

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BABY RAY PADGETT,

APPELLANT

Appellate Case No. 2012-212559

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to backdate appellant's sentence to the original date that it was imposed since this was necessary for appellant to be given full credit for the time he had already served?

STATEMENT OF THE CASE

Appellant was indicted at the November 8, 2004, term of the Aiken County grand jury for the offense of purse snatching. R. 25-26. On November 29, 2004 he was sentenced by the Honorable Reggie Lloyd to three years imprisonment suspended upon the service of three-years-probation, and restitution. R. 27.

On February 4, 2010 probation agent Sandra Young issued a probation violation citation. The citation alleged appellant failed to report to authorities following his release from incarceration on September 12, 2008. The citation also alleged appellant failed to refrain from violating state and local laws. The citation further stated that appellant had failed to pay court-ordered fines, restitution and probation supervision fees. R. 28-29

On March 11, 2012 appellant appeared before the Honorable William P. Keesley, for a probation revocation hearing. Appellant was represented by Bennett E. Castro. A probation agent represented the State. R. 1.

At the conclusion of the probation revocation hearing Judge Keesley terminated appellant on an Aiken County violation and ordered the financial obligation reduced to a civil judgment. Judge Keesley also terminated appellant from supervision on Newberry County and reduced the financial obligations to civil judgments. R. 19, ll. 18-24.

On the Edgefield County violations that prompted the probation citation, among other things, Judge Keesley noted that appellant had five years to serve minus the time he had already served on those violations from Edgefield County. Judge Keesley revoked the Edgefield cases in full and reduced the financial obligations to a civil judgment. R. 20, l. 7 - 20, l. 14; R. 31-33.

Defense counsel Castro asked the judge to backdate appellant's sentences. This would allow petitioner to get full credit for the time served. Counsel offered that he did not think this would affect appellant's max-out date since he had been incarcerated since February 3, 2010. R. 9, ll. 9-21.

The probation agent asked the judge not to backdate the sentences to February 3, 2010 because it was not in the best interests of the victims who were owed restitution. The judge refused to backdate the sentences. The judge reduced the restitution to civil judgment anyway. R. 16, ll. 17-24; r. 31-33.

ARGUMENT

The court erred by refusing to backdate appellant's sentence to the original date that it was imposed since this was necessary for appellant to be given full credit for the time he had already served.

In his revocation order dated May 11, 2012 Judge Keesley gave appellant credit for 18 months he had already served on the sentence. R. 30. However the judge refused to backdate the sentence even though it was apparent that appellant had been incarcerated during the entire time in question.

There was admittedly a great deal of confusion because of the number of cases involved here. The judge even said: "I think the biggest part of the problem, Mr. Padgett, is that you're constantly getting locked up and you're constantly getting into trouble in numerous counties and it's hard to keep up with you." R. 19, ll. 2-6.

South Carolina Code § 24-13-45 provides that a prisoner is entitled to credit for the time he serves in prison prior to sentencing for the same offense. The Court in State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (Ct. App. 2004), stated the Legislature only intended to award sentencing credit to those who actually spent time confined in a penal institution. Here, it was undisputed petitioner was almost always in jail during the relevant time periods involving his various probationary sentences.

In State v. McCord, 349 S.C. 477, 562 S.E.2d 689 (Ct. App. 2002), this Court held that a trial court cannot deny a defendant credit for time he has served prior to trial and sentence.

This matter is not discretionary with the trial court. See Allen v. State, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000). Here, it was agreed that appellant had been

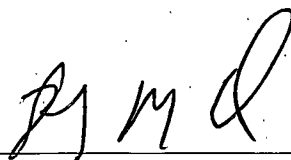
incarcerated on various charges before they were disposed of in the courts. The judge refused to give appellant credit for the time he had served in prison when he refused to backdate the time served to the date of the sentences.

Further, the judge's reasoning was that appellant was constantly being "locked up and you're constantly getting into trouble in numerous counties," and it was therefore difficult to determine his actual time served was respectfully not a proper legal reason to fail to give appellant credit for time served. The judge, on his own motion, could have continued the case ordered the parties to provide him further and proper information if he did not believe he had it before him at the revocation hearing.

CONCLUSION

The revocation of appellant's probation should be vacated, and this case remanded for an evidentiary hearing where appellant's time served can accurately be ascertained

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of February, 2013.

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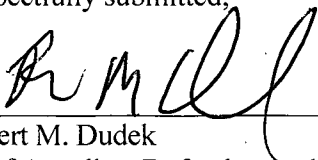
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Baby Ray Padgett states:

1. He is Chief 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 probation revocation hearing before Judge William P. Keesley, which was held on May 11, 2012, 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 Baby Ray Padgett.

Respectfully submitted,


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of February, 2013.

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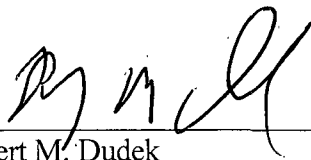
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Probation Revocation Transcript;
- (2) Probation Violation Citation dated March 27, 2012;
- (3) Revocation of Probation Order dated May 11, 2012;
- (4) Original Sentencing Order dated October 29, 2004;
- (5) True-billed indictment dated November 8, 2004;
- (6) Probation Revocation Affidavit dated February 4, 2010;
- (7) Three Civil Judgment Forms.

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

February 22nd, 2013



Robert M. Dudek
Chief Appellate Defender

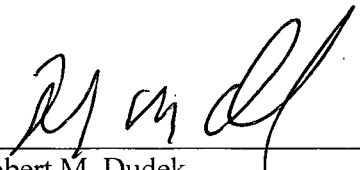
South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1343

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 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."

February 22, 2013



Robert M. Dudek
Chief Appellate Defender

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Division of Appellate Defense
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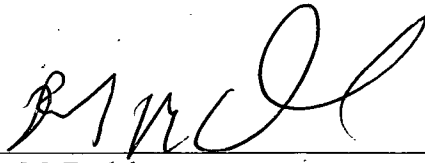
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APPELLANT

CERTIFICATE OF SERVICE


The undersigned attorney 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 Tommy Evans, Jr., Esquire, at P.O. Box 50666, Columbia, SC; and on Baby Ray Padgett, #218929 at Lee Correctional Institution, this 22nd day of February, 2013.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of February, 2013.

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