

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Lancaster County

Honorable Daniel D. Hall, Circuit Court Judge

RECEIVED

MAY 18 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TRAEVIS A. MINGO,

APPELLANT

APPELLATE CASE NO. 2017-001679

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief 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
STANDARD OF REVIEW	3
ARGUMENT	
The court erred by revoking eight years of appellant's probation without specifying, on the record, the grounds for the revocation.	4
Relevant Facts.....	4
Discussion.....	4
CONCLUSION.....	6
PETITION TO BE RELIEVED AS COUNSEL.....	7

TABLE OF AUTHORITIES

Cases

<u>Barlet v. State</u> , 288 S.C. 481, 343 S.E.2d 620 (1986).....	5
<u>Bearden v. Georgia</u> , 461 U.S. 660 (1983).....	5
<u>State v. Allen</u> , 270 S.C. 88, 634 S.E.2d 653 (2006)	5
<u>State v. Hamilton</u> , 333 S.C. 642, 511 S.E.2d 94 (Ct.App.1999).....	3, 5
<u>State v. Spare</u> , 374 S.C. 264, 647 S.E.2d 706 (2007)	4
<u>State v. White</u> , 218 S.C. 130, 61 S.E.2d 754 (1950).....	5

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by revoking eight years of appellant's probation without specifying, on the record, the grounds for the revocation?

STATEMENT OF THE CASE

Appellant was sentenced by the Honorable Ryan Gibbons on April 26, 2016, to ten years imprisonment, suspended upon the service of two years imprisonment, and three years of probation for burglary in the second degree and assault and battery in the first degree. Appellant was also ordered to pay various surcharges. R. 3, ll. 1-11.

A probation revocation hearing was held on July 17, 2017, before the Honorable Daniel D. Hall. Ryan Payne represented appellant. The probation agent was Lynn Oliver. R. 1.

At the conclusion of the probation revocation hearing, Judge Hall revoked eight years of appellant's probation, terminated the balance, and converted the monetary debts to a civil judgement. R. 10, ll. 1-6.

This appeal follows.

STANDARD OF REVIEW

The appellate court's authority to review a decision revoking probation is confined to correcting errors of law unless the lack of a legal or evidentiary basis indicates the circuit judge's decision was arbitrary and capricious. See, State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct.App.1999).

ARGUMENT

The court erred by revoking eight years of appellant's probation without specifying, on the record, the grounds for the revocation.

Relevant Facts

The probation agent alleged appellant had not reported on all occasions, and that he had not reported any employment to his agent. In addition, appellant had not notified his agent of his change of address, he had failed to follow the instructions of his agent, and he was behind on "multiple arrearages on the record which would be charged on the violations charge." R. 3, l. 11 – 4, l. 7. In addition, the agent alleged appellant had been convicted of a violent felony, and he had been arrested for being in possession of a weapon by a person convicted of a violent crime. R. 4, ll. 3-12.

Defense counsel Payne told the judge that a substantial part of the alleged probation violations were currently pending charges. Defense counsel urged the court to allow the judicial process to follow its natural path, and not to revoke appellant based on these charges. R. 5, l. 22 – 7, l. 18.

The judge then inquired of appellant how many times he had been to jail. Without stating what grounds for the revocation of probation he found credible, the judge summarily revoked eight years of appellant's probation. R. 7, l. 22 – 10, l. 6.

Discussion

If the judge revoked appellant's probation in full, or in part, for failing to pay the public defender fund or other monetary items, he must first find that appellant's failure to pay was willful. See State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (2007). Further, the court must determine whether the state had presented sufficient evidence to establish that a probationer has

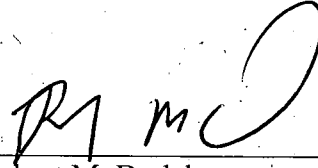
violated the terms of his probation. State v. Allen, 270 S.C. 88, 94, 634 S.E.2d 653, 655 (2006).

While probation is a matter of grace, the probationer is entitled to fair treatment, and he must not be made the victim of whim or caprice. State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999); State v. White, 218 S.C. 130, 136, 61 S.E.2d 754, 756 (1950).

Because the judge did not make a finding that appellant not paying his monetary obligations was a willful violation, and because he failed to specify specifically that he found the state had proved appellant violated a specific term of his probation, the revocation in this case should be vacated. See Bearden v. Georgia, 461 U.S. 660 (1983); Barlet v. State, 288 S.C. 481, 483, 343 S.E.2d 620, 622 (1986); State v. Hamilton, supra.

CONCLUSION

By reason of the foregoing arguments, the revocation of appellant's probation should be vacated.

A handwritten signature in black ink, appearing to read 'R M Dudek', is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of May, 2018.

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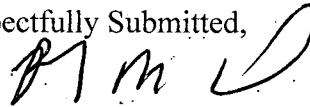
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Traevis A. Mingo states:

1. He is Chief 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 Daniel D. Hall, which was held on July 17, 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 Traevis A. Mingo.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 18th day of May, 2018.

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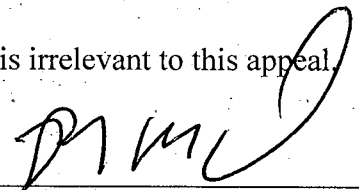
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment;
- (2) Probation revocation hearing transcript;
- (3) Probation sentence sheet.

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

May 18, 2018


Robert M. Dudek
Chief Appellate Defender

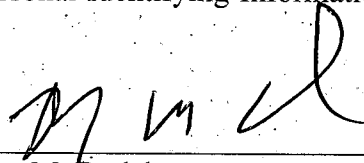
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CERTIFICATE OF COUNSEL

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 18, 2018.



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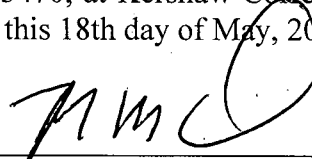
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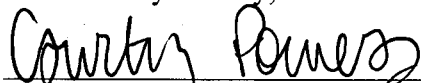
CERTIFICATE OF SERVICE

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 the South Carolina Department of Probation, Parole, and Pardon Services, Post Office Box 50666, Columbia, SC 29250; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Traevis A. Mingo, 353470, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 18th day of May, 2018.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of May, 2018.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.