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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAMONT QUADRE DEWBERRY,

APPELLANT

APPELLATE CASE NO. 2014-002481

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
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

Did the lower court err in revoking Appellant's probation where Appellant told the court he had not been able to pay funds because he lost his job but that he expected his family would be able to pay the funds for him directly and where the court did not otherwise attempt to determine whether the failure to pay was willful or whether adequate measures besides revocation were available to rectify the situation?

STATEMENT OF THE CASE

On April 23, 2014, the South Carolina Department of Probation, Parole and Pardon Services (“DPPPS”) obtained through Spartanburg County an arrest warrant for Appellant Lamont Quadre Dewberry. The warrant reported that Appellant willfully violated the conditions of his probation. R. 15-16. On November 7, 2014, Appellant appeared at a probation hearing before The Honorable Roger L. Couch. Claire Hall represented Appellant. R. 1. At the end of the hearing, Judge Couch revoked Appellant’s probation. R. 13, lines 6-8.

ARGUMENT

THE LOWER COURT'S REVOCATION OF APPELLANT'S PROBATION CONSTITUTED REVERSIBLE ERROR BECAUSE THE COURT FAILED TO MAKE THE FINDINGS PRESCRIBED BY LAW BASED ON THE EVIDENCE IN THE RECORD.

STATEMENT OF FACTS

On March 23, 2010, Appellant was sentenced in Greenville County to incarceration for ten years and seven years for convictions of robbery and second degree burglary, respectively. Both sentences were suspended to four years with service of the remainder on probation. R. 17-18.

In the arrest warrant, DPPPS alleged that on February 11, 2014, March 11, 2014, and March 8, 2014, Appellant failed to report to his probation agent as instructed. Additionally, Appellant changed his residence with his agent's prior knowledge or consent, failed to provide proof of gainful employment, and failed to pay fees and restitution. R. 15-16. At the probation hearing, counsel for Appellant informed the judge that Appellant had "had a hard time with the financial obligations in this case." R. 5, lines 19-20. Counsel explained that Appellant had recently had a job, but he lost it when the employer moved a production facility out of state. R. 12, lines 18-24. Counsel also explained that Appellant had family members whom he expected would be able to help pay his past due monies directly. App. 6, lines 8-21. Appellant himself told the judge that his financial situation was unstable and confirmed the expectation that his family would be able to help him pay. R. 9, lines 1-6.

DISCUSSION

The lower court's revocation of probation constituted reversible error because the court failed to make the findings prescribed by law based on the evidence in the record. Although "[p]robation is a matter of grace," the court may only revoke probation "upon

an evidentiary showing of fact tending to establish a violation of the conditions.” *State v Hamilton*, 333 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999). In *State v Spare*, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007), this Court held a circuit court may only revoke probation on the basis of a failure to pay money by making the following findings based on sufficient evidence in the record: (1) The State has established that the probationer has violated the conditions of his probation. (2) The probationer’s failure to pay was wilful insofar as he either had the funds and chose not to or did not make a bona fide effort to acquire the funds. (3) If the probationer could not acquire the funds despite a bona fide effort, no alternate measures are adequate to meet the State’s interests in punishment and deterrence. *See generally State v Coker*, 397 S.C. 244, 245-46, 723 S.E.2d 619, 620 (Ct. App. 2012).

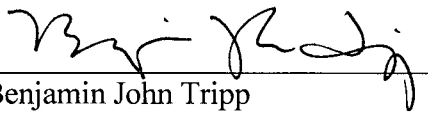
At Appellant’s hearing below, the lower court failed to make the second and third findings based on evidence in the record. As for the second element, counsel informed the judge that Appellant had difficulty paying the funds. Counsel suggested the failure to pay was not willful insofar as Appellant had recently had a job, but he lost it when the employer moved a production facility out of state. Appellant himself told the judge that his financial situation was unstable. Counsel further explained that Appellant had family members whom he expected would be able to help pay his past due monies directly, and Appellant expressed the same expectation. Thus, the record shows Appellant, despite bona fide efforts, simply had not yet been able to acquire the funds. However, the judge never inquired further to determine whether the failure to pay was willful. Similarly, with regard to the third element, the record shows Appellant could have paid the past due funds directly with help from his family, and revocation of probation would not have been necessary to

enforce the State's interest. Nevertheless, the lower court judge failed to inquire into the matter beyond what Appellant offered. Accordingly, the judge erred in revoking probation without conducting the inquiries prescribed by law.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the ruling of the lower court and remand for a new probation hearing.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of January, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
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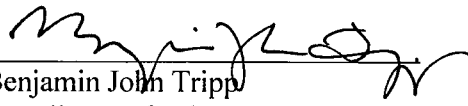
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lamont Quadre Dewberry states:

1. He is 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 trial before Judge Roger L. Couch, which was held on November 7, 2014, 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 Lamont Quadre Dewberry.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of January, 2015.

STATE OF SOUTH CAROLINA

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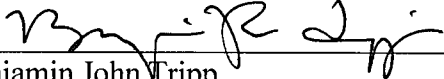
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Probation Revocation Transcript
- (2) Arrest Warrant
- (3) Order (Dated November 7, 2014)
- (4) Order (Dated November 11, 2014)

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

January 23, 2015



Benjamin John Tripp
Appellate Defender

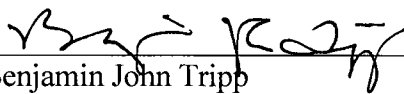
South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 23, 2015



Benjamin John Tripp
Appellate Defender

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Columbia, South Carolina 29211-1589

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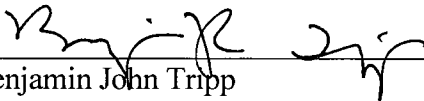
V.

LAMONT QUADRE DEWBERRY,

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 Matthew Buchanan, 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 Lamont Quadre Dewberry, #353733 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 23rd day of January, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of January, 2015.


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