

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Anderson County

Honorable R. Ferrell Cothran, Circuit Court Judge

RECEIVED

JUL 12 2017

THE STATE,

RESPONDENT

SC Court of Appeals

V.

TIMOTHY B. CASON,

APPELLANT

APPELLATE CASE NO 2016-001737

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

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT3

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

TABLE OF AUTHORITIES

Cases

<u>Barlet v. State</u> , 288 S.C. 481, 343 S.E.2d 620 (1986)	4
<u>Bearden v. Georgia</u> , 466 U.S. 660, 103 S. Ct. 2064 (1983)	4
<u>Douglas v. Burden</u> , 412 U.S. 430, 93 S. Ct. 2199 (1973)	4
<u>Gagnon v. Scarpelli</u> , 411, U.S. 778, 93 S. Ct. 1756 (1973).....	4
<u>Goldberg v. Kelly</u> , 397 U.S., at 267-271, 90 S. Ct. at 1020-1022, 25 L.Ed2d 287	3
<u>Hyser v. Reed</u> , 115 U.S. App. D.C. 254, 318 F.2d 225 (1963)	3
<u>Morrissey v. Brewer</u> , 408 U.S. 471, 92 S. Ct. 2593 (1972).....	3, 4

STATEMENT OF ISSUE ON APPEAL

Whether appellant's probation was revoked when his violation was not willful as he was too poor to pay his fines and fees?

STATEMENT OF THE CASE

Appellant was originally sentenced on a guilty plea on March 24, 2015 to possession of methamphetamine to three (3) years suspended upon service of sixteen (16) days with probation for eighteen (18) months thereafter. On July 8, 2016, he was served with a probation violation arrest warrant. A probation violation hearing was held on August 11, 2016, before the Honorable R. Ferrell Cothran in Anderson County. Appellant was represented by Wendy Hallford, Esq. Judge Cothran ordered appellant to serve nine (9) months of his original sentence.

This appeal follows.

ARGUMENT

Appellant's probation was revoked when his violation was not willful because he was too poor to pay his fines and fees.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 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.

Appellant's probation was revoked in part because he failed to pay his supervision fees and he failed to pay his public defender fund. (R. p. 2, lines 22-23) Appellant explained at his hearing:

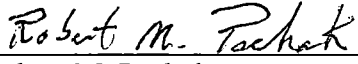
THE DEFENDANT: Okay. My father passed away in October. My car tore up, and I lost my job because I didn't have transportation. They foreclosed on my home I had in November - - I mean in December. But I have been basically living in Belton without a home to live in. But I'd be more than willing to go to rehab.

(R. p. 4, lines 4-9)

As can be seen from appellant's own testimony his violations were not willful. He was simply too poor to pay his fines and fees.

CONCLUSION

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



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of July, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY B. CASON,

APPELLANT

RECEIVED

JUL 12 2017

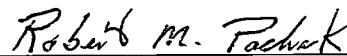
SC Court of Appeals

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy B. Cason 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. Ferrell Cothran, which was held on August 11, 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 Timothy B. Cason.

Respectfully Submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 12th day of July, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY B. CASON,

APPELLANT

RECEIVED

JUL 12 2017

SC Court of Appeals

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

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

- (1) Indictment 2014-GS-04-02087
- (2) Probation revocation transcript dated August 11, 2016
- (3) Probation violation arrest warrant dated March 4, 2016

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

July 12, 2017

Robert M. Pachak

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

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 12, 2017.

Robert M. Pachak

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

RECEIVED
JUL 12 2017
SC Court of Appeals