

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEXIE EDWARD HOOVER,

APPELLANT

APPELLATE CASE NO 2016-002277

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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

Whether due process was violated when appellant's probation was revoked for failing to pay fines and fees?

STATEMENT OF THE CASE

Appellant was served with a probation violation arrest warrant on September 20, 2016, he appeared for a probation revocation hearing on November 9, 2016, before the Honorable Michael Nettles. Appellant was represented by David S. Matthews, Esquire. Appellant originally pled guilty to domestic violence, third degree and possession of meth or cocaine base. He was sentenced to one year suspended upon service of the year probation. This sentence was imposed on February 22, 2016, by the Honorable Brooks Goldsmith.

Multiple violations against appellant were alleged by the probation agent. Judge Nettles revoked appellant's probation.

This appeal follows.

ARGUMENT

Due process was violated when appellant's probation was revoked for failing to pay fines and fees.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 (1972) 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 (1970), 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 can not 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 the probation agent read the charges against appellant as follows:

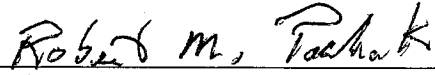
"Agent Boltin: Your Honor, he is before you today being charged with violating conditions 3, 7, 9 and 10; his special condition is probation. He failed to follows the advice and

instructions of his agent. He failed to submit to a urine test. He reported to the Colleton County office intoxicated, definitely under the influence. He refused to submit to a urine test. By failing to complete domestic abuse counseling. He was terminated from counseling on September 20, 2016 for failing to disclose having any contact with the victim during June of 2016, which resulted in an arrest warrant being issued for aggravated assault. This contact was also a violation of a protection order. He is charged with failing to pay \$450 for supervision fees. He is also \$150 in arrears. Failing to pay \$648.90 court ordered fine by being \$164 in arrears. For failing to pay him \$133.90 court fine.” (R. 3, lines 16 – R. 4, line 6.

While appellant had multiple charges the trial court did not specify what charges he was revoking appellant’s probation for. Therefore, the failure to pay fines and fees were included if not the sole reason for revocation. That was a violation of due process.

CONCLUSION

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


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of February, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable , Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEXIE HOOVER,

APPELLANT


PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lexie Hoover 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 , which was held on November 8, 2016, 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 Lexie Hoover.

Respectfully Submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 27th day of February, 2017.

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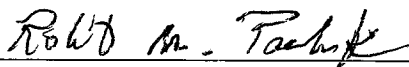
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Probation Revocation Transcript
- (2) Probation violation arrest warrant
- (3) Order of Violation

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

February 27, 2017


Robert M. Pachak
Appellate Defender

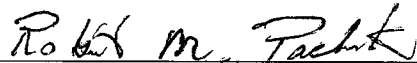
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ATTORNEY FOR APPELLANT

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."

February 27, 2017.



Robert M. Pachak
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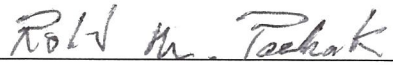
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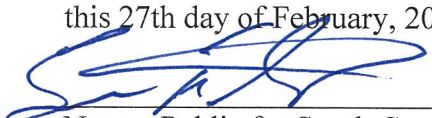
CERTIFICATE OF SERVICE

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 Lexie Hoover, 370614, at Macdougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 27th day of February, 2017.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of February, 2017.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 27, 2017

Matthew Buchanan, Esquire
General Counsel
SCPPPS
Post Office Box 50666
Columbia, SC 29250

Re: The State v. Lexie Hoover

Dear Mr. Buchanan:

Enclosed are two copies of the Anders Brief of Appellant and Designation of Matter in the above entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/sf

Enclosure



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 27, 2017

Lexie Hoover, #370614
Macdougall Correctional Institution
1516 Old Gilliard Road
Ridgeville, SC 29472

Re: Your appeal

Dear Hoover:

Enclosed please find a copy of the Anders Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals. The Court will write to you in the future eliciting any **written memorandum** you may want to submit for the Court's consideration of your appeal. That memorandum should be sent to the Court of Appeals, and **not to me**. The petition to be relieved is a standard part of the Anders procedure, it does not mean that I do not wish to represent you.

Please contact me if you have any questions.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/sf

Enclosure