

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

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MAR 01 2017

CATHY DAWN SKATES,

SC Court of Appeals

APPELLANT

APPELLATE CASE NO 2016-001552

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
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 the probation revocation judge abused his discretion in revoking probation and thereby imposing a seven-year sentence on a mother who altered the results of a drug screen so that she could be admitted to a facility in order to give birth?

STATEMENT OF THE CASE

On November 14, 2013, Appellant appeared before the Honorable R. Keith Kelly in Cherokee County on one count of manufacturing methamphetamine in violation of S.C. Code Ann. § 44-53-0375. R. 9. She was sentenced to seven years' imprisonment, suspended to five years' probation. R. 2, ll. 16 – 18; R. 9.

Appellant was served with a probation citations dated January 26, 2016 and March 23, 2016 that alleged various violations of the conditions of her probation. R. 10. On May 18, 2016, an arrest warrant was issued for Appellant for violating the conditions of her probation. R. 14

On July 15, 2016, Appellant appeared before the Honorable R. Keith Kelly for a probation revocation hearing. She was represented by Mary Shealy, and the State was represented by Agent Witt of the South Carolina Department of Probation, Parole and Pardon Services. R. 1. Appellant admitted to the violation. R. 2, ll. 6 – 12.

Judge Kelly revoked Appellant's probation in full. R. 6, ll. 7 – 8. She received credit for forty-one days previously served. R. 16.

ARGUMENT

At the time of the probation revocation hearing, Appellant was eight months pregnant. R. 2, ll. 23 – 25. She also had two other children, a one-year-old and a three-month-old. R. 2, ll. 23 – 25. She needed a rehabilitation center that would assist her with childbirth, and she chose the Chrystalis Center. R. 3, ll. 9 – 16. However, the Chrystalis Center only accepted addicts, and Appellant only had clean drug screens up until that point in time. R. 3, ll. 16 – 23. Appellant therefore tested positive so that she could get into the Chrystalis Center. R. 3, ll. 16 – 23.

Appellant did not contest the probation violation. She testified in her defense:

I realize decisions I've made to falsify that drug screen [were] stupid. I have maintained since my daughter was born, been clean, and [] the most terrifyin' thing in this world is havin' children took from me ' cause it's all I have. I just wanna maintain a clean lifestyle and keep my children, if you give me that chance, Your Honor, I swear you will never see my face again."

R. 4, ll. 18 – 24.

The State discussed a few pending charges as well as an open case with the South Carolina Department of Social Services ("DSS"). R. 5, l. 5 – R. 6, l. 4. Agent Witt claimed that Appellant did not have custody of the one-year-old child and was not supposed to remove it from the home without permission from DSS. R. 5, ll. 12 – 17.

The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court. State v. Miller, 122 S.C. 468, 474-75, 115 S.E. 742, 745 (1923); State v. Proctor, 345 S.C. 299, 301, 546 S.E.2d 673, 674 (Ct.App.2001). The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation. State v. King, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); State v. Hamilton, 333

S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct.App.1999). “While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice.” White, 218 S.C. at 136, 61 S.E.2d at 756; State v. Allen, 370 S.C. 88, 96, 634 S.E.2d 653, 657 (2006) (“[A] probationer or parolee has a constitutionally protected liberty interest and cannot be denied due process simply because probation has been described as an act of grace.”).

An appellate court will not reverse the trial court’s decision unless that court abused its discretion. White, 218 S.C. at 135, 61 S.E.2d at 756; Hamilton, 333 S.C. at 647, 511 S.E.2d at 96. “An abuse of discretion occurs when the trial court’s ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.” Allen, 370 S.C. at 94, 634 S.E.2d at 656.

Appellant sought to receive treatment at the Chrystalis Center, a rehabilitation center which would have allowed her a safe and clean environment in which to give birth. However, because this facility would only accept addicts with positive drug screens, Appellant took the necessary steps in order to produce a positive drug screen. She even told probation officers that she was going to test positive, and indicated that it was “in hopes of getting into this Chrystalis Center.” R. 3, ll. 16 – 23.

Appellant now has three children. It was error for Judge Kelly to revoke her probation on a whim: “Ma’am, you’re revoked in full, best a luck to ya.” R. 6, ll. 7 – 8. A seven year term of imprisonment deprives her of the opportunity to be an active mother in her children’s lives.

CONCLUSION

Based on the foregoing, Appellant requests that this Court reverse the revocation of probation and remand for a new revocation hearing, or grant such other relief as justice may require.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of March, 2017.

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APPELLANT

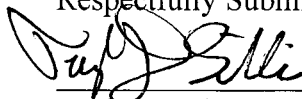
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cathy Dawn Skates 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 R. Keith Kelly, which was held on July 15, 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 Cathy Dawn Skates.

Respectfully Submitted,



Taylor D Gilliam

Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of March, 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) Transcript dated July 15, 2017
- (2) Probation Order
- (3) Probation Citations
- (4) Arrest Warrant
- (5) Sentencing Sheet

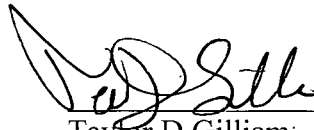
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I certify that this designation contains no matter which is irrelevant to this appeal.

March 1, 2017



Taylor D Gilliam
Appellate Defender

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(803) 734-1330

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."

March 1, 2017.



Taylor D Gilliam
Appellate Defender

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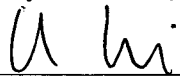
APPELLANT

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 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 Cathy Dawn Skates, 368994, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 1st day of March, 2017.


Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of March, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires:

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SC Court of Appeals