

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Aiken County

Honorable Doyet A. Early, Circuit Court Judge

RECEIVED

MAY 30 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTOPHER DESHAWN ELMORE,

APPELLANT

APPELLATE CASE NO. 2016-001832

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
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

Did the circuit court err by revoking Appellant Elmore's probation on the ground of not reporting without a full and sufficient evidentiary hearing which was a violation of Appellant's due process right pursuant to the Fourteenth Amendment?

STATEMENT OF THE CASE

The Aiken County Grand Jury indicted Christopher Deshawn Elmore on the charge of shoplifting third or more. On August 13, 2015, Appellant Elmore appeared before the Honorable Eugene C. Griffith and entered a guilty plea to shoplifting third. He was represented by M. Bradley McMillian, and the state was represented by Samuel B. Grimes. R. 1 – R. 3, ll. 25. The plea judge sentenced Elmore to four years suspended to the service of ninety days and probation for thirty months. Restitution in the amount of \$300 was ordered to be paid during his probation. R. 12, ll. 18 – R. 13, ll. 9.

On August 22, 2016, Appellant Elmore appeared before the Honorable Doyet A. Early, III for a probation violation hearing. Elmore was represented by Michael Routzong, and the state was represented by Shynel Favor, probation agent. R. 15 – R. 18, ll. 24. Judge Early revoked two years with credit for time served. Probation would be terminated at that time and the restitution converted to a civil judgment. R. 21, ll. 7 – 10.

Appellant Elmore's attorney filed a notice of appeal of the order revoking probation.

This appeal follows.

ARGUMENT

The circuit court erred by revoking Appellant Elmore's probation on the ground of not reporting without a full and sufficient evidentiary hearing which was a violation of Appellant's due process right pursuant to the Fourteenth Amendment.

On January 22, 2015, the loss prevention officer with the Wal-Mart store in Aiken contacted the Aiken Department of Public Safety for help catching and restraining a person who allegedly took a pair of black boots and walked out without paying. R. 5, ll. 22 – R. 6, ll. 7. Appellant Elmore was recognized by the loss prevention officer. After a short pursuit, Elmore was arrested for shoplifting. R. 6, ll. 3 – R. 7, ll. 1.

Also found on his person were a watch, and a cell phone. The Wal-Mart Store asked for restitution in the amount of \$300. R. 7, ll. 2 – 10.

At the guilty plea, the state cited two prior convictions for shoplifting in 2011 and 2012. R. 7, ll. 11 – 25.

Elmore admitted freely to the court that he took the boots because he was working at an Italian restaurant and needed a pair of non-slip work boots. He said that it was wrong and apologized but that was what he did. R. 8, ll. 4 – 12.

The plea judge sentenced Elmore to four years suspended to the service of ninety days and thirty months of probation. The judge ordered he pay restitution in the amount of \$300. R. 12, ll. 18 – R. 13, ll. 19.

On May 31, 2016, Elmore was arrested for violating his probation. The arrest warrant indicated that Elmore had violated his probation by failing to obtain the consent of his probation agent prior to changing his residence; failing to pay restitution; failing to pay the fine; failing to pay supervision fees; and failing to pay the drug test fee. R. 23 – 24. A probation violation

hearing was held on August 22, 2016 before the Honorable Doyet Early III. R. 15. The judge read the probation arrest warrant with the reasons for the violation. As stated in the arrest warrant with one exception. The judge read that Elmore had not reported since April of 2016 which the probation agent verified was correct. R. 18, ll. 25 – R. 19, ll. 6.

The judge stated that in March 2016, Elmore had a prior probation violation for a conviction for disorderly conduct and possession of a dangerous weapon. He was continued on probation but given a zero tolerance for any future violations. R. 18, ll. 1 – 24.

Defense counsel argued that Elmore had been staying with his mother but she had asked him to leave and obtained a restraining order against him. Elmore said she was upset with him because she believed his friends were gay. Then she would let him back in. R. 19, ll. 10 – 25.

