

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Richland County

Honorable L. Casey Manning, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

v.

CEDRICT HOPKINS,

APPELLANT

APPELLATE CASE NO. 2018-002060  
\_\_\_\_\_

INITIAL BRIEF OF APPELLANT  
\_\_\_\_\_

**RECEIVED**  
JUL 25 2019  
SC Court of Appeals

JOANNA K. DELANY  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW .....3

ARGUMENT

The court erred when it revoked appellant’s probation where the probation violation citation was only issued after appellant’s term of probation had expired, since a citation must be issued during the term of probation to confer revocation authority on the court.....4

*Relevant facts* .....4

*Discussion* .....5

CONCLUSION.....8

**TABLE OF AUTHORITIES**

**Cases**

*State v. Crouch*, 355 S.C. 355, 585 S.E.2d 288 (2003).....6

*State v. Ellis*, 397 S.C. 576, 726 S.E.2d 5 (2012) .....5, 6

*State v. Felder*, 313 S.C. 55, 437 S.E.2d 42 (1993).....6

*State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) .....6

*State v. Hamilton*, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999).....3

*State v. Hutto*, 252 S.C. 36, 165 S.E.2d 72 (1968) .....6

*State v. Miller*, 122 S.C. 468, 115 S.E. 742 (1923).....3

*State v. Proctor*, 345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001) .....3

*State v. Sumpter*, 334 S.C. 369, 513 S.E.2d 373 (Ct. App. 1999).....7

**Statutes**

S.C. Code Ann. § 24-19-10.....4

S.C. Code Ann. § 24-21-300.....5, 6

S.C. Code Ann. § 24-21-440.....5, 7

S.C. Code Ann. § 24-21-450.....5

S.C. Code Ann. § 24-21-460.....3

**STATEMENT OF ISSUE ON APPEAL**

Whether the court erred when it revoked appellant's probation where the probation violation citation was only issued after appellant's term of probation had expired, since a citation must be issued during the term of probation to confer revocation authority on the court?

## STATEMENT OF THE CASE

On April 12, 2013, a Richland County Grand Jury indicted appellant for the offenses of burglary in the first degree and burglary in the second degree. R. p. \*(indictments). On June 6, 2013, appellant appeared before the Honorable DeAndrea Benjamin and pleaded guilty as indicted to second degree burglary and he pleaded guilty to another count of second degree burglary as a lesser-included offense. R. p. \*(sentence sheets). Appellant was represented by undersigned counsel and the state was represented by Saquisha Tobin. R. p. \*(sentence sheets).

The court sentenced appellant pursuant to the Youthful Offender Act (YOA) to concurrent sentences not to exceed six years suspended upon the service of three years of probation. R. p. \*(sentence sheets).

On September 23, 2016, appellant appeared before the Honorable Frank Addy, Jr. for a probation revocation hearing. R. p. \*(2016 order). The court continued appellant on probation but extended his probation by two years. R. p. \*(2016 order).

On October 19, 2018, appellant appeared before the Honorable Casey L. Manning for a probation revocation hearing. Tr. 1. Alice Phillips represented appellant, and Shree Duckett appeared on behalf of the South Carolina Department of Probation, Parole, and Pardon Services (SCDPPPS). Tr. 1. The court revoked appellant's YOA sentence and terminated his probation. Tr. 4, ll. 16-18.

On October 26, 2018, defense counsel filed a motion to reconsider the sentence. R. p. \*(motion). On November 8, 2018, the court issued an order denying appellant's motion to reconsider the sentence. R. p. \*(order denying motion).

This appeal follows.

## **STANDARD OF REVIEW**

The appellate court's authority to review a decision revoking probation is confined to correcting errors of law unless the lack of a legal or evidentiary basis indicates the circuit judge's decision was arbitrary and capricious. *State v. Hamilton*, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999). The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court. *State v. Miller*, 122 S.C. 468, 474-75, 115 S.E. 742, 745 (1923); *State v. Proctor*, 345 S.C. 299, 301, 546 S.E.2d 673, 674 (Ct. App. 2001); S.C. Code Ann. § 24-21-460.

## ARGUMENT

The court erred when it revoked appellant's probation where a probation violation citation was only issued after appellant's term of probation had expired, since a citation must be issued during the term of probation to confer revocation authority on the court.

