

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2016-002239

THE STATE,.....RESPONDENT

v.

RECEIVED

JUL 21 2017

SC Court of Appeals

WILLIA JEAN FLOWERS,.....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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A trial court is not required to reconsider a probation revocation because reconsiderations are held at the discretion of the court and due process does not require time for the defendant probationer to develop a defense or mitigation1

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TABLE OF AUTHORITIES

CASES

State v. Cantrell, 250 S.C. 376, 378, 158 S.E.2d 189, 191 (1967)2

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State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982).....2

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STATUTES

S.C. Code §24-21-4303

S.C. Code §24-21-450.....2, 4

STATEMENT OF ISSUES ON APPEAL

Whether this Court should remand a probation revocation for reconsideration because a courtroom citation was issued during a guilty plea and a violation was heard at the same time as the sentencing?

STATEMENT OF THE CASE

On November 3, 2014, the Appellant pled guilty before the Honorable Kristi Lea Harrington in Dorchester County to the offense of Shoplifting, third or subsequent offense. She received a sentence of ten years suspended on three years probation with the special conditions that she pay restitution of \$24.00 and obtain her GED. R. at *.

On January 28, 2016, probation agents issued a probation warrant, alleging that she failed to follow the advice and instructions of her agent by failing to report, changing her address without consent, and failing to pay her financial obligations. R. at *. Agents were unable to locate the Appellant's whereabouts until being notified she was detained at the Charleston County Detention Center on August 9, 2016. Agents provided a copy of the probation violation to the detention center as a detainer. R. at *.

On September 13, 2016, Appellant appeared before Judge Harrington in Charleston County, where she pled guilty to another offense of Shoplifting, third or subsequent. The conviction to the new Shoplifting was a violation of Appellant's probation. Tr. p. 3, l. 21-23. The courtroom probation agent served the Appellant with a courtroom citation for the violation. R. at *. The court sentenced Appellant to thirty-seven days time served on the new offense, and revoked probation for the full ten years. Tr. p. 10, l. 24 – p. 11, l. 4.

The Appellant's attorney filed a motion to withdraw the guilty plea and a motion for reconsideration of the sentence on September 22, 2016. These motions were denied October 12, 2016. The Appellant then filed a notice of appeal regarding Judge Harrington's denial of the motion to reconsider.

This appeal follows.

ARGUMENT

The Court did not abuse its discretion when it declined to allow the Appellant to withdraw her plea or reconsider the Appellant's sentence, because due process does not require time for the defendant to develop a defense or mitigation when already pleading guilty.

The Law.

“A motion to withdraw a plea of guilty, and to be allowed to enter a plea of not guilty, addresses itself to the discretion of the trial judge before whom the plea is entered, and, in the absence of a clear abuse of that discretion, this court will not interfere.” *State v. Cantrell*, 250 S.C. 376, 378, 158 S.E.2d 189, 191 (1967) (Citing *State v. Harvey*, 128 S.C. 447, 123 S.E.2d 201 (1924)).

“An abuse of discretion occurs when a trial judge’s decision is unsupported by the evidence or controlled by an error of law.” *State v. Rikard*, 371 S.C. 295, 301, 638 S.E.2d 72, 75, (Ct. App. 2006) (Citing *State v. Lopez*, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct. App. 2002)).

“A determination the plea was voluntarily entered ‘will normally show the trial judge did not abuse his discretion.’” *Id.* (Citing *State v. Riddle*, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982)).

Subject matter jurisdiction to revoke an individual’s probation is conferred on the General Sessions Court through a probation warrant or a citation. *State v. Felder*, 313 S.C. 55, 437 S.E.2d 42 (1993). The warrant or citation must be issued while the individual’s probation is still active. S.C. Code §24-21-450. “At any time during the period of probation or suspension of sentence the court, or the court within the venue of which the violation occurs, or the probation

agent may issue or cause the issuing of a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence.”

