

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Aug 04 2020
SC Court of Appeals

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOB RYAN ALJOE,

APPELLANT.

APPELLATE CASE NO. 2019-002106

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion by revoking Appellant's community supervision when the state failed to present any evidence Appellant willfully violated the terms and conditions of his supervision?

STATEMENT OF THE CASE

An Anderson County grand jury indicted Appellant on March 17, 2009 for second degree criminal sexual conduct (CSC) with a minor. R. 19-20. On April 22, 2010, Appellant pled guilty as indicted before the Honorable J. Cordell Maddox, Jr. R. 21. He was sentenced to fifteen years suspended upon the service of ten years imprisonment and five years of probation. R. 21.

After being released from incarceration, Appellant was enrolled in a community supervision program. He appeared before the Honorable R. Scott Sprouse on December 16, 2019 for a community supervision violation hearing. R. 1. Agent Benjy Partain appeared on behalf of the Department of Probation, Parole, and Pardon Services (the Department). R. 1. Heather Scalzo represented Appellant. R. 1.

By order filed December 16, 2019, Judge Spouse found Appellant willfully violated the terms and conditions of his community supervision and revoked one year. R. 14, ll. 8-11; R. 18.

This appeal follows.

STANDARD OF REVIEW

“Both the decision of whether an alleged violation was willful and the decision of whether to revoke community supervision are discretionary.” State v. Garrard, 390 S.C. 146, 151, 700 S.E.2d 269, 272 (Ct. App. 2010). “The trial court will not be reversed unless the appellant has shown an abuse of that discretion.” Id. (citing State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006) (applying an abuse of discretion standard of review to the related context of an appeal from an order revoking probation)). “Where there is any evidence to support the court’s factual findings, there is no abuse of discretion.” Id. (citing State v. Allen, 370 S.C. at 94, 634 S.E.2d at 655).

ARGUMENT

The trial judge abused his discretion by revoking Appellant's community supervision since the state failed to present any evidence Appellant willfully violated the terms and conditions of his supervision.

Relevant Facts

Agent Partain claimed Appellant willfully violated the terms and conditions of his community supervision based on several grounds. First, he asserted Appellant failed to provide his current address. On July 10, 2019, Partain conducted a home visit at the address Appellant had provided, which was his mother's residence. R. 5, ll. 2-6. Partain learned from Appellant's mother that Appellant "in the past possibly three or four weeks, he may have stayed at that residence three or four times." R. 5, l. 21 – 6, l. 9. Second, Partain claimed Appellant failed to abide by "the sex offender conditions in regards to social media." R. 5, ll. 6-10. He said Appellant had an active Facebook account under the name Ryan McGrath. Ryan is Appellant's middle name and McGrath is his biological father's last name. R. 6, l. 21 – 7, l. 2. Finally, Partain claimed Appellant failed to pay his fees for drug testing and intensive supervision. R. 5, ll. 10-13.

Appellant denied willfully violating the terms and conditions of his community supervision. R. 7, l. 19 – 8, l. 2. He testified that his mother created the Facebook account after he learned the identity of his biological father and the existence of numerous half siblings. Appellant's mother, Crystal Hatone, verified this information. She testified that she created the account to share pictures of Appellant and family news with his half siblings. Appellant's girlfriend was pregnant and Hatone shared this exciting news with the family. R. 8, l. 24 – 11, l.

20. However, Hatone also admitted that she did not post everything that was posted on the account. R. 13, ll. 12-13.

Appellant's attorney requested the trial judge continue Appellant on community supervision. R. 14, ll. 2-5. However, the judge found the state met its burden and revoked one year. Appellant was given credit for one hundred and fifteen days of pretrial incarceration. R. 14, ll. 8-11. The judge also ordered that "the time served satisfy" Appellant's arrearages. R. 14, ll. 12-18.

Discussion

The trial judge abused his discretion by revoking Appellant's community supervision since the state failed to present any evidence Appellant willfully violated the terms and conditions of his supervision.

"The community supervision program is operated by the South Carolina Department of Probation, Parole and Pardon Services." State v. Garrard, 390 S.C. 146, 149, 700 S.E.2d 269, 271 (Ct. App. 2010) (citing S.C. Code Ann. § 24-21-560(A)&(B)). "When the department determines that a participant has committed a violation warranting revocation, 'a probation agent must initiate a proceeding in General Sessions Court.'" Id. (citing S.C. Code Ann. § 24-21-560(C)). "A circuit judge then 'shall determine whether . . . the prisoner has willfully violated a term of the community supervision program.'" Id. (citing S.C. Code Ann. § 24-21-560(C)(5)).

"Both the decision of whether an alleged violation was willful and the decision of whether to revoke community supervision are discretionary." State v. Garrard, 390 S.C. 146, 151, 700 S.E.2d 269, 272 (Ct. App. 2010). "Where there is any evidence to support the court's

factual findings, there is no abuse of discretion.” Id. (citing State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006)).

The trial judge abused his discretion by finding Appellant willfully violated the terms and conditions of his community supervision. Appellant’s mother admitted she created the Facebook account under Appellant’s middle name and his biological father’s last name. She further admitted that she posted pictures and family news to keep Appellant’s newly discovered half siblings up to date on Appellant’s life. Consequently, it was apparent that Appellant had not violated “the sex offender conditions in regards to social media” since it was his mother who was actively using the Facebook account.

Moreover, the trial judge wholly failed to take evidence concerning Appellant’s alleged violations related to his current address and payment arrearages. It is extremely likely that Appellant’s failure to pay the fees was not willful as he likely struggled to find employment given his background. Moreover, the agent admitted Appellant had clothes at his mother’s residence demonstrating Appellant in fact lived there.

Respectfully, this Court should hold the trial court abused its discretion and reverse its order finding Appellant wilfully violated the terms and conditions of his community supervision.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse the order of the trial court finding Appellant willfully violated the terms and conditions of his community supervision.

Respectfully submitted,

s/ Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of August, 2020.

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Counsel for Jacob Ryan Aljoe states:

1. She is an 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 community supervision revocation hearing, which was held on December 16, 2019 before the Honorable R. Scott Sprouse, 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 (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 Jacob Ryan Aljoe.

Respectfully Submitted,

s/ Lara M. Caudy _____
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of August, 2020.

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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) Complete Hearing Transcript Dated December 16, 2019;
- (2) Violation Report;
- (3) Revocation Order filed December 16, 2019;
- (4) True-Billed Indictment;
- (5) Sentence Sheet.

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

August 4, 2020.

s/ Lara M. Caudy

Appellate Defender

South Carolina Commission on Indigent
Defense

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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.”

August 4, 2020.

s/ Lara M. Caudy
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