

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Doyet A. Early, Circuit Court Judge

RECEIVED

OCT 21 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARQUISE TERREL GREEN,

APPELLANT

APPELLATE CASE NO 2015-002627

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**

Did the court err by revoking appellant's probation in full where his failure to report and do his public service was based on circumstances beyond his control since his mother had him forcibly removed from the residence, and he no longer had transportation?

### STATEMENT OF THE CASE

Appellant was sentenced by the Honorable Doyet A. Early, III, to five years imprisonment, suspended upon the service of five years probation for the crime of burglary in the third degree. R. 10. A probation arrest warrant was issued on September 17, 2015. This arrest warrant alleged, inter alia, that appellant had failed to report, that he had changed his residence without notifying his agent, and that he had failed to complete his one hundred hours of public service. R. 11.

A probation revocation hearing was held on December 15, 2015 before Judge Early. Bradley McMillian represented appellant, and Ashley Finch was the probation agent. R. 1. Judge Early revoked appellant's probation in full. R. 6, ll. 1-7.

This appeal follows.

## ARGUMENT

The court erred by revoking appellant's probation in full where his failure to report and do his public service was caused by circumstances beyond his control since his mother had him forcibly removed from the residence, and he no longer had transportation to allow him to report or work.

At the probation revocation hearing Judge Early noted that he had suspended appellant's five-year prison term upon probation. R. 4, ll. 4-9. Defense Counsel McMillian told the judge that appellant was only nineteen-years-old. His mother, who was in the courtroom, had an argument with appellant at some point after he was placed on probation. Appellant was then arrested for assault and battery in the third degree, and put on a trespass notice that "he couldn't come back. So his address change was not exactly voluntary." R. 4, l. 22 – 5, l. 13.

Counsel McMillian also told the judge "once he was kicked out of the house, he really didn't have a ride to get to probation." R. 5, ll. 16-19. The judge noted that appellant's mother asked him to put appellant on probation rather than incarcerate him. The judge then observed that appellant did not have the ability to pay "so that's not a willful violation. Failing to report is a willful violation, and failing to do his public service is willful." The judge then revoked appellant's probation in full. R. 6, ll. 1-7. He also terminated appellant's probation and converted the monetary portion of it to a civil judgment. R. 6, ll. 10-11.

### **Discussion.**

The decision to revoke probation is addressed to the sound discretion of the trial court. State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006). The appellate court's authority is confined to correcting errors of law unless a lack of legal or evidentiary basis indicates the circuit

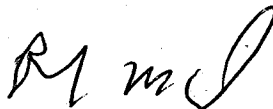
judge's decision was arbitrary and capricious. State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1998).

Our Courts have long recognized that probation may not be revoked solely for failure to make required payments of fines or restitution without the circuit court judge determining that the probationer has made a bona fide effort to pay. State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (2007). Appellant respectfully submits the same principle should apply where a probationer, based on circumstances beyond his control, cannot report or do public service work.

Appellant was only nineteen-years-old. The record shows he was dependent on his mother who requested that the judge place appellant on probation. However, she then "kicked him out" of the family residence, and a trespass order was issued for appellant not to come back. Defense counsel correctly informed the judge that appellant simply was unable to report or do his public service. Since appellant was not consciously failing to follow the terms of his probation, the judge erred by revoking his probation, and the revocation was arbitrary since it was caused by circumstances beyond his control. State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1998).

**CONCLUSION**

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



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Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of October, 2016.

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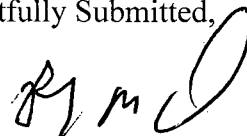
\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Marquise Green states:

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 Doyet A. Early, which was held on December 15, 2015, 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 Marquise Green.

Respectfully Submitted,



\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of October, 2016.

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment;
- (2) Probation Revocation Hearing Transcript (Dec. 15, 2015)
- (3) Indictment
- (4) Sentencing Sheet
- (5) Probation Arrest Warrant
- (6) Revocation of Probation Order

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

October 21, 2016

  
\_\_\_\_\_  
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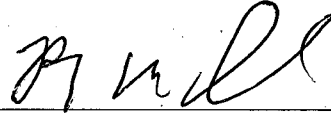
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CERTIFICATE OF COUNSEL

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.



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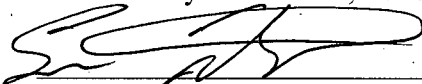
CERTIFICATE OF SERVICE

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 Marquise Green, 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.