Appellant's probationary term had ended when the probation violation citation was issued and when the court revoked his probation. Therefore, the court was without authority to revoke appellant's probation.

### ***Relevant facts***

On June 6, 2013, appellant was sentenced pursuant to the Youthful Offender Act<sup>1</sup> to a term not to exceed six years, but that sentence was suspended upon the service of three years' probation. R. p. \*(sentence sheets). On September 23, 2016, appellant's probation was extended by two years, for a total of five years' probation. R. p. \*(2016 order). Therefore, his probationary term ended on June 6, 2018—five years from his original sentencing date.

Nevertheless, on August 3, 2018, after the expiration of appellant's probation, a probation agent signed an affidavit and alleged that appellant violated his probation by, inter alia, failing a drug test and being in arrears financially. R. p. \*(citation and affidavit). On August 8, 2018, SCDPPPS issued the accompanying citation. R. p. \*(citation and affidavit).

When the circuit court subsequently revoked appellant's probation on October 19, 2018, it was without the authority to do so, since appellant was no longer on probation at the time of the revocation hearing nor was he on probation when the violation citation was filed. Defense counsel timely brought this issue to the court's attention by filing a motion to reconsider. R. p. \*(motion). Counsel correctly argued that appellant's probationary period had already ended

---

<sup>1</sup> See S.C. Code Ann. § 24-19-10.

when the agent filed a violation citation. Counsel noted that probation was statutorily limited to a maximum term of five years, and that the five year term in appellant's case ended on June 6, 2018. Counsel explained,

Pursuant to S.C. Code Ann. § 24-21-440, [appellant's] probation was required to terminate no later than June 6, 2018, five (5) years after he was originally sentenced to probation. His period of probation could not exceed five years and could only be continued or extended within that five year limit . . . Probation Agent Duckett issued her recent probation warrant on August 3, 2018, almost two months after that statutory expiration date.

R. p. \*(motion at 2). Counsel cited S.C. Code Ann. § 24-21-450 and noted that per statute, "in the absence of the timely issuance of [a] warrant, the court is without authority to revoke the probation after the probationary period has passed . . ." R. p. \*(motion at 2).

The court denied the motion to reconsider in a written order. R. p. \*(order denying motion). The court wrote that despite "[h]aving fully considered [appellant's] request" it found "the sentence imposed [wa]s not improper or excessive." R. p. \*(order denying motion at 2). The order also stated that per SCDPPPS, appellant's probation "was extended two years from the date of [the September 23, 2016] probation hearing." R. p. \*(order denying motion at 1).

### ***Discussion***

S.C. Code Ann. § 24-21-300 provides in relevant part that, "At any time **during a period of supervision**, a probation agent, instead of issuing a warrant, may issue a written citation and affidavit setting forth that the probationer . . . in the agent's judgment violates the conditions of his release or suspended sentence." (emphasis added).

In *State v. Ellis*, 397 S.C. 576, 581, 726 S.E.2d 5, 8 (2012), the South Carolina Supreme Court explained, "Circuit courts gain the authority to revoke a defendant's probation through the issuance of a probation revocation warrant pursuant to section 24-21-450 of the South Carolina

Code or through the use of a citation and affidavit in lieu of a warrant pursuant to section 24-21-300 of the South Carolina Code.” *Accord State v. Felder*, 313 S.C. 55, 437 S.E.2d 42 (1993). Here, because the citation was not issued during a period of supervision, but instead was issued after supervision had ended, the court was without authority to revoke appellant’s probation.

In *State v. Crouch*, 355 S.C. 355, 360, 585 S.E.2d 288, 291 (2003), the South Carolina Supreme Court found that a probation arrest warrant was a nullity since it was not issued during the time of probation. Similarly, in *State v. Hutto*, 252 S.C. 36, 46, 165 S.E.2d 72, 77 (1968), the South Carolina Supreme Court concluded that absent a warrant issued during the probationary period, the order of revocation was void. However, *Crouch* and *Hutto* were decided before *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005), and spoke in terms of whether the circuit court had “jurisdiction” to revoke. In *Ellis*, 397 S.C. at 581, 726 S.E.2d at 8, the South Carolina Supreme Court noted that while the “circuit court clearly has subject matter jurisdiction to adjudicate probation violation revocations . . .” the issuance of a citation or warrant “confer[s] authority on those courts already in possession of jurisdiction.”<sup>2</sup> The salient inquiry is thus whether the court possessed the authority to revoke and not whether the court had jurisdiction.

