

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

George C. James, Jr., Circuit Court Judge

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JUN 06 2012

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ISSAC MCDANIEL,

APPELLANT

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
ARGUMENT.....	5
CONCLUSION.....	6
PETITION TO BE RELIEVED AS COUNSEL.....	7

TABLE OF AUTHORITIES

Cases

State v. McCord, 349 SC 477, 562 S. E. 2d 689 (2002)..... 5

Statutes

S.C. Code Ann. §24-13-40 (Supp. 2001)..... 5

STATEMENT OF ISSUE ON APPEAL

The circuit court judge erred in not giving appellant credit for time served after revoking his probation sentence in the case.

STATEMENT OF THE CASE

Appellant Issac McDaniel was convicted of unlawful neglect of a child during the April 2007 term of the Lexington County General Sessions Court before Judge James R. Barber. Appellant was sentenced to imprisonment for a period of five years, suspended upon the service of two and one half years and three years probation.

On October 21, 2011, appellant appeared at the Lexington County General Sessions Court for a probation revocation hearing held before Judge George C. James. Elizabeth Fullwood represented petitioner at that hearing. Judge James revoked twenty months of appellant's probation sentence.

Appellant appealed his probation revocation. This brief follows.

ARGUMENT

The circuit court judge erred in not giving appellant credit for time served after revoking his probation sentence in the case.

In April 2007, appellant received a South Carolina sentence of imprisonment for a period of five years, suspended upon the service of two and a half years and three years probation. Thereafter, appellant moved to Texas and violated his probation while living there (use of drugs, failing to report and CDV conviction). As a result, appellant served two years prison time in Texas (from 2009 to 2011). Then, on October 2011, appellant was extradited to South Carolina and placed in the Lexington County Detention Center.

During the probation revocation hearing held on October 21, 2011, counsel requested that appellant receive time served credit for the two-year sentence he served in Texas in the event his probation sentence was revoked. Tr. 9 lines 13 – p. 10, l. 2; Tr. 7, l. 19 – p. 8, l. 15. The state argued that appellant maxed out his sentence in Texas on September 28, 2011, and arrived in Lexington on October 5, 2011, and that he should not benefit by receiving credit for time served in Texas. Tr. 9, l. 21 – p. 9, l. 11. The circuit court judge did not give the appellant credit for his time served in Texas. Tr. 10, lines 3 – 14. The time served rule follows:

Section 24-13-40 of the South Carolina Code states in relevant part that: In every case in computing the time served by a prisoner, full credit against the sentence *shall* be given for time served prior to trial and sentencing. Provided, however, that credit for time given: ... (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.
S.C. Code Ann. §24-13-40 (Supp. 2001) (emphasis added).

See also State v. McCord, 349 SC 477, 562 S. E. 2d 689 (2002).

Clearly, appellant should have been given credit for the time he served in Texas when he received his probation revocation sentence. The circuit court judge erred in not giving appellant for time served after revoking his probation sentence.

CONCLUSION

Based on the foregoing argument, appellant's probation revocation sentence should be vacated and his case remanded to the lower court for a new hearing.

Respectfully submitted,

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of June, 2012.

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IN THE COURT OF APPEALS

Appeal from Lexington County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ISSAC MCDANIEL,

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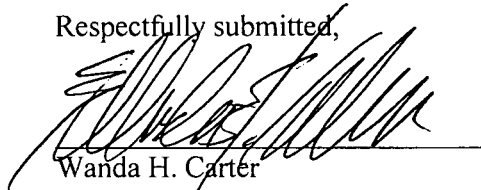
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Issac McDaniel states:

1. She is Deputy Chief 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 George C. James, Jr., which was held on October 21, 2011, 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 Issac McDaniel.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of June, 2012.

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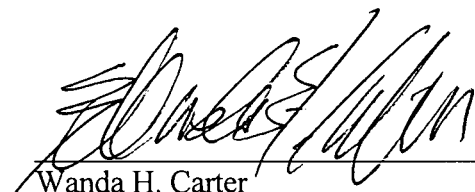
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Probation Revocation Transcript,
- (2) Court's Exhibit #1

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

June 6th, 2012



Wanda H. Carter
Deputy Chief Appellate Defender

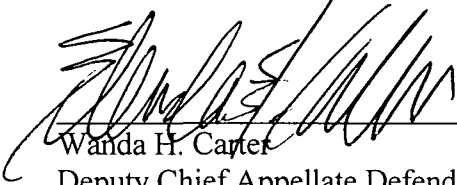
South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

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

June 6th, 2012



Wanda H. Carter
Deputy Chief Appellate Defender

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Columbia, South Carolina 29211-1589

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Appeal from Lexington County

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THE STATE,

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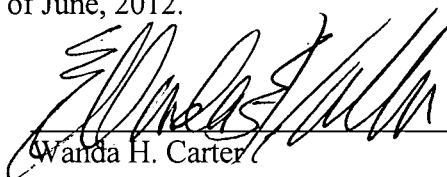
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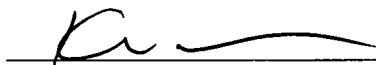
CERTIFICATE OF SERVICE

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 J. Benjamin Aplin, Esquire, at P.O. Box 50666, Columbia, SC; and on Issac McDaniel, #322110 at Kirkland Correctional Institution, this 6th day of June, 2012.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of June, 2012.

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