

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
Court of General Sessions
R. Lawton McIntosh, Circuit Court Judge
Case Nos.: 2012-GS-23-07504,07507

Appellate Case No. 2018-000564

RECEIVED
FEB 19 2019
SC Court of Appeals

THE STATE, RESPONDENT

v.

GEORGE CLEVELAND, III, APPELLANT

INITIAL BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220**

ATTORNEY FOR THE RESPONDENT

TABLE OF CONTENTS

Table of authorities.....ii

Statement of issues on appeal.....iii

Statement of the case.....1

Arguments

 1. The General Sessions court had jurisdiction to hear the probation violation and impose a revocation of ninety days.....2

 2. The General Sessions court could impose a revocation for willful failure to pay.....4

Conclusion.....5

TABLE OF AUTHORITIES

CASES

State v. Coker, 397 S.C. 244, 245, 723 S.E.2d 619, 620 (Ct.App. 2012).....4

State v. Felder, 313 S.C. 55, 437 S.E.2d 42 (1993).....3

State v. Hutto, 252 S.C. 36, 165 S.E.2d 72 (1968).....3

State v. Lee, 350 S.C. 125, 132, 564 S.E.2d 372, 376 (Ct. App. 2002).....3

State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (Ct.App.2007).....3-4

State v. White, 218 S.C. 130, 135-6, 61 S.E.2d 754, 756 (1950).....4

STATUTES

S.C. Code Ann. §16-21-80 (2010).....2,3

S.C. Code Ann. §17-25-322 (1996).....3

18 U.S.C.A. § 23122,3

STATEMENT OF ISSUES ON APPEAL

1. **Whether the Court of General Sessions had subject matter jurisdiction to consider the Appellant's probation and therefore the authority to revoke ninety days of his suspended sentence?**
2. **Whether the Court of General Sessions had the authority to revoke the Appellant's probation when there was a finding of willful failure to pay restitution?**

STATEMENT OF THE CASE

On or about May 7, 2012, in Greenville County, the Appellant George Cleveland III was found to be in possession of stolen vehicles. He was subsequently charged for receiving, possessing, concealing, selling, or disposing of a stolen vehicle valued more than \$10,000, and an additional charge for a vehicle valued more than \$2,000 but less than \$10,000, both in violation of S.C. Code §16-21-80. He was also charged with two counts of removing or falsifying a Vehicle Identification Number with the intent to conceal its identity, and obtaining signature or property under false pretenses of a value more than \$2,000 but less than \$10,000.

On November 5, 2013, the Appellant appeared before the Honorable Judge Edward W. Miller in Greenville County General Sessions Court. He received five years incarceration on all counts except for possessing, concealing, selling, or disposing of a stolen vehicle valued at more than \$10,000, for which he received ten years provided on the service of six years, with the balance suspended upon five years probation. (Tr. p.*)

On October 13, 2014, the Appellant in Oconee County pled to three additional offenses related to possession of stolen vehicles and altering VINs, receiving five years suspended to five years probation, consecutive to the Greenville County charges. (Tr. p.*)

In the probation cases, the court also issued an order of restitution for \$11,300.00 as a special condition. (Tr. p.*)

The Appellant was released from the Department of Corrections and started his probation on April 3, 2017. The Appellant fell behind in his payments of restitution and was brought to court for a violation hearing before the Honorable Judge Lawton McIntosh on February 23, 2018. Judge McIntosh found the Appellant to be in willful violation for not paying his restitution and revoked him for ninety days and continued him on probation.

The Appellant filed a motion for reconsideration on March 11, 2018, which was denied on March 22.

The Appellant then appealed the court's revocation, alleging that the court lacked subject matter jurisdiction to hear the probation matter, as well as that the court did not have the authority to revoke for failure to pay restitution under the South Carolina Constitution.

The brief of the Respondent refuting these arguments follows.

ARGUMENT

1. The General Sessions court had jurisdiction to hear the probation violation and impose a revocation of ninety days.

The Appellant claims that because the vehicles at issue in his arrest and subsequent conviction were from a dealership located in Georgia, then federal law is implicated. He cites the United States Code which prohibits knowingly transporting stolen vehicles in interstate commerce (18 U.S.C.A. § 2312, "Whoever transports in interstate or foreign commerce a motor vehicle, vessel, or aircraft, knowing the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both."). Because there is a federal law prohibiting an act the Appellant apparently committed, he argues that the Court of General Sessions lacked subject matter jurisdiction to hear his probation violation. Brief of Appellant, P. 6.

This argument is misguided. The federal law prohibits the *transport* of stolen vehicles in interstate commerce. South Carolina's law for which the Appellant was convicted prohibited knowingly receiving, possessing, concealing, selling or disposing of a stolen vehicle, which occurred in Greenville County, South Carolina. Rather than being concerned with the stolen

vehicle's movement across state lines, South Carolina's law found in §16-21-80 simply prohibits knowingly possessing, selling or disposing of a stolen vehicle.¹

While it is entirely possible that – based on the means the Appellant obtained the stolen vehicle from the Georgia dealership – the Appellant violated 18 U.S.C.A. § 2312, that is entirely irrelevant to the matter before Judge McIntosh on February 23, 2018.

The Appellant was convicted by plea to possessing, selling, or disposing of a stolen vehicle valued at \$10,000 or more, pursuant to South Carolina law. This occurred in the County of Greenville in Court of General Sessions. (Tr. p. *). The Appellant was sentenced in state court to a state sentence under state law.

