

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

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Appeal from Orangeburg County

Honorable Diane Schafer Goodstein, Circuit Court Judge

JUL 26 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARION KALE TILL,

APPELLANT

APPELLATE CASE NO. 2016-002498

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
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

Did the circuit court err in revoking Appellant Till's probation in full for eleven and one half years without a full and sufficient evidentiary hearing when his violation was based on his violating a restraining order issued from his conviction of CDVHAN on his wife by going to the wife's residence when he believed she was not there to obtain wheel rims for his car, and attending his son's wedding although his son had assured him that it was okay because it had been worked out?

STATEMENT OF THE CASE

On June 15, 2016, the Orangeburg County Grand Jury indicted Kale Till on the charge of criminal domestic violence of a high and aggravated nature (CDVHAN). On July 27, 2016, Appellant Till appeared before the Honorable Benjamin Culbertson, R. 18, and entered a guilty plea to the charge as indicted. Judge Culbertson sentenced Till to twelve years suspended to the service of six months (time served) and five years probation. The judge ordered that Till “have no direct or indirect contact with the victim and could not be within one mile of the victim’s residence.” R. 18.

On November 16, 2016, the Department of Probation, Parole, and Pardon (DPPPS) issued an arrest warrant for Kale Till charging him “having contact with the victim which was a violation of his probation. R. 11 – 12. On December 7, 2016, Appellant Till appeared before the Honorable Diane S. Goodstein for a probation violation hearing. Appellant Till was represented by Minh Lee Wyman, and the state was represented by Agent Gregory. R. 1. Judge Goodstein revoked Appellant Till’s probation in full requiring him to serve the remaining eleven and one half years in confinement. R. 15. Till’s attorney filed a notice of appeal.

This appeal follows.

ARGUMENT

The circuit court erred in revoking Appellant Till's probation in full for eleven and one half years without a full and sufficient evidentiary hearing when his violation was based on his violating a restraining order issued from his conviction of CDVHAN on his wife by going to the wife's residence when he believed she was not there to obtain wheel rims for his car, and attending his son's wedding although his son had assured him that it was okay because it had been worked out.

Appellant Till and his wife had been married for thirty-six years and had two children and two grandchildren. R. 3, ll. 1-23. They had had domestic trouble for a while. His wife described it as "an on-going issue." His wife told the court that Till had "cut" her back in February, and that was the reason they were in this situation. She said that she was afraid of him and he lived only a mile from her house. She was in the process of getting a divorce although she believed that he would never leave her alone. R. 4, ll. 21 – R. 5, ll. 11; R. 7, ll. 3-6.

Till's attorney explained that according to Ms. Till, Appellant Till was seen at her shed on their property, and that was what this violation was about. She said that Till admitted that he had violated his probation "willfully but under mitigating circumstances." He went to the shed to get rims for his truck because he thought his wife was not there. R. 3, ll. 1 – R. 4, ll. 5.

Counsel continued to explain that Till thought that not being within a mile of the residence meant not being within a mile of her. Counsel said that he understood now that he should have called probation to help him get the things. He was asking the court for another chance because he had not had a "full understanding of the terms of his probation." R. 4, ll. 2-11.

Counsel argued for Till to be given another chance on probation as he believed that they could solve their domestic issues in Family Court. Till would not be trying to contact her again. R. 5, ll. 15-24.

The probation agent argued that there was a restraining order against Till when this happened as Till had had two restraining orders, and had violated the other one also. He explained that Till had sent his wife text messages and had shown up at their child's wedding when he was in rehabilitation. R. 6, ll. 1-16.

Ms. Till said that Appellant Till did not try to contact her at their son's wedding. She said that she could not deny him coming to the son's wedding. R. 6, ll. 20-24. The son did not testify at the hearing. Appellant Till did tell the court that he was not going to the wedding until his son called him "the last day" and said that the son had made arrangements for Till to be there. His son told him that he had worked it out and it was okay for Till to come but he could not talk to his wife. And Till did not. He said he left as soon as the ceremony was over. He just saw them get married. R. 8, ll. 1-25.

The judge then asked if anyone had anything else. When there was no response, the judge said: "Revoke. Credit for time served." R. 9, ll. 1-7.

Discussion

The South Carolina Supreme Court held that a probationer charged with a probation violation must be afforded minimal due process. State v. Hill, 368 S.C. 649, 630 S.E.2d 274 (2006).

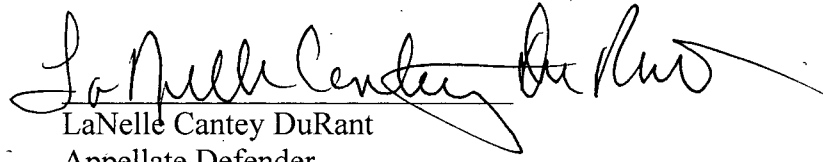
The authority of the court revoking probation should always be predicated upon an evidentiary showing of fact tending to establish a violation of the conditions. State v. Lee, 350 S.C. 125, 564 S.E.2d 372 (2002).

The decision to revoke a probationary sentence is discretionary with the trial court. State v. White, 218 S.C. 130, 61 S.E.2d 754 (1950); State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999). However, that revocation should not be ordered unless "predicated upon an evidentiary showing of fact tending to establish violations of conditions." State v. White, *supra*.

The circuit court erred in revoking Appellant Till's probation in full without holding a full and sufficient evidentiary hearing. His son did not testify to validate Till's version of the wedding appearance. His wife did not object to Till's coming to the wedding. There was no validation of whether he actually needed the rims for his truck. The judge needed more reliable information than just the wife's testimony before she revoked the probation in full for almost twelve years.

CONCLUSION

Based on the above, the probation revocation should be reversed, and the case remanded for a full evidentiary hearing on the facts.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of July, 2017. ,

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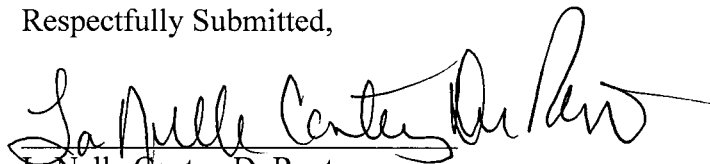
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marion Kale Till states:

1. She is an 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 probation revocation hearing before Judge Diane Schafer Goodstein, which was held on December 7, 2016, 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 Marion Kale Till.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of July, 2017.

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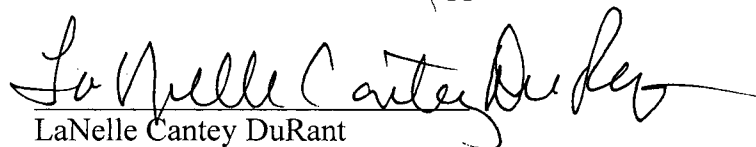
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) Sentencing Sheet
- (3) Probation Arrest Warrant
- (4) Transcript Pages 1 – 10.
- (5) Probation Violation Report
- (6) Order Revoking Probation

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

July 26, 2017


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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."

July 26, 2017.



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