The decision to revoke probation is in the discretion of the circuit court judge. *State v. Hamilton*, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct.App. 1999).

Discussion.

The Appellant asserts that the trial court should have allowed her to withdraw her plea or should have reconsidered the probation revocation because the probation violation warrant was not “timely served on her.”

Specifically, the Appellant asserts that “due process considerations for fairness should allow a probationer adequate time to develop either a defense or mitigation for their violation.”¹ However, the Appellant’s argument fails to take into consideration that this probation revocation hearing was conducted at the same time as her guilty plea. At this guilty plea, the Appellant was represented by counsel. She knew that this plea would violate her probation, thus negating any sort of “defense” to the probation violation. It should be obvious that by waiving her rights to a trial and pleading guilty to an offense she committed while under supervision, the Appellant also admitted and waived any defenses regarding her violation of probation specific to the condition that she not violate the laws of the state. See S.C. Code §24-21-430(2) “The probationer shall: (1) refrain from the violations of any state or federal penal laws[.]”

It should be expected that the Appellant would have been prepared to present mitigating facts at a guilty plea. Thus, there is no reason for the court to allow additional time for the Appellant to prepare for additional mitigation. This is compounded by the fact that the Appellant

¹ The Appellant’s brief quotes defense counsel’s Motion to Withdraw and appears to use its reasoning as her appellate argument. This brief will assume that was Appellant’s intent.

pled guilty to the very same offense for which she had been placed on probation. She told the court that she knew this would be a violation, so this should not have been a surprise.

Further, the Appellant did not object to holding the probation hearing when the trial court announced its intention to take up the probation violation right after accepting the plea of guilty. The court, when told that the probation agent had the paperwork and could move forward, asked the Appellant if she was “ready to do this now?” To which she responded, “Yes.” Tr. p. 3, l. 19-20.

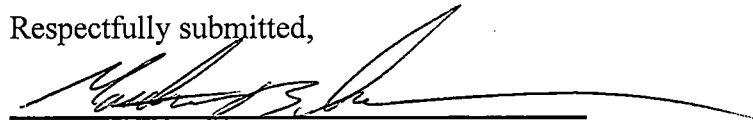
Although earlier in the proceeding the Appellant’s attorney stated that she had not waived jurisdiction in Dorchester County, the fact that the conviction in Charleston County also violated her probation conferred jurisdiction to the plea court. S.C. Code §24-21-450.

Consequently, the court did not abuse its discretion when it refused to allow the Appellant to withdraw her plea, and in not reconsidering her revocation sentence. Because the revocation of ten years was the amount suspended, it was not contrary to law.

CONCLUSION

There was no abuse of discretion when the court did not grant the Appellant’s motion to withdraw her plea. Furthermore, because the Appellant was in court prepared to plead guilty knowing that the plea would violate her probation, there was no due process requirement that the court give her additional time to prepare a defense or mitigation. This appeal should be dismissed.

Respectfully submitted,



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Attorney for the Respondent

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July 20, 2017

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The Honorable Kristi Lea Harrington, Circuit Court Judge

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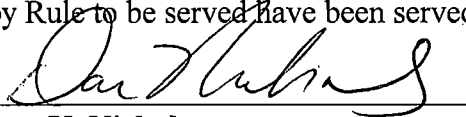
WILLIA JEAN FLOWERS,.....APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within *Initial Brief of Respondent and Designation of Matter*, dated July 20, 2017, on Appellant this 20th day of July, 2017, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Robert Pachak, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellant Defense
PO Box 11589
Columbia, S.C. 29211-1589

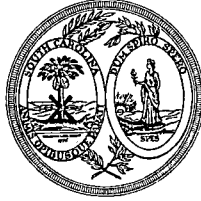
I further certify that all parties required by Rule to be served have been served.



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July 20, 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. Willia Flowers

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,

Matthew C. Buchanan
General Counsel

MCB:dn
Enclosures

cc: Robert Pachak, Appellate Defender

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