The Appellant was brought to court based on a probation citation for the nonpayment of financial obligations – notably restitution. As required in S.C. Code §17-25-322(C), the “department, through its agents, must initiate legal process to bring every probation, whose restitution is six months in arrears, back to court, regardless of wilful failure to pay. The judge shall make an order addressing the probationer's failure to pay.”

“Subject matter jurisdiction to revoke an individual's probation is conferred on the General Sessions Court by either the issuance of a probation violation warrant or the issuance of a probation violation citation and affidavit in lieu of a warrant.” *State v. Lee*, 350 S.C. 125, 132, 564 S.E.2d 372, 376 (Ct. App. 2002) (citing *State v. Felder*, 313 S.C. 55, 437 S.E.2d 42 (1993) and *State v. Hutto*, 252 S.C. 36, 165 S.E.2d 72 (1968)).

¹ S.C. Code §16-21-80: A person not entitled to the possession of a vehicle who receives, possesses, conceals, sells, or disposes of it, knowing it to be stolen or converted under circumstances constituting a crime, is guilty of a: (1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the vehicle is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both; (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the value of the vehicle is more than two thousand dollars but less than ten thousand dollars; (3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the value of the vehicle is ten thousand dollars or more.

In the instant case, probation agents issued a citation because the Appellant had not paid restitution or other financial obligations. (Tr. p.*). Therefore, the court had subject matter jurisdiction to hear the Appellant's probation violation.

2. The General Sessions court could impose a revocation for willful failure to pay.

The Appellant argues that the South Carolina Constitution prohibits imprisonment for debt, and therefore the court lacked the authority to revoke him for nonpayment of restitution.

The Appellant mischaracterizes what the judge did when he revoked ninety days of his suspended sentence. The Appellant was not imprisoned for having a debt of restitution, as he asserts. Instead, Judge McIntosh found the Appellant to have willfully refused to pay his court-ordered obligation to make restitution for his criminal convictions. (Tr. p.*).

The decision to revoke probation is in the sound discretion of the circuit judge. *State v. White*, 218 S.C. 130, 135-6, 61 S.E.2d 754, 756 (1950). The Court of Appeals' authority to review the lower court's decision is limited to correcting errors of law, or in determining whether a lack of legal or evidentiary basis indicates the circuit judge's decision was arbitrary and capricious. *Id.*

“[A] court may not revoke probation solely on the basis of the failure to pay money unless the court makes certain findings of fact regarding the willfulness of the failure to pay.” *State v. Coker*, 397 S.C. 244, 245, 723 S.E.2d 619, 620 (Ct.App. 2012). The trial court did, however, make a finding of willful failure to pay. (Tr. p.*).

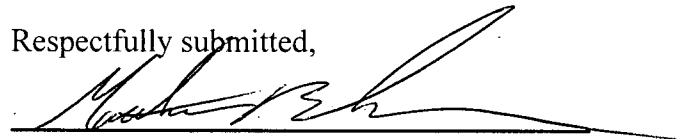
The trial court chose to revoke the Appellant 90 days after the violation hearing, so the trial court must have found that the Appellant's failure to pay was willful. The Appellant is citing Section 19 of the South Carolina Constitution; but when a probationer's choice to not pay restitution is determined by the court, the probation may be revoked. *State v. Spare*, 374 S.C.

264, 647 S.E.2d 706 (Ct.App.2007). Based on representations the Appellant made to the trial court, Judge McIntosh found that he had willfully refused to pay his restitution. (Tr. p.*).

CONCLUSION

The trial court had jurisdiction to hear the case through the citation issued by the probation agent because the Appellant was on probation due to a South Carolina conviction, and the court could make a finding of willful refusal to pay restitution. Therefore, this Court should dismiss this Appeal.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina
February 13, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

FEB 19 2019

SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of General Sessions
R. Lawton McIntosh, Circuit Court Judge
Case Nos.: 2012-GS-23-07504,07507

Appellate Case No. 2018-000564

THE STATE, RESPONDENT

v.

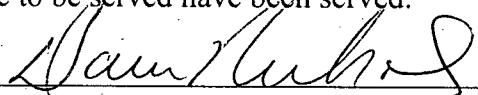
GEORGE CLEVELAND, III, APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within Initial Brief and Designation of Matter dated February 14, 2019, on Appellant this 14th day of February, 2019, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

George Cleveland, III, Pro Se
400 Hunter Street
Seneca, S.C. 29678

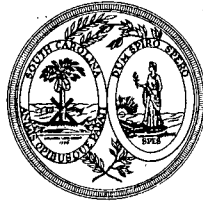
I further certify that all parties required by Rule to be served have been served.



Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

February 14, 2019

The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

RECEIVED
FEB 19 2019
SC Court of Appeals

Re: State v George Cleveland

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter dated February 14, 2019, along with proof of service in the above referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan".

Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures

cc: George Cleveland, III, Pro Se

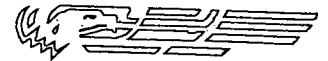
State of South Carolina

Department of Probation, Parole, and Pardon Services

2221 DEVINE STREET, SUITE 600, POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250



U.S. POSTAGE » PITNEY BOWES



ZIP 29205 \$ 000.80⁰
02 1W
0001388679 FEB. 14. 2019

The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

RECEIVED
FEB 19 2019
SC Court of Appeals