

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Dorchester County

Honorable Maite Murphy, Circuit Court Judge

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THE STATE,

RESPONDENT,

v.

JOSEPH GOODRICH,

APPELLANT

APPELLATE CASE NO 2018-000725

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ANDERS BRIEF OF APPELLANT

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VICTOR R SEEGER  
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 court abused its discretion by revoking Appellant's probation in full where Appellant had no prior convictions nor prior violations of probation, and where he has been treated for depression which caused the violations to be the result of a recognized illness, and not willful?

## STATEMENT OF THE CASE

During the August 2017 term, the Dorchester County Grand Jury indicted Appellant for Domestic Violence in the second degree and forgery, value less than \$10,000. R.9 – 12.

On August 8, 2017 Appellant was sentenced to five years' imprisonment, suspended upon three years' probation by the Honorable Diane S. Goodstein. R. 13 – 14.

On April 9, 2018, Appellant had his probation revocation hearing in front of the Honorable Maite Murphy. R. 1. John Kornegay represented Appellant. Id.

Judge Murphy found that Appellant had willfully violated his probationary sentence and revoked his probation in full. R. 5, ll. 9 – 16.

This brief follows.

## STANDARD OF REVIEW

The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court. 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. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006). In reviewing a trial court's decision to terminate probation, the question is simply whether there has been an abuse of discretion and this question is to be determined in accordance with familiar principles governing the exercise of judicial discretion. "That exercise implies conscientious judgment, not arbitrary action... It takes account of the law and the particular circumstances of the case and is 'directed by the reason and conscience of the judge to a just result... 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.'" State v. White, 218 S.C. 130, 61 S.E.2d 754, 756 (1950).

## ARGUMENT

The court abused its discretion by revoking Appellant's probation in full where Appellant had no prior convictions nor prior violations of probation, and where he has been treated for depression which caused the violations to be the result of a recognized illness, and not willful.

### **Relevant Facts**

Appellant was convicted of criminal domestic violence in the second degree and forgery, value less than \$10,000. R. 2, ll. 4 – 15. Appellant was to undergo substance abuse counseling, “along with CADA,”<sup>1</sup> as well as pay restitution and court costs. Id.

The state alleged that Appellant violated his probationary sentence by failure to report to his initial intake on August 21, 2017; changing his address without consent of his probation agent; failure “to follow the instructions of the agent,” and failure to pay restitution. R. 2, ll. 20 – 22; R. 3, ll. 1 – 2, R. 3, ll. 9 – 14. The state recommended revocation in full. R. 3, ll. 17 – 19.

Defense counsel stated that Appellant's violations were willful. R. 3, ll. 23 – 24. However, he explained that Appellant has suffered from depression since he lost parental rights over his three-year-old daughter. R. 4, ll. 7 – 13. The struggle with depression has, “consumed his life” since then. R. 4, ll. 14 – 15.

Appellant had not received any treatment for his depression until he was incarcerated. R. 4, ll. 14 – 19. He has received medication and treatment for depression since being in jail. Id. Defense counsel requested the court to consider a sentence of time served for the fifty days he spent in the

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<sup>1</sup> CADA otherwise known as “Community Against Domestic Abuse” is a program, credentialed by South Carolina Department of Social Services, “designed to help men and women end violence in their relationships, to reduce the occurrence of domestic violence families and in the community.” CADA: Community Against Domestic Abuse, Dorchester Alcohol and Drug Commission Dorchester Alcohol and Drug Commission, <https://www.dadc.org/cada-community-against-domestic-abuse/> (last visited Nov 21, 2018).

Dorchester County, a partial revocation, and to allow Appellant to continue his probation. R. 5, ll. 1 – 5.

Judge Murphy found Appellant’s violations willful and revoked his probation in full. R. 5, ll. 9 – 16.

