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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Pickens County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

CASSIDY LYNN LEWIS,

APPELLANT

APPELLATE CASE NO. 2017-001959

RECEIVED

ANDERS BRIEF OF APPELLANT

JAN 29 2018

SC Court of Appeals

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

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STATEMENT OF ISSUE ON APPEAL

Whether appellant's case should be remanded for resentencing when part of the decision to revoke her probation was based on her inability to pay fees?

STATEMENT OF THE CASE

On October 14, 2014, appellant pled guilty in Pickens County to burglary in the third degree and larceny. She was sentenced under the Youthful Offender Act to three (3) years for burglary suspended to two (2) years probation and to thirty (30) days for larceny suspended to probation.

On June 20, 2017, appellant was served with a probation citation. On September 15, 2017, she appeared for a probation revocation hearing before the Honorable Eugene C. Griffith. Appellant's probation was revoked on both charges and the Youthful Offender Act sentences were invoked.

This appeal follows.

ARGUMENT

Appellant's case should be remanded for resentencing when part of the decision to revoke her probation was based on her inability to pay 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.

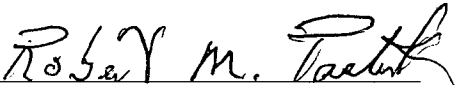
408 U.S. at 488 – 489, 92 S.C. at 2604.

In Gagnon v. Scarpelli, 411, U.S. 778, 93 S. Ct. 1756 (1973) the Court made the same procedures set out in Morrisey 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.

In this case appellant was charged with failing to pay her public defender fees and her drug test fee. (R. p. 5, lines 18-22). Because the failure to pay her fees should not be considered in the decision to revoke her probation her case should be remanded for resentencing.

CONCLUSION

Petitioner's case should be remanded for resentencing.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of January, 2018.

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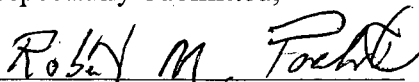
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cassidy Lynn Lewis 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 Eugene C. Griffith, which was held on September 15, 2017, 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 Cassidy Lynn Lewis.

Respectfully Submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 29th day of January, 2018.

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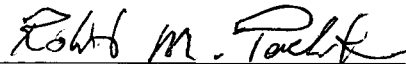
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s): 2014-GS-39-1005
- (2) Probation citation
- (3) Hearing transcript dated September 15, 2017
- (4) Orders revoking probation
- (5) Sentencing sheets

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

January 29, 2018



Robert M. Pachak
Appellate Defender

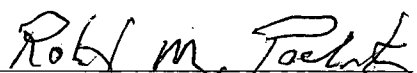
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ATTORNEY FOR APPELLANT

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."

January 29, 2018.


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Appellate Defender

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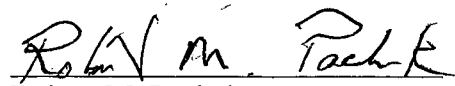
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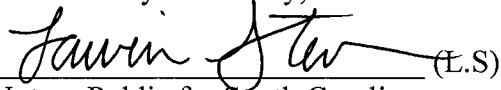
APPELLANT

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 SCPPPS, Post Office Box 50666, Columbia, SC 29250; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Cassidy Lynn Lewis, 373997, at Camille Griffin Graham Correctional Center, 4450 Broad River Road, Columbia, SC 29210, this 29th day of January, 2018.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of January, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.