

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2016-002044

THE STATE,.....RESPONDENT

v.

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JUL 18 2017

SC Court of Appeals

TEKYSHA COHEN,.....APPELLANT

INITIAL BRIEF OF RESPONDENT

**Matthew Buchanan
General Counsel**

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250**

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Whether this Court should dismiss this Appeal when the Appellant has already served her revocation and is no longer on probation, meaning that there will be no practical legal effect?

STATEMENT OF THE CASE

On October 2, 2012, Appellant appeared before the Honorable Alison Lee, having been indicted for criminal conspiracy. The indictment alleged that between the dates of September 1, 2011 and January 31, 2012, combined with others for the purpose of breach of trust with fraudulent intent over \$10,000. R. *. Appellant pled guilty to the offense, and Judge Lee sentenced her to three years of incarceration suspended upon probation for five years. Special conditions were \$7,901.07 in restitution, PTUP, and a fine.

After numerous paperwork reviews in which the payment rates of her fines, fees and restitution were restructured, Agent Morales issued a citation ordering her to court. He alleged that Appellant failed to pay the court-ordered fine and restitution, thus violating the previous restructuring agreements. R. *. The Appellant appeared before the Honorable L. Casey Manning on September 16, 2016, regarding the citation. During the admittedly brief hearing, the judge revoked sixty days and continued the Appellant on probation. Tr. 3, l. 25 – 4, l.1. The Appellant filed a motion to reconsider on the day of the hearing, which the judge denied. R. *.

The Appellant was released on October 16, 2016 and returned to supervision. R. *. Her probation case expired on April 24, 2017 after she paid her financial obligations in full. R. *.

The Appellant had previously filed a notice of appeal regarding Judge Manning's denial of the motion to reconsider.

ARGUMENT

The Court should dismiss this Appeal as being moot, because the Appellant has served the revocation and has completed her supervision, meaning that there is no practical legal effect should this Court rule in the Appellant's favor.

The Law.

“A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (Citing *Sloan v. South Carolina Dep't of Transp.*, 379 S.C. 160, 167-168, 666 S.E.2d 236, 239-40 (2008)). “Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.” *Id.*

Sloan recognized three exceptions to the mootness doctrine. These exceptions are, (1) if the issue raised is capable of repetition but evading review; (2) if the issue before the appellate court is a question of “imperative and manifest urgency,” and (3) if the decision by the trial court may affect future events or may have collateral consequences to the parties. *Id.*

Discussion.

This case meets every definition of mootness, and the exceptions do not apply. There is simply nothing this Court can do that will have any effect on the Appellant's current situation. The revocation judge sentenced the Appellant to sixty days in the county jail which she completed in thirty. Moreover, she is no longer on supervision, so she no longer faces the prospects of additional revocations.

Because the intervening events – Appellant's release from incarceration and then supervision – this Court has no ability to rectify any error the revocation court made. Consequently, this Court should dismiss the appeal as moot.

The Appellant in her argument makes the claim that this issue is capable of repetition without being addressed. However, the question of whether a court hearing a restitution matter must make a finding of willfulness before revoking probation solely for financial matters has been addressed, both by the U.S. Supreme Court in *Bearden v. Georgia*, 461 U.S. 620 (1983), and by South Carolina's Supreme Court in *Bartlet v. State*, 288 S.C. 481, 343 S.E.2d 620 (1986) and *State v. Spare*, 374 S.C. 264, 647 S.E.2d 706 (2007). This is not a controversy that risks evading review. In fact, since *Spare* was decided, a number of other cases have been heard by this Court addressing this issue. See *State v. Faust*, 2009-UP-157 (Ct. App. 2009), *In re Taylor K.*, 2012-UP-116 (Ct. App. 2012), *State v. Coker*, 397 S.C. 244 (Ct. App. 2012), and *State v. McAllister*, 2014-UP-433 (Ct. App. 2014).

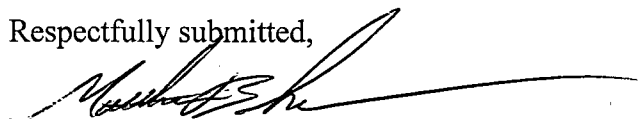
This matter is also clearly not a matter of urgency. As noted above, the Appellant's argument is not new, nor is it one that has any pressing need to be addressed once more.

Lastly, because the Appellant is no longer on probation, there are no future or collateral events likely to occur that will adversely affect her as a result of the partial revocation. While the Appellant is correct in her argument that she was continued on supervision, she has since completed her obligations and her sentence is completed. There can be no foreseeable events that may adversely affect the Appellant because she was partially revoked. The reversal of a probation revocation does not alter the underlying conviction, which will remain undisturbed. Further, revocations do not in and of themselves further curtail an individual's rights in the same way as a conviction. See *State v. Franks*, 276 S.C. 636, 638, 281 S.E.2d 227, 228 (1981), "The penalty imposed upon a finding of violation of probation conditions is a forfeiture of the act of grace extended and the reimposition of the unserved portion of the original sentence. No additional punishment is invoked."

CONCLUSION

Even if this Court were to rule that the revocation judge improperly revoked the Appellant's probation, there is no remedy that this Court could provide to the Appellant. Therefore, this Court should dismiss the Appeal as moot.

Respectfully submitted,



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Attorney for the Respondent

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July 11, 2017

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CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant, hereby certify that I have served the within the *Initial Brief of Respondent and Designation of Matter*, dated July 11, 2017, on the Appellant this 11th day of July, 2017, by depositing a copy of same in the United States mail, postage paid, addressed to:

Robert Dudek, Appellate Defender
S.C. Commission on Indigent Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule 54 to be served have been served.


Dawn Nichols
Executive Assistant
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State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
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July 11, 2017

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street – 5th Floor
Columbia, South Carolina 29201

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RE: State v. Tekysha Cohen

Dear Ms. Kitchings:

Enclosed please find the original *Initial Brief of the Respondent and Designation of Matter*, along with proof of service in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan".

Matthew C. Buchanan
General Counsel

MCB:dn
Enclosures

cc: Robert Dudek, Esquire

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