

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Richland County

SC Court of Appeals

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BUTLER GATSON,

APPELLANT

APPELLATE CASE NO 2012-213214

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in revoking probation when the violations were for failure to pay and failure to complete public service employment when there was no finding that either violation was willful?

STATEMENT OF THE CASE

In April of 2007, the Richland County Grand Jury indicted Gatson for two counts of assault and battery of a high and aggravated nature. On August 7, 2007, appellant appeared before the Honorable Roger M. Young and pled guilty. Nicole Singletary represented Gatson at the guilty plea. Judge Young sentenced Gatson to ten (10) years suspended upon seven (7) years service and five (5) years probation concurrent for each charge.

On October 12, 2012, Gatson appeared before the Honorable Clifton Newman for a probation violation hearing. John P. Carroll represented Gatson at the hearing. Judge Newman found that Gatson violated his probation, revoked eighteen (18) months and terminated probation. A timely notice of intent to appeal was served on October 19, 2012. This appeal follows

ARGUMENT

The trial court erred in revoking probation when the violations were for failure to pay and failure to complete public service employment but there was no finding that either violation was willful.

During the probation violation hearing the probation agent told the judge that Gatson's violations were "strictly financial" and failure to complete public service employment. (R. p. 4, line 25 – p. 5, line 1). The agent also told the judge that Gatson reported as instructed. (R. p. 4, line 22). Counsel for Gatson told the judge that Gatson was actively seeking employment. (R. p. 6, lines 9-12). Gatson told the judge that he did not have transportation to the public service employment location. (R. p. 8, line 12 – p. 9, p. 10, lines 1-6). The judge revoked 18 months and terminated probation without making findings as to the willfulness of the violations. The judge erred.

In State v. Coker, 397 S.C. 244, 245, 723 S.E.2d 619, 620 (Ct.App. 2012), the South Carolina Court of Appeals wrote:

In Bearden v. Georgia, 461 U.S. 660, 672, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983), the Supreme Court of the United States held that 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. In Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986), our supreme court stated: "Probation may not be revoked *solely* on the ground the probationer failed to pay fines or to make restitution. The judge must determine on the record that the probationer failed to make a bona fide effort to pay." 288 S.C. at 483, 343 S.E.2d at 622 (citing Bearden, 461 U.S. at 672, 103 S.Ct. 2064).

While Gatson's violations included a failure to pay as well as a failure to complete public service employment, in State v. Garrard, 390 S.C. 146, 700 S.E.2d 269 (Ct.App. 2010), the South Carolina Court of Appeals found the trial judge did not abuse her discretion when she found that Garrard was not in willful violation of the sex offender conditions of community supervision requiring him to stay one thousand feet

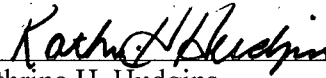
away from schools when he and his brother moved a washer and dryer for their mother and Garrard briefly stopped at his brother's workplace, which was 750 feet from a high school.

The judge in the present case should have made finding of willfulness as to both the failure to pay and the failure to complete public service employment. The judge made no findings of willfulness as to either violation. The judge erred in revoking probation for failure to pay and failure to complete public service employment without making findings of willfulness.

CONCLUSION

Based on the above argument, the decision to revoke probation should be reversed and the case remanded for a determination of willfulness.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of July, 2013.

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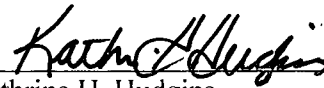
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Butler Gatson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on October 12, 2012, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Butler Gatson.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of July, 2013.

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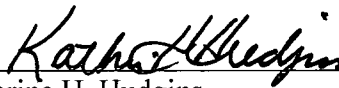
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments and sentencing sheets;
- (2) Violation Report;
- (3) Orders Revoking Probation;
- (4) Civil Judgments.

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

July 24th, 2013



Kathrine H. Hudgins
Appellate Defender

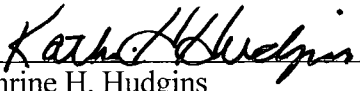
South Carolina Commission on Indigent Defense
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(803) 734-1343

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."

July 24th, 2013



Kathrine H. Hudgins
Appellate Defender

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Division of Appellate Defense
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Columbia, South Carolina 29211-1589

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CERTIFICATE OF SERVICE

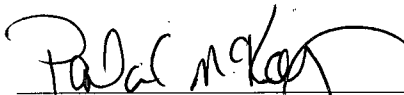
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Butler Gatson, 096699 at Evans Correctional Institution, 610 Hwy. 9 West Bennettsville, SC 29512 this 24th day of July, 2013.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of July, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.