

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Dorchester County
Honorable Maite Murphy, Circuit Court Judge

RECEIVED

JUN 29 2017

SC Court of Appeals

THE STATE,

RESPONDENT

v.

HOLLY EARLENE ASHBY MAHON,

APPELLANT

APPELLATE CASE NO. 2016-002521

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the probation revocation judge abuse her discretion by revoking Appellant's probation in full and reinstating a nearly ten year prison sentence?

STATEMENT OF THE CASE

A Berkeley County Grand Jury indicted Appellant on September 9, 2013 for manufacturing methamphetamine. R. 14-15. On September 13, 2013, Appellant pled guilty as indicted before the Honorable R. Markley Dennis, Jr. R. 18. Assistant Solicitor Michael E. Patterson represented the state, and Chad D. Shelton represented Appellant. R. 18. Judge Dennis sentenced Appellant to ten years suspended upon the service of seventy-two days and four years probation. R. 18.

A Dorchester County Grand Jury subsequently indicted Appellant on September 2, 2014 for financial transaction card fraud. R. 16-17. On May 4, 2015, Appellant likewise pled guilty as indicted before the Honorable Roger E. Henderson. R. 19. Assistant Solicitor Shelia Mims represented the state, and Ashley D. Chisholm represented Appellant. R. 19. Judge Henderson sentenced Appellant to one year suspended upon the service of one year probation. R. 19. The judge ordered Appellant to serve this probationary sentence concurrent with the probationary sentence she was already serving for her Berkeley County conviction. R. 19. Appellant was also ordered to pay \$1,833.49 in restitution as a special condition of probation. R. 19.

In 2016, Appellant was served with multiple citations and warrants for allegedly violating the terms and conditions of her probation. R. 3, ll. 18-19. A probation revocation hearing was held in Dorchester County on December 12, 2016 before the Honorable Maite Murphy. R. 1. John Kornegay represented Appellant, and Agent Audrey Harris of the Department of Probation, Parole, and Pardon services appeared on behalf of the state. R. 1. Judge Murphy found Appellant willfully violated the terms and conditions of her probation, and ordered Appellant's probation be revoked in full. R. 6, l. 20 – 7, l. 2; R. 9-10. The judge also converted Appellant's unpaid restitution and supervision fees to a civil judgment. R. 11-13.

ARGUMENT

The probation revocation judge abused her discretion by revoking Appellant's probation in full and reinstating a nearly ten year prison sentence.

Agent Harris alleged Appellant violated the terms and conditions of her probation by failing to report, failing to attend and complete substance abuse counseling, failing to complete eighty hours of public service employment, failing to pay supervision fees and court ordered restitution, and failing to "follow the advice and instructions of agent." R. 3, l. 18 – 5, l. 4. Harris also maintained that Appellant failed to serve ninety days of court ordered "weekend jail time" imposed due to a previous revocation. R. 4, ll. 5-7. She recommended Appellant's probation be revoked in full. R. 5, ll. 2-4.

Without being specific, Appellant's counsel admitted that some of the violations were willful and others were not willful. R. 5, ll. 9-11. He pleaded with the judge not to revoke Appellant's probation in full explaining that Appellant struggles with drug addiction. R. 5, ll. 22-25. Counsel told the judge that he also represents Appellant on a pending possession charge and that the assistant solicitor in that case has recommended Appellant complete Drug Court. He urged the judge to likewise sentence Appellant to complete Drug Court, if she qualifies, so that she can get the substance abuse treatment she needs. R. 5, l. 11 – 6, l. 19.

Judge Murphy ultimately found Appellant willfully violated the terms and conditions of her probation. R. 6, ll. 20-22. Emphasizing that Appellant was given an opportunity to complete substance abuse treatment and counseling in the past, along with "weekend jail time," but failed to complete either, the judge ruled a full revocation was warranted. R. 6, l. 20 – 7, l. 2. This was an abuse of discretion.

“The question of whether a defendant’s probation should be revoked in whole or in part is committed to the circuit court’s sound discretion.” State v. Knapp, 338 S.C. 541, 543, 526 S.E.2d 741, 742 (Ct. App. 2000) (citing S.C. Code. Ann. § 24-21-460 and State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)).

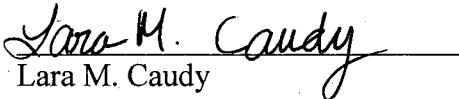
The judge abused her discretion by revoking Appellant’s probation in full and reinstating a nearly ten year prison sentence when Appellant undisputedly suffers from severe drug addiction. Her drug addiction is likely what led her to fail to comply with the conditions of her probation. Counsel informed the judge that Appellant was going to be screened for Drug Court and, if she qualified, was likely to be sentenced to complete Drug Court on a pending possession charge. He urged the judge to consider sentencing Appellant to complete Drug Court due to her probation violation as well. Counsel stressed that Appellant desperately needs substance abuse treatment. R. 5, l. 22 – 6, l. 12.

Respectfully, this Court should hold the probation revocation judge abused her discretion by revoking Appellant’s probation in full and reinstating a nearly ten year prison sentence and remand for a new probation revocation hearing.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court hold the probation revocation judge abused her discretion and remand for a new revocation hearing.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of June, 2017.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Holly Earlene Ashby Mahon 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 probation revocation hearing before Judge Maite Murphy, which was held on December 12, 2016, 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 probation revocation hearing.

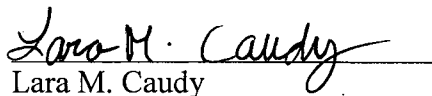
WHEREFORE, she asks the Court to relieve her as counsel for Holly Earlene Ashby Mahon.

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Respectfully Submitted,


Lara M. Caudy

Appellate Defender

ATTORNEY FOR APPELLANT

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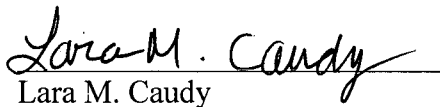
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-Billed Indictments;
- (2) Complete Hearing Transcript Dated December 12, 2016;
- (3) Probation Revocation Orders;
- (4) Civil Judgment Orders;
- (5) Sentence Sheets.

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

June 29, 2017


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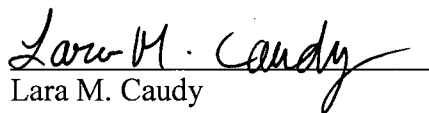
SC Court of Appeals

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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."

June 29, 2017.



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