

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 16 2016

SC Court of Appeals

Appeal from Aiken County

R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN WILLIAMSON,

APPELLANT

APPELLATE CASE NO. 2016-000236

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUE ON APPEAL

Whether appellant's probation violations were willful?

STATEMENT OF THE CASE

Appellant was convicted of kidnapping in Aiken County. His original sentence was 10 years suspended to 5 years probation. He was served with a probation violation arrest warrant on December 21, 2015. On January 29, 2016, appellant appeared before the Honorable R. Keith Kelly for a probation revocation hearing. Appellant's probation was revoked in full.

This appeal follows.

ARGUMENT

Appellant's probation violations were not willful.

The probation agent in this case alleged the following violations by appellant:

Kevin Troy Williamson has failed to follow the advice and instructions of his agent by failing to report since April the 8th of 2014, and as instructed on May the 6th, 2014, and after his release from ACDC on December the 4th, 2014 and October the 29th, 2015.

He failed to gain consent of his agent prior to changing his residence from 339 South Hankinson Street, Jackson, South Carolina, as verified during a home visit conducted on November the 30th, 2015. He failed to notify his agent of contact with law enforcement after his arrest on October 13th, 2014, and April the 28th, 2015. He failed to refrain from violating state and local laws after being convicted of giving false information to police, possession of THC, reckless driving, driving under suspension second, leaving the scene of an accident, and open container on November 13th, 2014, by Judge Sullivan in New Ellenton Summary Court. He failed to pay his supervision fees as instructed. Current arrearages being \$1,000 which constitutes a violation of conditions, one, two, six, seven and 10 of his probationary sentence.

(R. p. 10, line 4 – p. 11, line 3)

The trial court asked appellant if he agreed what was just said. The defense attorney said appellant agrees with some of it and part of it he didn't agree with. (R. p.11, ll. 4-13)

Defense counsel explained:

MR. THOMPSON: Mr. Williamson was placed on probation October of 2013. And, for October, November, December, January, February, March, April, about six or seven months he actually did ok. Then he didn't come to see him in May. So he admits that he absconded May, June, July, August.

In September, he gets into a horrible traffic accident that, the end result of this traffic accident is that he's in jail for three months, September, October, November, with all of

the charges that the agent mentioned. Things like possession of marijuana, and leaving the scene of the accident, and open container and that. He gets a 90-day concurrent sentence on that. He's supposed to go see him after he gets out of jail but he admits that he did not do that and he absconds again for about another four months. So December 2014, January 2015, February, March.

And then he gets arrested again in April for child support violations. And he's in jail at the Aiken County Detention Center again for April, May, June, July, August, September, October. So for about seven months he's in jail for child support violations.

And then he's supposed to get out and come see him again but he doesn't. And he absconds again. This time for about a month and a half. They get a warrant.

In January of this year he is arrested for possession of a controlled substance he's served with the warrant that he's before you on today.

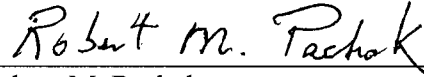
(R. p. 11, line 18 – p. 12, line 2)

In Beardin v. Georgia, 466 U.S. 660, 103 S. Ct. 2064 (1983) the Court held that a State cannot revoke a defendant's probation because he is too poor to pay a fine. A probation violation has to be willful. Appellant's horrible car accident cannot be considered willful. His revocation should therefore be reconsidered in light of that fact.

CONCLUSION

Appellant's probation revocation should be reconsidered.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of June, 2016.

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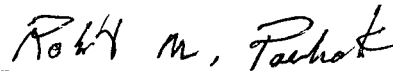
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kevin Williamson states:

1. He is 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 trial before Judge R. Keith Kelly, which was held on January 29, 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 Kevin Williamson.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

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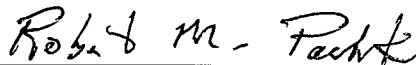
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Probation revocation transcript;
- (2) Indictment;
- (3) Probation violation arrest warrant
- (4) Order revoking probation

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

June 16th, 2016



Robert M. Pachak
Appellate Defender

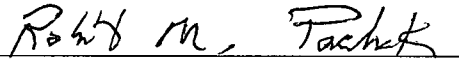
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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 16, 2016.



Robert M. Pachak
Appellate Defender

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Division of Appellate Defense
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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 a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Kevin Williamson, #305769 at Evans Correctional Institution, this 16th day of June, 2016.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of June, 2016.

Christian Ford (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2026.