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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable John C. Hayes, Circuit Court Judge

RECEIVED
OCT 10 2016
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN ROBERT CRAWFORD,

APPELLANT

APPELLATE CASE NO 2016-001164

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief 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

The probation revocation judge erred in revoking appellant's probation in part for failing to pay fines/fees owed as a violation of probation because the record indicated that SCDPPP failed to lower payments owed as ordered to accommodate appellant's financial circumstances, which meant that appellant's failure to pay was not willful.

STATEMENT OF THE CASE

Appellant John Crawford pled guilty to second degree burglary during the July 2012 term of the York County General Sessions Court before Judge Nettles and was sentenced to fifteen years, suspended upon the service of four years, and three years probation. Appellant's probation was continued on October 2, 2015, by Judge Daniel D. Hall due to probation violations alleged by SCDPPP. On May 16, 2016, a probation violation hearing was held before Judge Hayes in response to appellant's arrest for resisting arrest on November 11, 2015, after which time he pled guilty as charged. Appellant was present at the hearing and represented by Toni Johnson, Esquire. Judge Hayes revoked appellant's probation in full.

Appellant appealed his probation revocation. This appeal follows.

ARGUMENT

The probation revocation judge erred in revoking appellant's probation in part for failing to pay fines/fees owed as a violation of probation because the record indicated that SCDPPP failed to lower payments owed as previously ordered to accommodate appellant's financial circumstances, which meant that appellant's failure to pay was not willful.

During the probation hearing, the probation revocation judge was apprised of appellant's resisting arrest charge and subsequent plea on the same as a violation of probation. Tr. 4, l. 17 – p. 5, l. 6. However, the probation revocation judge was apprised of the fact that appellant could not pay fees and fines because he was “hoping to get...his fines and fees caught up.” Tr. 6, l. 1 – 6. This was based on a prior revocation order where SCDPPP was directed to “lower restitution monthly amount to be determined by agent.” Tr. 14. Clearly, there was no evidence that this directive via court order was complied with in the case. Had the same been carried out, it is possible that appellant would have likely been able to pay the money owed in his case.

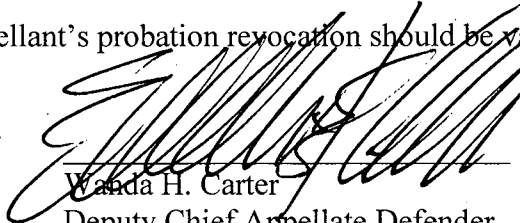
Clearly, the evidence presented regarding the failure to pay fees did not support the probation revocation judge's ruling in the matter. In cases involving the failure to pay fines or restitution, the circuit judge must, in addition to finding sufficient factual evidence of the violation, make an additional 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 10th day of October, 2016.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Robert Crawford 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 John C. Hayes, which was held on May 16, 2016 (Probation Revocation Hearing), 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 John Robert Crawford.

Respectfully Submitted,


Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 10th 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) Probation Revocation Transcript dated May 16, 2016
- (2) True-billed indictment
- (3) Sentence sheet
- (4) Probation Violation Citation dated September 1, 2015
- (5) Probation Revocation order dated October 2, 2015
- (6) Probation Violation Arrest Warrant dated April 21, 2016
- (7) Probation Revocation order dated May 16, 2016
- (8) Notice of appeal

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

October 10, 2016



Wanda H. Carter

Deputy Chief Appellate Defender

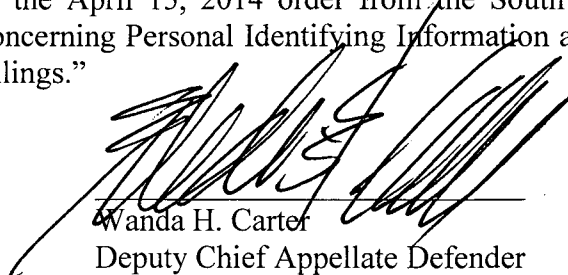
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ATTORNEY FOR APPELLANT

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."

October 10, 2016.



Wanda H. Carter
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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 John Robert Crawford, 200825, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 10th day of October, 2016.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of October, 2016.

 (L.S)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.