The judge said that issue did not concern him as much as the zero tolerance and his not reporting to probation. Elmore told the judge that he had reported except for the month of May. He did not report in May because he had a charge pending—the violation of the restraining order. R. 20, ll. 4 – 24.

Elmore said he had written a letter. The court did not inquire about the letter nor did the judge ask Elmore to explain about his stating he had reported. R. 21, ll. 1 – 10.

The judge revoked two years, terminated the probation, and converted the restitution to a civil judgment. R. 21, ll. 1 – 10.

Discussion

The South Carolina Supreme Court held that a probationer charged with a probation violation must be afforded minimal due process. State v. Hill, 368 S.C. 649, 630 S.E.2d 274 (2006).

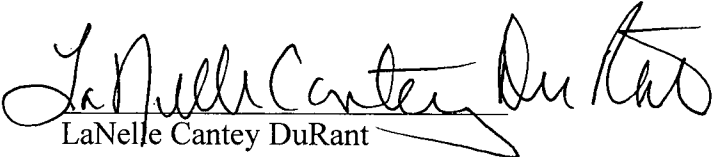
The Court also held in Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986), that where no determination was made as to why the defendant had not complied with the probation terms, the deprivation of the defendant's conditional freedom without finding of a willful violation contravened the Fourteenth Amendment due process.

The authority of the court revoking probation should always be predicated upon an evidentiary showing of fact tending to establish a violation of the conditions. State v. Lee, 350 S.C. 125, 564 S.E.2d 372 (2002).

The circuit court erred in revoking Elmore's probation without a full and sufficient evidentiary hearing on all of the facts. Elmore said he had reported except for the month of May. The probation arrest warrant was served on Elmore May 31, 2016. The judge did not inquire further about the reasons Elmore said he had reported. Elmore said he had written a letter and the judge did not ask him to explain that. He owed restitution and said that he was working. He needed the boots for work. Elmore was denied his due process right to a full hearing on the facts.

CONCLUSION

Based on the above, the probation revocation should be reversed, and the case remanded for a full evidentiary hearing on the facts.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of May, 2017.

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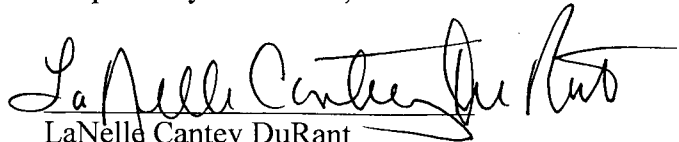
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Deshawn Elmore states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Doyet A. Early, which was held on, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, She asks the Court to relieve her as counsel for Christopher Deshawn Elmore.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of May, 2017.

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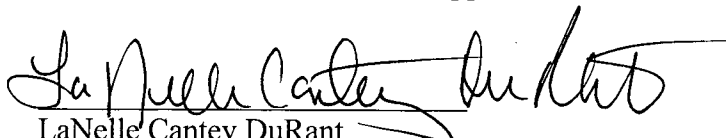
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) August 13, 2015 Transcript
- (3) August 22, 2016 Transcript
- (4) Probation violation Report
- (5) Probation Arrest Warrant
- (6) Judge's order August 22, 2016

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

May 30, 2017


LaNelle Cantey DuRant
Appellate Defender

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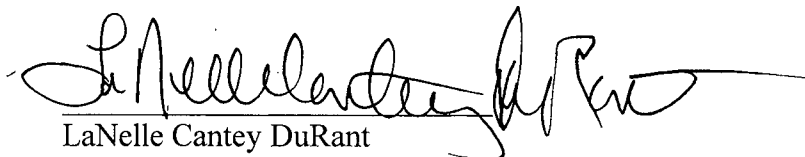
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CERTIFICATE OF COUNSEL

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."

May 30, 2017.



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