

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Charleston County

Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIA JEAN FLOWERS,

APPELLANT

APPELLATE CASE NO 2016-002239

FINAL BRIEF OF APPELLANT

RECEIVED

SEP 01 2017

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether appellant's revoked probationary sentence should be reconsidered when her probation violation arrest warrant was not timely served on her?

STATEMENT OF THE CASE

On September 13, 2016, appellant appeared before the Honorable Kristi L. Harrington in Charleston County and pled guilty to shoplifting, enhancement. She was sentenced to 37 days and was given credit for 37 days served. A prior probationary sentence of 10 years for another shoplifting, enhancement from Dorchester County was revoked in full. Peter Shahid, Esq. was plea counsel and Tyler Whitaker, Esq. was the assistant solicitor.

Plea counsel filed a motion to withdraw the guilty plea and in the alternative a motion to reconsider the sentence. That motion was filed on September 22, 2016. That motion was denied by an order dated October 12, 2016.

This appeal follows.

ARGUMENT

Appellant's revoked probationary sentence should be reconsidered because her probation violation arrest warrant was not timely served on her.

At appellant's guilty plea counsel advised the court that appellant was on probation in Dorchester County. The court wanted to know if that matter would be heard at the plea. Counsel replied, "No, your Honor. I think they have a hold on her there to take her up there after this." Then counsel said, "We are going to ask for time served for this so she can handle her matters in Dorchester County. We have not waived jurisdiction in Dorchester County." (R. p. 2, lines 7-19)

Later, plea counsel said, "I understand she has violated her probation. We are not asking you to invoke [revoke] in full. We're asking for a 90-day revocation to run concurrent with her guilty plea and revocation violation today." (R. p. 9, lines 19-22).

In plea counsel's motion to withdraw the guilty plea and in the alternative a motion to reconsider the sentence, he wrote the following:

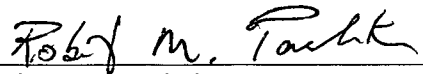
Furthermore, Ms. Flowers was served with her probation violation warrant at the time she entered her guilty plea on September 13, 2016. South Carolina law requires that a warrant be issued and then served on a defendant placed on probation before a probation can be revoked. See State v. Martin, 338 S.C. 401, 404 (2000) (stating that S.C. Code Ann. §§24-21-450, 460 "require a warrant to be issued and the probationer served with the warrant in order to revoke the probation.") Though there is no time period prior to a probation hearing when a probationer must be served with a probation violation warrant, due process considerations for fairness should allow a probationer adequate time to develop either a defense or mitigation for their violation. Because Ms. Flowers, was served with the warrant immediately after she was sentenced on her probation violation, she was granted neither. Therefore, we ask this court to withdraw Ms. Flowers' guilty plea for Indictment No. 2015GS1005147 and Warrant No. W18160018.

In the alternative the defense moves for a reconsideration of the full revocation for Warrant No. W18160018. The defense reiterates the above grounds, and believes there are other mitigating circumstances the court did not hear that could have swayed the court to grant Ms. Flowers a lesser sentence. First, Ms. Flowers

served as a mentor and de facto mother for many children in her neighborhood who are either runaways or homeless. She does not volunteer with an organization to do this work, she does it to help these children and keep these children off the street and out of trouble. Furthermore, Ms. Flowers informed her probation agent that she had difficulty in making her monthly meetings with them because she did not own a car, so she requested that her probation be transferred to Berkley County because it was easier for her to travel to the Berkley County Probation office than to the Dorchester County probation office. She was under the impression that her probation agent was in the process of transferring her probation, but he never did. Finally, Ms. Flowers has two daughters in high school who, if her current sentence is maintained, will not have their mother help them graduate school and potentially apply to and be accepted into college. Her daughters will likely stay with their grandmother while Ms. Flowers finishes her sentence, but their living situation is subject to change. Ms. Flowers' friends and family are available to address the court regarding these facts if need be.

CONCLUSION

In light of the above, appellant's revoked probationary sentence should be reconsidered because her probation violation arrest warrant was not timely served on her.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of September, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability this Final 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."

September 1, 2017

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