STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable William H. Seals, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MIRANDA KAY TAYLOR,

APPELLANT

APPELLATE CASE NO 2019-001267

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in revoking Appellant's probation, where Appellant did not willfully fail to report because she was incarcerated in North Carolina?

STATEMENT OF THE CASE

On a possession of a stolen vehicle charge, Appellant was sentenced to three years' incarceration, suspended upon the service of probation. R. 9-12. Represented by Kia Wilson, Appellant appeared before the Honorable William Seals on July 24, 2019 for a probation revocation hearing. R. 1. The state contended that she failed to comply with a number of her probation guidelines, including failure to report, failure to work diligently at a lawful occupation, failure to pay supervision fee, failure to notify agent before leaving South Carolina, failure to pay court fee, and failure to follow the advice and instructions of the agent. R. 8. The arrest warrant indicated that Appellant was incarcerated in Stokes County, North Carolina in November 2018.

According to Appellant's counsel, she accepted the negotiations and agreed to an eighteen-month revocation and termination thereafter. R. 3, l. 6 – R. 4, l. 3. The probation revocation judge agreed and sentenced Appellant to eighteen months' incarceration.

This appeal follows.

STANDARD OF REVIEW

The decision to revoke probation is addressed to the discretion of the circuit judge. State v. White, 218 S.C. 130, 135–6, 61 S.E.2d 754, 756 (1950); Sanders v. MacDougall, 244 S.C. 160, 164, 135 S.E.2d 836, 837 (1964); State v. Miller, 122 S.C. 468, 475, 115 S.E. 742, 745 (1923). This court's authority to review such a decision 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. White at 135–6, 61 S.E.2d at 756; State v. Archie, 322 S.C. 135, 137–8, 470 S.E.2d 380, 381 (Ct.App.1996).

ARGUMENT

The circuit court erred in revoking Appellant's probation, where Appellant did not willfully fail to report because she was incarcerated in North Carolina.

Relevant facts

At the probation revocation hearing, an unnamed probation officer contended that Appellant had neither reported as required nor paid her fees. R. 3, ll. 6 – 12. The probation officer indicated that an eighteen-month revocation and termination thereafter was negotiated, seemingly with Appellant's counsel. Id. Counsel for Appellant offered the following regarding Appellant and another individual she was representing at the time:

> I've discussed with them what their potential revocation sentence would be for the hearing. I've spoken to probation and they've graciously made recommendations for what they would be willing to agree to, and my clients have both accepted those, and we're asking the Court to impose those respective sentences of [eighteen months for Appellant].

R. 3, l. 19 – R. 4, l. 2. The probation revocation judge agreed to the recommendation and ordered accordingly. R. 4, l. 3.

Discussion

Probation is a matter of grace; revocation is the means to enforce the conditions of probation. State v. McCray, 222 S.C. 391, 396, 73 S.E.2d 1, 3 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950). However, the authority of the revoking court should always be predicated upon an evidentiary showing of fact tending to establish a violation of the conditions. White, at 135, 61 S.E.2d at 756; State v. Miller, 122 S.C. 468, 475, 115 S.E. 742, 745 (1923). Thus, before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions.

The revocation of probation or parole is not a stage of criminal prosecution. However, 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. Morrissey v. Brewer, 408 U.S. 471, 480–90, 92 S.Ct. 2593, 2600–05, 33 L.Ed.2d 484 (1972) (holding that minimum requirements of due process in parole revocation proceeding include "(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole"); Gagnon v. Scarpelli, 411 U.S. 778, 782, 93 S.Ct. 1756, 1760, 36 L.Ed.2d 656 (1973) (holding that "a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in Morrissey"); State v. Riddle, 277 S.C. 110, 282 S.E.2d 863 (1981) (reversing probation revocation and remanding for hearing consistent with guidelines set forth in Morrissey and Gagnon). "It is an essential component of due process that individuals be given fair warning of those acts which may lead to a loss of liberty. This is no less true whether the loss of liberty arises from a criminal conviction or the revocation of probation.... [W]here the proscribed acts are not criminal, due process mandates that [a probationer or parolee] cannot be subjected to forfeiture of his liberty for those acts unless he is given prior fair warning." U.S. v. Dane, 570 F.2d 840, 843–44 (9th Cir.1977) (citing Tiitsman v. Black, 536 F.2d 678 (6th Cir.1976)).

Although the arrest warrant suggested that Appellant violated her probation in more ways than the two elicited at the revocation hearing, the probation officer did not pursue those alleged violations. R. 6. Therefore, the additional alleged violations were unproven and abandoned. Proceeding on just the two discussed at the hearing—failure to report and failure to pay—the state failed to prove that the violations were willful.

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 (1989). 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. "This court's authority to review such a decision 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." Hamilton, 333 S.C. at 647, 511 S.E.2d at 96.

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. Fontaine v. Peitz, 291 S.C. 536, 539, 354 S.E.2d 565, 566 (1987).

The state failed to offer sufficient evidence that Appellant violated her probation. As such, the decision to revoke was in error.

CONCLUSION

Based on the foregoing, Appellant respectfully requests that the probation revocation decision be reversed.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of August, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Miranda Kay Taylor 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 William H. Seals, which was held on July 24, 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 Miranda Kay Taylor.

Respectfully Submitted,

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

This 19th 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) True-billed indictment(s);
(2) Probation revocation transcript dated July 24, 2019;
(3) Arrest warrants; and
(4) Sentencing sheet.

I certify that this designation contains no matter which is irrelevant to this appeal.
August 19, 2020

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

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ATTORNEY FOR APPELLANT

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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 19, 2020.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

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