

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED
AUG 08 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CANDICE BAIRD,

APPELLANT

APPELLATE CASE NO 2017-002142

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
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 the probation revocation judge abused her discretion in revoking probation in full, where the recommendation from the supervising probation agent was to revoke three years rather than the full seven?

STATEMENT OF THE CASE

A Berkeley County grand jury indicted Appellant at its September 2017 term of court for domestic violence in the first degree. R. 22 – 23. On September 20, 2017, Appellant pled guilty before the Honorable Kristi Harrington. She pled guilty as indicted. R. 4, ll. 16 – 17. Cozette McNeil appeared on behalf of the State, and Debra Littlejohn represented Appellant.

Judge Harrington accepted Appellant's guilty plea. R. 9, ll. 7 – 14. Subject to a negotiated plea, the plea court sentenced Appellant to a term of three hundred and one days and provided credit for the same. R. 10, ll. 3 – 7. Appellant was on probation at the time, and probation was revoked in full resulting in a sentence of seven years. R. 18, ll. 15 – 24; R. 20, ll. 4 – 13.

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. State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999).

ARGUMENT

The probation revocation judge abused her discretion in revoking probation in full, where the recommendation from the supervising probation agent was to revoke three years rather than the full seven.

The facts giving rise to Appellant's guilty plea as provided by the State were as follows: On or about November 2, 2016, a man reported to law enforcement that he and his girlfriend had gotten into a verbal argument.¹ R. 8, l. 5 – R. 9, l. 1. He indicated that Appellant stabbed him in the chest with a knife. Id. According to the assistant solicitor, when Appellant was located and arrested the knife was found in her possession as well. Id.

During the plea colloquy, the plea judge referenced Appellant's probation. R. 5, ll. 18 – 21. Appellant received a seven year sentence suspended to thirty months' probation for the charges of failure to stop for blue lights, grand larceny, and hit and run. R. 25 – 27.

Counsel for Appellant answered affirmatively that the plea would violate the terms and conditions of Appellant's probationary sentence. Id. Appellant indicated that she wished to resolve the probation matter following the guilty plea. R. 6, ll. 6 – 8.

The plea judge listed other alleged probation violations including absconding from supervision, failing to report as instructed, and missing office visits. R. 10, ll. 8 – 25. Appellant's father had passed away, leading to a trip to Knoxville Tennessee. R. 11, ll. 7 – 22. Appellant was on probation beginning August 2015, and her father passed away the following December. R. 11, l. 23 – R. 12, l. 4.

¹ The indictment alleges that this event transpired on or about November 24, 2016. R. 23.

Appellant spoke and accepted responsibility for her actions. R. 12, l. 24 – R. 13, l. 5. Her probation agent recommended, in conjunction with credit for time served on the domestic violence charge, revocation of three years. R. 18, ll. 15 – 20. The plea judge found that Appellant was not a suitable candidate for probation and that Appellant willfully violated the terms and conditions of her probationary sentence. R. 20, ll. 4 – 9.

The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court. State v. Miller, 122 S.C. 468, 474-75, 115 S.E. 742, 745 (1923); State v. Proctor, 345 S.C. 299, 301, 546 S.E.2d 673, 674 (Ct.App.2001). The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation. State v. King, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); State v. Hamilton, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct.App.1999). “While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice.” White, 218 S.C. at 136, 61 S.E.2d at 756; State v. Allen, 370 S.C. 88, 96, 634 S.E.2d 653, 657 (2006) (“[A] probationer or parolee has a constitutionally protected liberty interest and cannot be denied due process simply because probation has been described as an act of grace.”).

The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation. State v. King, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); State v. Hamilton, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct.App.1999). “While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice.” White, 218 S.C. at 136, 61 S.E.2d at 756.

An appellate court will not reverse the trial court's decision unless that court abused its discretion. White, 218 S.C. at 135, 61 S.E.2d at 756; Hamilton, 333 S.C. at 647, 511 S.E.2d at 96. "An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious." Allen, 370 S.C. at 94, 634 S.E.2d at 656.

Appellant should have been given a three year sentence as recommended by the probation agent. She accepted responsibility for her actions and was taking steps to be alcohol-free. As admitted by Appellant, her judgment was cloudy at the time of her actions. R. 18, ll. 3 – 12. At the time of her plea, she had realized the ramifications of her prior deeds, and she should have received the sentence that the probation officer recommended. The judge failed to exercise discretion in considering Appellant's circumstances and instead deferred to the prior sentencing judge. The decision of the plea-turned-probation revocation judge to revoke in full was arbitrary and capricious, and it should be reversed.

CONCLUSION

Based on the foregoing, Appellant requests that this Court reverse the revocation of probation and remand for a new revocation hearing, or grant such other relief as justice may require.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of August, 2018.

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Honorable Kristi Lea Harrington, Circuit Court Judge

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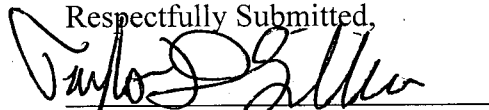
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Candice Baird 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 Kristi Lea Harrington, which was held on September 20, 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 Candice Baird.

Respectfully Submitted,



Taylor D Gilliam

Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of August, 2018.

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Honorable Kristi Lea Harrington, Circuit Court Judge

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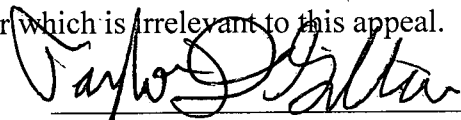
APPELLANT

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

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

- (1) True-billed indictment(s);
- (2) Guilty plea and probation revocation hearing transcript dated September 20, 2017;
- (3) Sentencing sheet(s); and
- (4) Orders revoking probation.

I certify that this designation contains no matter which is irrelevant to this appeal.
August 08, 2018



Taylor D Gilliam
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."

August 08, 2018.



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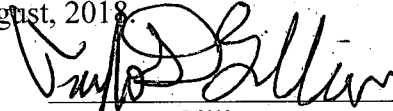
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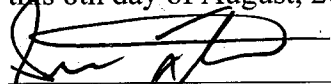
CERTIFICATE OF SERVICE

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 Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Candice Baird, 374072, at Camille Griffin Graham Correctional Center, 4450 Broad River Road, Columbia, SC 29210, this 8th day of August, 2018.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of August, 2018.



(L.S)

Notary Public for South Carolina
My Commission Expires: 10/30/2022