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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the circuit court properly revoked Appellant's probation where it acquired revoking authority pursuant to a timely issued probation citation and an affidavit in lieu of an arrest warrant, and where Appellant was served with the citation prior to his probation being revoked?

RESPONDENT'S STATEMENT OF THE CASE

Appellant was indicted by the Horry County grand jury for possession of cocaine- 2nd offense (09-GS-26-1563). On September 17, 2009, he pled guilty as charged, then waived presentment to the grand jury and entered a plea to criminal domestic violence (CDV) - 2nd offense (09-GS-26-2958). Appellant was sentenced to five (5) years imprisonment suspended upon the service of one (1) year imprisonment and five (5) years probation for the drug charge, and one (1) imprisonment suspended upon the service of time served and one (1) year probation for CDV - 2nd. He was ordered to comply with the Department of Probation, Parole and Pardon Services' (the Department's) standard conditions of probation. (R.p.10; R.p.15-p.17). Appellant did not appeal his conviction or sentence.

On October 12, 2011, Appellant appeared before the Honorable Edward B. Cottingham to enter a guilty plea to assaulting a police officer while resisting arrest. (2011-GS-26-3545). He was represented by Melinda Knowles, Esquire. As a result of the new conviction, Appellant was charged with violating the conditions of his probation in the following respects:

Offender has violated probation by failing to refrain from violation of any federal, state or local law as evidenced by his conviction pursuant to Indictment 2011-GS-26-3645.

(R.p.11-p.12). The citation was served at 3:20pm on October 12, 2011, by probation agent Rodney Bellamy.

During the plea, the Solicitor and a probation agent noted that Appellate was already on probation for CDV and Possession of Cocaine, and had four (4) years remaining on his suspended sentence. (R.p.3, line 21-p.4, line 11). After accepting the plea and the Solicitor's sentencing recommendation, the judge took up the probation matter. Appellant was served with a "courtroom citation" charging him with a probation violation due to the new conviction. At

the conclusion of the proceeding, the court found the conviction violated the terms of Appellant's probation and revoked three years. (R.p.8, lines 5-13). In a written order issued the same day which referenced the citation, the court ordered that Appellant's suspended sentence be revoked and that he be required to serve three (3) years of the suspended sentence. (R.p.13). Appellant timely filed a notice of intent to appeal his probation revocation. This Final Brief of Respondent follows.

ARGUMENT

The circuit court properly revoked Appellant's probation where it acquired revoking authority pursuant to a timely issued probation citation and an affidavit in lieu of an arrest warrant, and where Appellant was served with the citation prior to his probation being revoked.

Appellant contends the circuit court lacked subject matter jurisdiction to revoke his probation and that the resulting revocation was null and void because he was not served with a probation violation warrant or citation prior to being revoked. The State submits this argument is entirely without merit.

The decision to revoke probation is addressed to the discretion of the circuit judge. Hamilton, supra; State v. White, 218 S.C. 130, 61 S.E.2d 754 (1950). The Court of General Sessions must acquire revoking authority over a probation case before it may revoke probation. Indeed, in probation revocation cases, this Court has held that compliance with statutory requirements regarding issuance of a warrant is the "pertinent jurisdictional fact," Lovell v. State, 223 S.C. 112, 74 S.E.2d 570, 572 (1953), and that "[i]f a warrant has not been issued, the trial court lacks subject matter jurisdiction [authority] to revoke probation and any attempted revocation is a nullity." State v. Felder, 313 S.C. 55, 56, 437 S.E.2d 42, 43 (1993); S.C. Code Ann. § 24-21-450 (2007); See also State v. Hutto, 252 S.C. 36, 165 S.E.2d 72 (1968). The Court of General Sessions likewise acquires the authority to revoke probation where the statutory requirements are met for the timely issuance of a probation citation and an affidavit in lieu of a warrant. Felder, supra; S.C. Code Ann. § 24-21-300 (2007).

Here, the citation and affidavit charging Appellant with violating the conditions of his probation was issued on October 12, 2011, as a consequence of his contemporaneous conviction

for assaulting a police officer while resisting arrest. The citation was served on Appellant at 3:20pm on the day of the conviction, by probation agent Rodney Bellamy. (R.p.11-p.12). The Court subsequently issued a revocation order which references that citation. The State submits that since the citation was issued and served on Appellant prior to his probation being revoked, the court had authority to revoke probation, and the revocation was not a nullity. In conclusion, the State submits that Appellant's probation revocation should be affirmed.

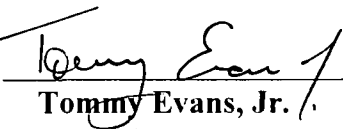
CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the probation revocation be affirmed and that the Appellant's appeal be dismissed.

Respectfully submitted,

Tommy Evans, Jr.
Legal Counsel

South Carolina Department of
Probation, Parole, and Pardon Services
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BY: 

Tommy Evans, Jr.
Legal Counsel

Columbia, South Carolina
September 24, 2012

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Edward B. Cottingham, Circuit Court Judge

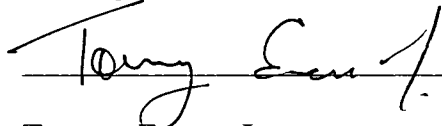
THE STATE, RESPONDENT,

v.

CURTIS GERALD, APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.



Tommy Evans, Jr.
Legal Counsel

September 24, 2012

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.

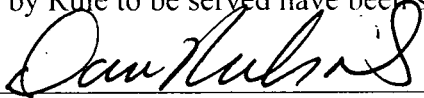
CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served
the within *Final Brief of Respondent* dated September 24, 2012, on Appellant this 26th day of
September, 2012, by depositing a copy of the same in the United States mail, postage prepaid,
addressed to:

Wanda Carter, Deputy Chief Appellate Defender
S.C. Commission on Indigent Defense
Office of Appellate Defense
Post Office Box 11589
Columbia, S.C. 29211-1589

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

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SEP 28 2012
SC Court of Appeals


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Executive Administrative Assistant

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September 26, 2012

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
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Columbia, South Carolina 29211

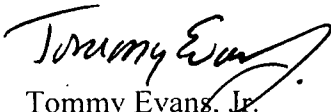
RE: The State v. Curtis Gerald

Dear Ms. Kitchings:

Enclosed please find the original and fourteen (9) copies of the *Final Brief of Respondent* dated September 24, 2012, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,


Tommy Evans, Jr.
Legal Counsel

TE:dkn
Enclosures

cc: Wanda Carter, Esquire
S: C. Office of Appellate Defense

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