

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

ORIGINAL
RECEIVED
JUL 23 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

NATHAN GOOD,

APPELLANT

APPELLATE CASE NO 2017-002570

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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 REVIEW3

ARGUMENT.....4

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

TABLE OF AUTHORITIES

Cases

Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986) 5

Bearden v. Georgia, 461 U.S. 660 (1983) 4, 5

Commonwealth v. Eggers, 742 A.2d 174, 176 (Pa.Super.Ct.1999) 5

Joseph v. State, 3 S.W.3d 627, 641 (Tex.App.1999) 5

Nichols v. State, 308 S.C. 334, 417 S.E.2d 860 (1992) 4

People v. Davis, 216 Ill.App.3d 884, 159 Ill.Dec. 841, 576 N.E.2d 510 (1991)..... 5

Spartanburg County Dep't of Soc. Servs. v. Padgett, 296 S.C. 79, 370 S.E.2d 872 (1988) 5

State v. Allen, 370 S.C. 88, 634 S.E.2d 653 (2006) 3

State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)..... 3, 4

State v. Sowell, 370 S.C. 330, 635 S.E.2d 81 (2006) 5

State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007) 3, 5

STATEMENT OF ISSUE ON APPEAL

Did the probation judge err in revoking probation without making a specific finding that the failure to pay the fees and restitution was willful?

STATEMENT OF THE CASE

In April of 2014, the Anderson County Grand Jury indicted Appellant, Nathan Gabriel Good, for grand larceny and housebreaking, indictments #2014-GS-04-672, 673. On January 25, 2016, Appellant appeared before the Honorable R. Scott Sprouse and pled guilty. Judge Spouse sentenced Appellant to ten years suspended with three years of probation for housebreaking and a concurrent sentence of five years suspended with three years of probation for grand larceny.

On December 11, 2017, Appellant appeared before Judge Sprouse for a probation revocation hearing. Appellant was represented by Victoria Voison Gurney with the Anderson County Public Defender Office. Appellant's probation had been continued once before on September 21, 2016. (R. p. 18). Appellant was alleged to have violated his probation by failing to report on May 31, 2017, testing positive for THC on June 27, 2017 and July 26, 2017, being convicted of shoplifting and possession of marijuana, failing to pay intensive supervision fees, failing to pay drug test fee, failing to pay restitution and failing to remain in treatment. (R. p. 18). The probation agent recommended a thirty day revocation but the hearing officer recommended a one year revocation with reinstatement of probation following the year sentence. (R. p. 18; R. p. 20). Judge Sprouse followed the recommendation of the hearing officer, revoking one year on each charge, reinstating probation upon release and restructuring fees and restitution. A timely notice of intent to appeal was served on December 14, 2017. This appeal follows.

STANDARD OF REVIEW

“The decision to revoke probation is addressed to the sound discretion of the trial court.” State v. Spare, 374 S.C. 264, 268, 647 S.E.2d 706, 708 (Ct. App. 2007) (citing State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006)). The appellate court’s “authority to review such a decision 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.” Id. (quoting State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999)).

ARGUMENT

The probation judge erred in revoking probation without making a specific finding that the failure to pay the fees and restitution was willful.

Appellant admitted the violations as alleged by the probation agent at the hearing. (R. p. 5, lines 16-22). Before hearing from counsel for Appellant, the judge found there was a willful violation. (R. p. 5, line 23). The judge did not make a specific finding in regard to whether the failure to pay fees and restitution was willful. After the finding, counsel for Appellant advised the judge that Appellant had been diagnosed with a terminal autoimmune disease called hemophagocytic syndrome. (R. p. 6, line 6 – p. 7, lines 1-2). She also advised the judge the Appellant was in need of a bone marrow transplant. (R. p. 14, lines 22-24). Appellant had been out of work and homeless for over a year and had just recently obtained part-time employment. (R. p. 7, lines 3-17). Counsel asked the judge to impose the agent's initial recommendation for a thirty day revocation. (R. p. 14, line 25 – p. 15, lines 1-9). The judge revoked a year stating, "My primary concern here is – what I have is twofold. The first is, there's a significant amount of restitution owed to the victim. There's also multiple failed drug tests and multiple offenses committed. So I'm going to revoke one year. Continue on probation. Restructure his money when he gets out. Good luck to you." (R. p. 15, lines 19-21). The judge erred.

