

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Aiken County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER NEAL MORRIS,

APPELLANT

APPELLATE CASE NO 2019-000853

RECEIVED

JAN 24 2020

ANDERS BRIEF OF APPELLANT

SC Court of Appeals

TAYLOR D GILLIAM
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 probation revocation judge abused his discretion in revoking probation in full, where Appellant was also on probation in Tennessee and requested that probation be revoked for ninety days in order to allow Appellant to enroll in a long-term halfway house program in Tennessee?

STATEMENT OF THE CASE

An Aiken County grand jury indicted Appellant in November 2016 for manufacturing methamphetamine. R. 17 – 18. Following a guilty plea on October 17, 2017, the Honorable Benjamin Culbertson sentenced Appellant to three years' incarceration suspended to three years' probation. On February 21, 2019, an arrest warrant was issued for Appellant based upon the allegation that he violated multiple conditions of his probation, including a recent conviction in Tennessee on a drug-related charge. R. 13.

Appellant appeared before the Honorable R. Lawton McIntosh on May 6, 2019 for a probation revocation hearing. R. 1. Laura McCann represented Appellant; Rachel Watson, an agent with the Department of Probation, Parole and Pardon Services prosecuted the matter on behalf of the state. Judge McIntosh found that Appellant willfully violated the terms of his probation. R. 9, ll. 18 – 24. Petitioner's probation was revoked in full. Id.

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).

ARGUMENT

The probation revocation judge abused his discretion in revoking probation in full, where Appellant was also on probation in Tennessee and requested that probation be revoked for ninety days in order to allow Appellant to enroll in a long-term halfway house program in Tennessee.

Relevant facts

The state contended that Appellant violated his probation in four different ways. R. 13. The arrest warrant suggested that Appellant pleaded guilty in Tennessee on December 3, 2018 to a felony drug charge. Additionally, the arrest warrant claimed Appellant failed to report to his Tennessee probation officer and failed to notify the officer of his change in address. Further, the arrest warrant asserted Appellant failed to pay supervision and drug test fees. Id.

Appellant admitted to violating some of the terms of his probation. R. 3, l. 19 – R. 4, l. 20. He readily admitted that he pleaded guilty to a drug charge in Tennessee and received a four year suspended sentence. Id. However, he contested the contention that he failed to report and failed to notify his probation officer of a change in address. Regarding the former allegation, Appellant stated that he never left the county jail in Tennessee. R. 4, l. 21 – R. 5, l. 2.

Rachel Watson, the agent from DPPPS, indicated that Appellant had absconded following his release from the jail. According to Watson, Appellant was arrested in Oklahoma in February 2019 and had to be extradited to South Carolina. R. 6, ll. 8 – 17. The cost of his extradition was \$1,136; the state requested a restitution order as a result. Id.

Counsel for Appellant noted that Appellant had “clearly violated his probation.” R. 7, ll. 12 – 21. In mitigation, counsel remarked that Appellant had been honest with her from the

beginning. She requested that Judge McIntosh revoke ninety days of his probation, terminate the remainder, and allow Appellant to go to Tennessee to enroll in a long-term halfway house program. R. 8, ll. 7 – 22.

Judge McIntosh found that Appellant had willfully violated his probation based upon the Tennessee conviction, a positive drug test, and the fact that he absconded. R. 9, l. 18 – R. 10, l. 4. As a result, he revoked probation in full. Id. Appellant's fine was reduced to a civil judgment.

Discussion

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). The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation. State v. King, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); State v. Hamilton, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct. App. 1999). “While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice.” White, 218 S.C. at 136, 61 S.E.2d at 756; State v. Allen, 370 S.C. 88, 96, 634 S.E.2d 653, 657 (2006) (“[A] probationer or parolee has a constitutionally protected liberty interest and cannot be denied due process simply because probation has been described as an act of grace.”).

The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation. State v. King, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); State v. Hamilton, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct. App. 1999). “While

probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice.” White, 218 S.C. at 136, 61 S.E.2d at 756.

An appellate court will not reverse the trial court’s decision unless that court abused its discretion. White, 218 S.C. at 135, 61 S.E.2d at 756; Hamilton, 333 S.C. at 647, 511 S.E.2d at 96. “An abuse of discretion occurs when the trial court’s ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.” Allen, 370 S.C. at 94, 634 S.E.2d at 656.

Appellant graduated from Chester County High School in Tennessee in 1999. R. 7, l. 2 – R. 8, l. 22. He was certified to teach and evaluate carpentry and was initially able to maintain employment in the construction industry. However, he was diagnosed with a disease with symptoms similar to narcolepsy; he was therefore unable to pay his fines until he was approved for disability.

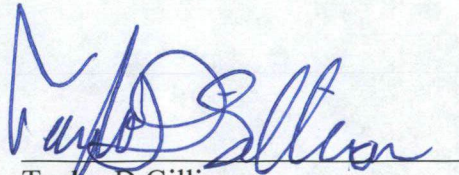
In Nashville, Appellant had a family member—a cousin with a construction business—who understood his illness and was willing to hire Appellant in order to give him an opportunity at improving his life. At the time of his revocation Appellant had shown his ability to complete drug and alcohol rehabilitation. Following the completion of that program in August 2018, he had avoided drugs and alcohol.

Counsel for Appellant advised the probation judge that a halfway house in Nashville was available to house Appellant. One of the conditions of his employment with his cousin was that he live in a sober environment at the halfway house.

Because Appellant contested some of the revocation grounds, he should not have been revoked in full. The probation revocation judge should have considered the opportunity for Appellant in Tennessee and revoked ninety days rather than the full three years such that Appellant could move out of state and improve his life.

CONCLUSION

Based on the foregoing, Appellant requests that this Court reverse the revocation of probation and remand for a new revocation hearing, or grant such other relief as justice may require.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of January, 2020.

STATE OF SOUTH CAROLINA
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Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

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SC Court of Appeals

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Neal Morris 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 R. Lawton McIntosh, which was held on May 6, 2019, 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 Christopher Neal Morris.

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of January, 2020.

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Honorable R. Lawton McIntosh, Circuit Court Judge

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DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

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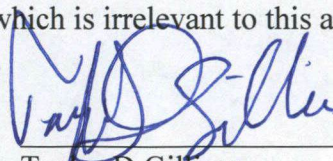
SC Court of Appeals

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

- (1) True-billed indictment(s):
- (2) Probation Revocation Hearing Transcript dated May 6, 2019
- (3) Order Specifying Methods and Conditions of Release
- (4) Arrest Warrant
- (5) Acknowledgement by Defendant
- (6) Civil Judgment

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

January 24, 2020



Taylor D Gilliam
Appellate Defender

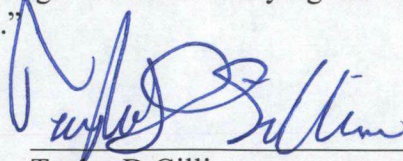
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ATTORNEY FOR APPELLANT

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 24, 2020.



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Appellate Defender

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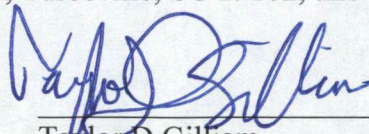
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CERTIFICATE OF SERVICE

The undersigned 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 SCDPPS, PO Box 50666, Columbia, SC 29250; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Christopher Neal Morris, 380098, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 24th day of January, 2020.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of January, 2020.

Marcy Allgire (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.