees and fines. R. 9 – 12.

On January 25, 2016, a probation revocation hearing was held before the Honorable R. Keith Kelly. Harden was represented by M. Bradley McMillian. R. 1. Following the brief hearing, Judge Kelly converted the monies due to civil judgments and revoked Harden “in full.” R. 5, ll. 20-22; R. 7 – 8.

This appeal follows.

ARGUMENT

The probation revocation judge erred in failing to make any inquiry to determine whether Appellant's violations of the terms of his probation were willful or not willful.

At Harden's probation revocation hearing, the probation agent recited the allegations against Harden. Judge Kelly then asked Harden if what the agent told him was "true." R. 3, l. 21 – 4, l. 20. Harden responded, "Yes, your Honor." R. 4, l. 21. Judge Kelly immediately ruled: "Okay. The Court finds a violation." R. 4, ll. 22-23. Defense counsel McMillian argued for a sentence of ninety days followed by a termination of probation. R. 4, l. 24 – 5, l. 11. Harden then expressed his remorse to the court, saying that he "messed up" and wished he could have done things differently. R. 5, ll. 14-19. Nonetheless, the probation judge revoked probation "in full." R. 5, ll. 20-22.

Probation is a matter of grace; revocation is the means to enforce the conditions of probation. State v. Hamilton, 333 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999). However, the authority of the revoking court should always be predicated upon an evidentiary showing of fact tending to establish a violation of the conditions. Id. Thus, before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions. Id. at 648-49, 511 S.E.2d at 97. Where probation is revoked solely for the failure to pay fines or restitution, it is mandatory that the court find that the violation is willful. Bearden v. Georgia, 461 U.S. 660, 103 S.Ct. 2064 (1983); Hamilton, 333 S.C. at 649, 511 S.E.2d at 97; Barlet v. State, 288 S.C. 481, 483, 343 S.E.2d 620, 622 (1986) ("Deprivation of his conditional freedom without the finding of a willful violation contravenes the Fourteenth Amendment's due process requirement."); State v. Spare, 374 S.C. 264, 270, 647

¹ It is not clear from the sentencing sheet for what offense Harden was incarcerated on a YOA sentence. R. 18.

S.E.2d 706, 709 (Ct. App. 2007) (finding circuit court judge erred in failing “to make the requisite inquiry into Spare's ability to pay, his reasons for failing to pay, and whether his failure to pay was willful”).

In the present case, the probation court failed to make any inquiry of Harden, other than whether the allegations were “true,” before finding a violation. The court should have given Harden an opportunity to explain his circumstances in order for the court to assess whether the violations were in fact willful. Two prior judges saw fit to sentence Harden to probation. In fact, Judge Keesley specifically ordered that Harden participate in in-patient drug treatment, reflecting his recognition that Harden’s crimes were related to his drug addiction. The revocation judge’s failure to hear any explanation before determining that there was a violation constituted an abuse of discretion. The revocation order should be vacated and Harden’s probation continued.

CONCLUSION

Based on the foregoing, Appellant Justin Cameron Harden respectfully requests that this Court vacate the revocation of his probation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Laura R. Baer". The signature is written in black ink and is positioned above a horizontal line.

Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of June, 2016.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Justin Cameron Harden states:

1. She is 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 probation revocation hearing before Judge R. Keith Kelly, which was held on January 25, 2016, and, in her opinion, the appeal is without legal merit.
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 Justin Cameron Harden.

Respectfully submitted,



Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

This 24th day of June, 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 of probation revocation hearing, dated Jan. 25, 2016;
- (2) Revocation Orders, dated Jan. 25, 2016;
- (3) Arrest Warrants, dated Dec. 16, 2015;
- (4) Indictment for Case No. 2008-GS-02-1172;
- (5) Sentencing Sheet for Case No. 2008-GS-02-1172;
- (6) Indictment for Case No. 2012-GS-02-01073; and
- (7) Sentencing Sheet for Case No. 2012-GS-02-01073.

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



Laura R. Baer
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

June 24th, 2016

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."

June 24, 2016

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CERTIFICATE OF SERVICE

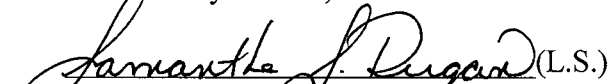
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Justin Cameron Harden, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 24th day of June, 2016.



Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of June, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: April 27, 2016.