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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ARTHUR JAMES BUIE,

APPELLANT

APPELLATE CASE NO. 2013-000440

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

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

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by revoking appellant's community supervision without a finding that the violation was willful, and that it was not caused by circumstances beyond appellant's control?

STATEMENT OF THE CASE

Appellant was originally convicted of armed robbery and he was on community supervision at the time of the February 15, 2013 revocation hearing before the Honorable Howard P. King. R 11. (South Carolina Department of Probation, Parole and Pardon services violation report). Julie Richard represented appellant at the revocation hearing. Agent Sumter represented the state. R. 1.

In the community supervision arrest warrant it stated that appellant had failed to pay his supervision fees, had failed to pay his electronic monitoring fees, and failed to comply with electronic monitoring. R 13. (community supervision arrest warrant) The judge also noted appellant had a community supervision arrest warrant for not telling his agent the truth about refraining from drug use. R. 13 (arrest warrant). R. 5, ll. 3-15. At the conclusion of the revocation hearing Judge King revoked one year of appellant's community supervision. R. 9, ll. 7-10.

This appeal follows.

ARGUMENT

The court erred by revoking appellant's community supervision without a finding that the violation was willful, and that it was not caused by circumstances beyond appellant's control.

Defense counsel Richard explained to the court that appellant turned himself in in Georgia when he learned there was an outstanding community supervision arrest warrant for his arrest. R. 7, ll. 2-10. Richard explained that appellant did not originally report back in South Carolina because his son had been shot in 2012, and his son almost died from the gun shot wound. Richard said that while appellant admitted he did not report she further noted that appellant had not been engaged in any criminal activity. R. 7, ll. 2-8

Appellant had a job and he was trying to pay his child support "and pay off the [electronic] monitor." R. 8, ll. 4-19. The judge revoked one year of appellant's community supervision without making any finding or even addressing whether appellant's failure to pay his electronic monitoring and other fees were willful violations or caused by circumstances beyond his control. R. 8, ll. 9-15.

Discussion

The violation report stated that appellant had been ordered to pay \$280 in electronic monitoring, and he was in arrearage \$225. Appellant had also been ordered to pay \$950 for regular supervision and \$280 for intense supervision. Appellant owed \$650 for his regular supervision, and he was in arrears \$220 on his intense supervision. R. 11. (Probation and Parole violation report).

In State v. Garrard, 390 S.C.146, 700 S.E.2d 269 (2010), this Court considered the allegation that the defendant was in willful violation of the community supervision program.

The Court noted that when appellate courts have defined “willful” they have always required a showing of consciousness of wrongdoing in order to prove willfulness. *Citing, South Carolina Department of Social Services v. Broome*, 307 S.C. 48, 53, 413 S.E.2d 835,839 (1922): In Garrard, the state failed to prove the defendant intentionally violated a court order. The violation was technical and not willful.

In State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007), this Court held there was insufficient evidence to establish that the probationer’s failure to pay his restitution was willful. Consequently, since there was not a showing that Spare was able to pay the unpaid balance of restitution of \$40,362.75, there was no showing that Spare had not made a bona fide effort to meet his financial obligation of paying the restitution. See Barlet v. State, 288 S.C. 481,483, 343 S.E.2d 620, 622 (1986).

As in Spare, the Supreme Court in Barlet held that the probationer could not have his probation revoked unless it was shown he did not make a bona fide effort to meet his financial obligation, and that his violation was therefore willful.

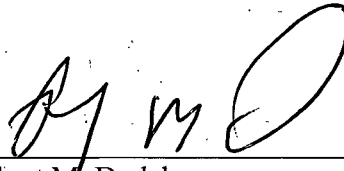
Here, the court did not make *any* inquiry as to whether appellant was able to pay his electronic monitoring fee which appellant said he was attempting to pay. As seen above, appellant owed \$225 for the electronic monitoring fee. This Court can take judicial notice of the fact that electronic monitoring is very expensive.

Similarly, there was no showing that appellant’s failure to pay the \$650 in regular supervision and \$220 in intensive supervision was willful and that he had the ability to pay for those fees also. Consequently, the court erred by revoking one year of appellant’s community supervision.

CONCLUSION

By reason of the forgoing arguments, the revocation of appellant's community supervision should be vacated, and in this case remanded to Sumter County Court of General Sessions for a new community supervision revocation hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of November, 2013.

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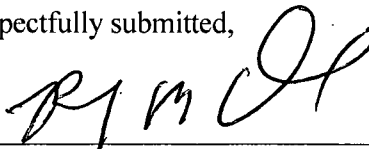
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Arthur James Buie 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 community supervision revocation hearing before Judge Howard P. King, which was held on February 15, 2013, 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 Arthur James Buie.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of November, 2013.

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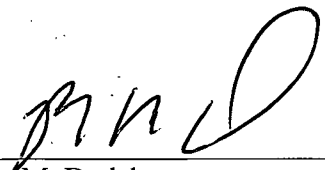
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire community revocation hearing transcript;
- (2) Probation, Parole and Pardon services report;
- (3) Community supervision arrest warrants;

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

November 22nd, 2013


Robert M. Dudek
Chief Appellate Defender

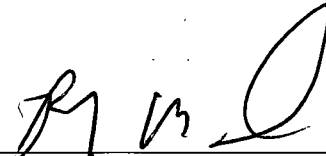
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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."

November 22nd, 2013



Robert M. Dudek
Chief Appellate Defender

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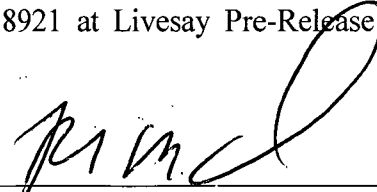
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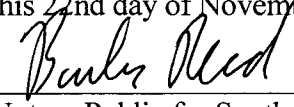
CERTIFICATE OF SERVICE

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 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 Arthur James Buie, #258921 at Livesay Pre-Release Center, this 22nd day of November, 2013.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

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

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021