

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CURTIS GERALD,

APPELLANT

Appellate Case No. 2011-201786

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

The circuit court judge erred in revoking appellant's probation sentence because the court lacked subject matter jurisdiction to act on the alleged probation violations raised in the case.

STATEMENT OF THE CASE

Appellant Curtis Gerald pled guilty to assaulting a police officer while resisting arrest during the October 2011 term of the Horry County General Sessions Court before Judge Edward K. Cottingham. Appellant was then sentenced to a two-year prison term. Additionally, Judge Cottingham revoked three years of appellant's probation sentence from his prior convictions¹ during the plea proceeding. Melinda Knowles represented petitioner at the plea proceeding and the probation revocation hearing held in the case.

Appellant appealed. This brief follows.

¹ In 2009, petitioner was convicted of criminal domestic violence and possession of cocaine and sentenced to imprisonment for a period of one year and five years respectively, suspended upon service one year and five years probation.

ARGUMENT

The circuit court judge erred in revoking appellant's probation sentence because the court lacked subject matter jurisdiction to act on the alleged probation violations raised in the case.

On October 12, 2011, appellant pled guilty to the charge of assault while resisting arrest and was sentenced to imprisonment for a period of two years. Immediately thereafter, the trial judge revoked three years of his probation sentence from his prior possession of cocaine and criminal domestic violence convictions. See Footnote #1.

During the dual circuit court proceedings, there was no language or reference presented in the record regarding whether a probation citation or arrest warrant had been in existence and served on appellant. In a written explanation for the basis of an appeal per Rule 203 (B)(iv), SCAR, filed with the Court on October 18, 2011, trial counsel outlined the circuit court's lack of jurisdiction to revoke appellant's probation sentence follows:

I (trial counsel) represented the above-named defendant before Judge Edward B. Cottingham on October 21, 2011, at which time the defendant entered a guilty plea to his/her pending charges. It was not until this time (i.e. the time of the guilty plea) that Defendant and myself, as his legal counsel, were notified (via verbal notice only) by Mr. Russell Anderson with Probation, Parole, and Pardon Services that the Court would also need to address possible violation(s) by Defendant on his probationary sentence. It is because of the lack of *proper* notice given to Defendant and myself, as his legal counsel, regarding these alleged violation(s) that I argue stand to support a sufficient legal basis for an appeal in this matter.

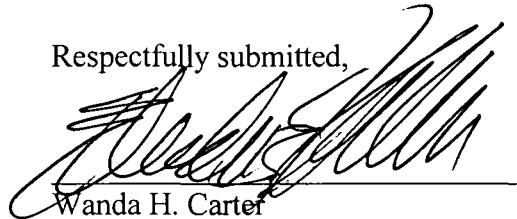
A probation violation arrest warrant or citation must be issued and served on any probationer before a circuit court judge can properly revoke a probation sentence. S.C. Code Ann. {24-21-450 and §24-21-460 (Supp. 1998)}. See also S.C. Code Ann. 24-21-300; State v. Richburg, 304 SC 162, 403 S.E. 2d 315 (1991); State v. Felder 313 SC 55, 437 S.E. 2d 42 (1993). If a warrant or citation has not been issued, the trial court lacks subject matter jurisdiction to revoke one's probation; and therefore, any revocation or attempted revocation is a nullity. Also, even though

there is information in existence indicating that a warrant was drawn on February 10, 2010, in the case; nonetheless, since appellant was not served with a probation violation arrest warrant or citation at the circuit court proceeding, the revocation of his probation sentence was null and void. Appellant's probation revocation sentence cannot stand as valid because the circuit court lacked subject matter jurisdiction to entertain the matter of appellant's alleged probation violations.

CONCLUSION

Based on the above argument, appellant's probation revocation should be vacated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

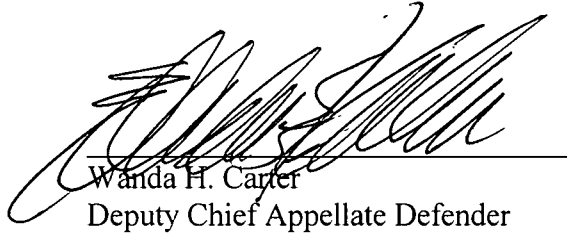
ATTORNEY FOR APPELLANT

This 9th day of October, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 9th, 2012



Wanda H. Carter
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CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250 , and this 9th day of October, 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of October, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.