When probation is revoked solely for failure to pay fines or restitution, a finding of willfulness is mandatory. Bearden v. Georgia, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983). In State v. Hamilton, 333 S.C. 642, 649 511 S.E.2d 94, 97 (Ct.App. 1999), the South Carolina Court of Appeals wrote:

In response to Bearden, our courts have held that probation may not be revoked *solely* for failure to make required payments of fines or restitution without the circuit judge first determining on the record that the probationer has failed to make a bona fide effort to pay. Nichols v. State, 308 S.C. 334, 337, 417 S.E.2d 860, 862 (1992);

Barlet v. State, 288 S.C. 481, 483, 343 S.E.2d 620, 622 (1986). In the absence of such a determination, a defendant's due process rights are contravened by the deprivation of his constitutional freedom. (internal citations omitted). Therefore, in those cases involving the failure to pay fines or restitution, the circuit judge must, in addition to finding sufficient factual evidence of the violation, make an additional finding of willfulness.

While the failure to pay was not the sole reason for the revocation, the judge specifically stated that one of his concerns was the amount of restitution. The judge should not have considered the failure to pay without making a specific finding that it was willful.

In State v. Spare, 374 S.C. 264, 269–70, 647 S.E.2d 706, 708–09 (Ct. App. 2007), the South Carolina Court of Appeals discussed factors to consider when determining if a failure to pay is willful writing:

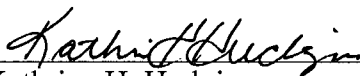
“Willful failure to pay means a voluntary, conscious and intentional failure.” People v. Davis, 216 Ill.App.3d 884, 159 Ill.Dec. 841, 576 N.E.2d 510, 513 (1991); see State v. Sowell, 370 S.C. 330, 336, 635 S.E.2d 81, 83 (2006) (“A willful act is defined as one ‘done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.’” (quoting Spartanburg County Dep't of Soc. Servs. v. Padgett, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988))). “The trial court may infer that the failure to pay is intentional where a probationer has the ability to pay a fee, but does not do so.” Joseph v. State, 3 S.W.3d 627, 641 (Tex.App.1999) (citations omitted).

“A proper analysis should include an inquiry into the reasons surrounding the probationer's failure to pay, followed by a determination of whether the probationer made a willful choice not to pay.” Commonwealth v. Eggers, 742 A.2d 174, 176 (Pa.Super.Ct.1999). “After making those determinations, if the court finds the probationer ‘could not pay despite sufficient bona fide efforts to acquire the resources to do so,’ the court should then consider alternatives to incarceration in accordance with Bearden.” Id. at 176 (quoting Bearden v. Georgia, 461 U.S. 660, 672, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983)).

Considering the factors discussed in Spare, there is nothing in the record to support a finding that Appellant's failure to pay was willful. The PCR judge erred in considering the failure to pay when revoking probation.

CONCLUSION

Based on the above argument this Court should reverse the revocation of probation and remand the case for a new hearing.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of July, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUL 23 2018
SC Court of Appeals

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

NATHAN GOOD,

APPELLANT

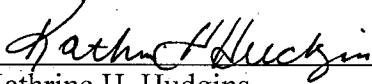
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Nathan Good states:

1. She is 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 R. Scott Sprouse, which was held on December 11, 2017, 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 Nathan Good.

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 23rd day of July, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
Honorable R. Scott Sprouse, Circuit Court Judge

RECEIVED
JUL 23 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

NATHAN GOOD,

APPELLANT

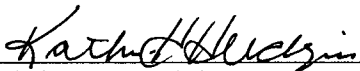
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments and sentencing sheets;
- (2) Probation Revocation Hearing December 11, 2017;
- (3) Violation Report, Form 1106, 2 pages;
- (4) Summary of Administrative Hearing, 3 pages;
- (5) Orders Revoking Probation – 2.

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

July 23, 2018


Kathrine H. Hudgins
Appellate Defender

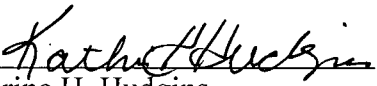
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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."

July 23, 2018.


Kathrine H. Hudgins
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

RECEIVED
JUL 23 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

RECEIVED

JUL 23 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

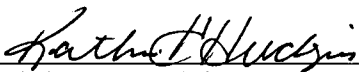
V.

NATHAN GOOD,

APPELLANT

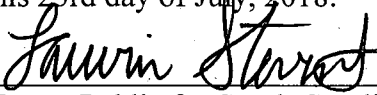
CERTIFICATE OF SERVICE

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 Nathan Good, at 901 Campbell Street, Anderson, SC 29621, this 23rd day of July, 2018.



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of July, 2018.

 (L.S)

Notary Public for South Carolina
My Commission Expires: July 5, 2027.