

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable Perry M. Buckner, Circuit Court Judge

ORIGINAL

THE STATE

RESPONDENT

V.

KRISTIN SUZANNE SARTAIN

APPELLANT

APPELLATE CASE NO 2017-000603

ANDERS BRIEF OF APPELLANT

RECEIVED

AUG 04 2017

SC Court of Appeals

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the decision to revoke appellant's probation should be reversed when she failed to pay her fines and fees?

STATEMENT OF THE CASE

Appellant pled guilty in Colleton County on March 26, 2015, to financial transaction card theft and theft of a controlled substance. She was sentenced to two (2) years, suspended on time served with three (3) years probation on each charge.

On January 20, 2017, appellant was served with a probation violation arrest warrant. A probation revocation hearing was held on February 27, 2017, before the Honorable Perry M. Bruckner. Appellant was present and was represented by Matthew Walker, Esq. Judge Buckner revoked one (1) year of probation and gave her credit for thirty-eight (38) days of time served.

This appeal follows.

ARGUMENT

The decision to revoke appellant's probation should be reversed because she failed to pay her fines and fees.

In 1972 the United States Supreme Court handed down the opinion of Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593 setting forth minimal due process requirements for the revocation of parole. The Court noted that "revocation deprives an individual... of the conditional liberty properly dependent on observance of special parole restrictions." 408 U.S. at 480, 92 S. Ct. at 2600. The Court went on to write that there must be an orderly process before a liberty protection is terminated. 408 U.S. at 482, 92 S. Ct. at 2601. First, the Court dealt with the parolee's arrest and the need for a preliminary hearing. The Court stated:

Due process would seem to require that some minimal inquiry be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available. Cf. Hyser v. Reed, 115 U.S. App. D.C. 254, 318 F.2d 225 (1963). Such an inquiry should be seen as in the nature of a 'preliminary hearing' to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions. Cf. Goldberg v. Kelly, 397 U.S., at 267-271, 90 S. Ct. at 1020-1022, 25 L.Ed2d 287,

408 U.S. at 484, 92 S. Ct. at 2602

With respect to the preliminary hearing before this officer, the parolee should be given notice that the hearing will take place and that its purpose is to determine whether there is probable cause to believe he has committed a parole violation. The notice should state what parole violations have been alleged. At the hearing the parolee may appear and speak in his own behalf; he may bring letters, documents, or individuals who can give relevant information to the hearing officer.

408 U.S. at 486-487, 92 S. Ct. at 2603.

With respect to the revocation hearing the Court wrote:

We cannot write a code of procedure; that is the responsibility of each State. Most States have done so by legislation, others by judicial decision usually on due process grounds. Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.

408 U.S. at 488 – 489, 92 S.C. at 2604.

In Gagnon v. Scarpelli, 411, U.S. 778, 93 S. Ct. 1756 (1973) the Court made the same procedures set out in Morrissey applicable to probation revocations. A short time later the Court held that due process is violated when the state revokes probation with no evidence that probation was violated. Douglas v. Burden, 412 U.S. 430, 93 S. Ct. 2199 (1973). Then in Bearden v. Georgia, 466 U.S. 660, 103 S. Ct. 2064 (1983) the Court held that the State cannot revoke a defendant's probation because he is too poor to pay a fine. A probation violation has to be willful. The South Carolina Supreme Court a short time later also held the probation could not be revoked "solely" on the ground that one on probation failed to pay fines or to make restitution (emphasis in original). Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986). The judge has to make a finding "on the record that the probationer failed to make a bona fide effort to pay." Id.

In this case appellant's monetary violations were as follows:

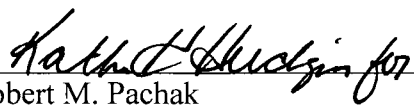
- Failing to pay \$1800 in supervision fees
- Failing to pay \$937.30 in court fines
- Being \$420 in arrears at the issuance of a warrant
- Failing to pay \$3187.70 in restitution
- Failing to pay her drug test fee of \$20
- Failing to pay her \$250 DNA processing fee

(R. p. 3, line 19-p. 4, line 1).

As can be seen from above appellant's probation should not have been revoked for failing to pay fines and fees.

CONCLUSION

The decision to revoke appellant's probation should be reversed.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of August, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable Perry M. Buckner, Circuit Court Judge

THE STATE

RESPONDENT

V.

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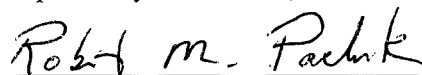
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kristin Suzanne Sartain states:

1. He is 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 trial before Judge Perry M. Buckner, which was held on February 27, 2017, 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 Kristin Suzanne Sartain.

Respectfully Submitted,



Robert M. Pachak

Appellate Defender

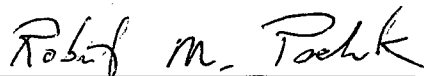
ATTORNEY FOR APPELLANT

This 4th day of August, 2017.

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."

August 04, 2017.



Robert M. Pachak
Appellate Defender

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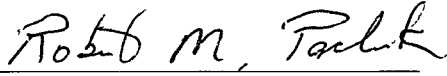
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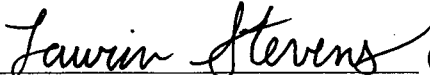
APPELLANT

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 SCPPPS, Post Office Box 50666, Columbia, SC 29250; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Kristin Suzanne Sartain, at 209 Crabapple Lane, Cottageville, SC 29435 this 4th day of August, 2017.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of August, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027