### **Discussion**

The trial court abused its discretion by revoking Appellant’s probation in full. Defense counsel asked the trial court to consider sentencing Appellant to time served and to consider a partial revocation to allow him to continue on probation. R. 5, ll. 1 – 5. The court denied defense counsel’s request and revoked Appellant’s probation in full. R. 5, ll. 9 – 16.

The “[circuit] court may impose by order duly entered and may at any time modify the conditions of probation.” S.C. Code Ann. § 24-21-430 (1976); State v. Allen, 370 S.C. 88, 96, 634 S.E.2d 653, 656 – 57 (2006). The authority of the circuit court to revoke probation “may not be capriciously or arbitrarily exercised,” but should be based upon “an evidentiary showing of fact tending to establish violation of the conditions.” State v. Williamson, 356 S.C. 507, 510, 589 S.E.2d 787, 788 (2003) (citing State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (1999)).

Here, the trial court abused its discretion by revoking Appellant’s probation in full. Appellant complied with the initial contact information requirement. His subsequent failure to comply with the conditions of his probation stem from the crippling depression that, “consumed his life,” after he lost custody of his three-year-old daughter. R. 4, ll. 6 – 13.

Appellant did not purposefully fail to update his address information with the probation office nor purposefully fail to pay restitution, rather people suffering from depression **often experience fatigue such that even the smallest seem too difficult to perform.** Depression (major depressive disorder), Mayo Clinic (2018), <https://mayoclinic.org/diseases->

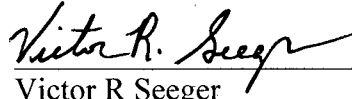
conditions/depression/symptoms-causes/syc-20356007 (last visited Oct. 9, 2018). (emphasis added)

Moreover, many people who suffer from depression **experience an inability to accomplish simple tasks or make decisions**. Rashmi Nemade, Natalie Staats Reiss, & Mark Dombeck, Classic Symptoms of Major Depression, <https://www.mentalhelp.net/articles/classic-symptoms-of-major-depression/> (last visited Oct 9, 2018). (emphasis added)

Although Appellant violated his probation, it was a consequence of his struggle with depression after losing parental rights over his three-year-old daughter, and not a willful violation. State v. Sowell, 370 S.C. 330, 336, 635 S.E.2d 81, 83 (2006) (quoting Black's Law Dictionary in defining “willful.” as “[p]roceeding from a conscious motion of the will; voluntary. Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary.” Black's Law Dictionary 1434 (5th ed.1979)). Therefore, the lower court abused its discretion when it revoked Appellant’s probation and Appellant should be granted a new probation revocation hearing.

**CONCLUSION**

For the foregoing reasons, Appellant respectfully requests this Court to reverse the lower court's order revoking his probation in full and remand for a new probation revocation hearing.



Victor R Seeger  
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of November, 2018.

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Counsel for Joseph Goodrich 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 Maite Murphy, which was held on April 9, 2018, 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 Joseph Goodrich.

Respectfully Submitted,

  
Victor R Seeger

Appellate Defender  
ATTORNEY FOR APPELLANT

This 21st day of November, 2018.

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

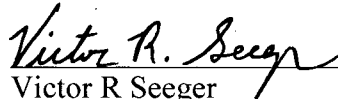
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Appellant proposes the following be included in the Record on Appeal:

- (1) Probation Revocation Transcript;
- (2) Probation Revocation Orders;
- (3) True-Billed Indictments;
- (4) Sentence sheets

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

November 21, 2018

  
Victor R Seeger  
Appellate Defender

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

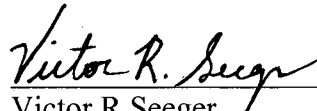
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**CERTIFICATE OF COUNSEL**

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."

November 21, 2018.



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Appellate Defender

South Carolina Commission on Indigent  
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Division of Appellate Defense  
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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 Joseph Goodrich, 375985, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 21st day of November, 2018.



Victor R Seeger  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 21st day of November, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: July 26, 2028