Defense counsel correctly argued in her motion to reconsider that the revocation was improper because appellant’s probationary period had ended before the agent filed a probation violation citation. Appellant’s probation was only for a term of five years, and that term had expired when the agent filed the citation. Appellant’s probationary term was limited to five years

---

<sup>2</sup> In *Gentry*, 363 S.C. at 100, 610 S.E.2d at 498, the South Carolina Supreme Court explained that “subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong . . .” “Circuit courts obviously have subject matter jurisdiction to try criminal matters.” *Id.* at 101, 610 S.E.2d at 499. Appellant recognizes that the circuit court here had subject matter jurisdiction to adjudicate probation violation revocations. Critically, however, the circuit court lacked the authority to revoke appellant’s probation since the citation was not issued during the probationary period.

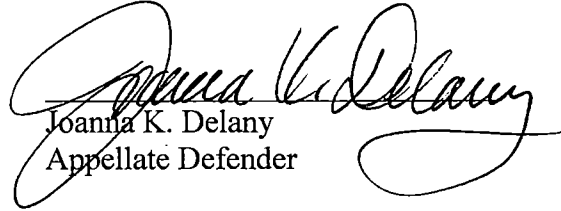
by the prior rulings of the court—a three year term of probation was originally imposed by Judge Benjamin and an additional two year term of probation was imposed by Judge Addy. Judge Addy’s extension of appellant’s probation was by two years—giving appellant a total of five years’ probation. Therefore, appellant’s probation ended five years after it was originally imposed: it was imposed on June 6, 2013 and ended on June 6, 2018.

Additionally, probation is limited by statute to no more than a five year period. S.C. Code Ann. § 24-21-440 provides, “The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended within the above limit.” *Accord State v. Sumpter*, 334 S.C. 369, 513 S.E.2d 373 (Ct. App. 1999). Therefore, by statute, appellant’s probationary period had ended before the violation citation was issued.

The court erred when it revoked appellant’s probation, where the revocation was premised on a citation that was issued after appellant’s probation ended. Because the citation was issued after appellant’s probation had expired, the court was without authority to revoke appellant’s probation. This Court should reverse.

**CONCLUSION**

Based on the foregoing argument, this Court should reverse the decision of the circuit court and vacate the order revoking probation.

A handwritten signature in black ink, appearing to read 'Joanna K. Delany', written in a cursive style.

Joanna K. Delany  
Appellate Defender

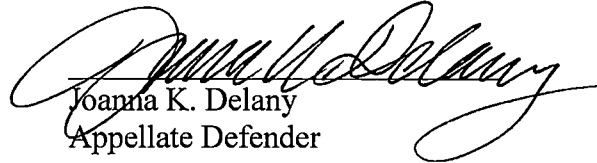
ATTORNEY FOR APPELLANT

This 25th day of July, 2019.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Initial 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."

July 25, 2019.

  
Joanna K. Delany  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**RECEIVED**  
JUL 25 2019  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Richland County

Honorable L. Casey Manning, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**  
JUL 25 2019  
SC Court of Appeals

THE STATE,

RESPONDENT,

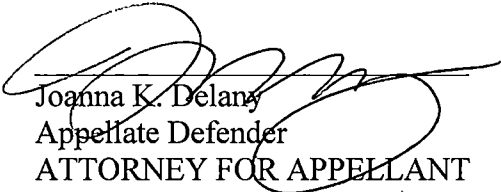
V.

CEDRICT HOPKINS,

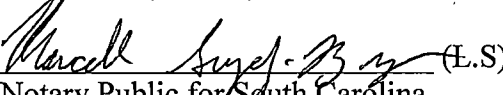
APPELLANT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Matthew Buchanan, Esquire, at the South Carolina Department of Probation, Parole, and Pardon Services, P.O. Box 50666, Columbia, SC 29250; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Cedrick Hopkins, at 3 Aster Street, Columbia, SC 29201, this 17th day of July, 2019.

  
\_\_\_\_\_  
Joanna K. Delany  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 25th day of July, 2019.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: July 26, 2028