

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**Dec 07 2020**

**SC Court of Appeals**

\_\_\_\_\_  
Appeal from Berkeley County

Honorable Roger M. Young, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

ANTHONY HOULK CRAVEN,

APPELLANT

APPELLATE CASE NO 2020-000777  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

JESSICA M. SAXON  
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 lower court erred in revoking Appellant’s probation where the circuit court judge did not determine on the record that there was sufficient evidence to establish that Appellant had violated the terms of his probation. ....4

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL .....9

**TABLE OF AUTHORITIES**

**South Carolina Cases**

Gandy v. Gandy, 297 S.C. 411, 377 S.E.2d 312 (1989)..... 6

In re Treatment and Care of Luckabaugh; 351 S.C. 122, 568 S.E.2d 338 (2002)..... 6

Property Owners Group v. Public Service Com’n of South Carolina, 338 S.C. 92, 525 S.E.2d 863  
(1999)..... 6

State v. Allen, 370 S.C. 88, 634 S.E.2d 653 (2006) ..... 3

State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)..... 3, 5, 6

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

State v. White, 218 S.C. 130, 61 S.E.2d 754 (1950)..... 5

Timothy C. Doughtie Advertising, Inc. v. Nelsen Steel and Wire Co., Inc. 384 S.C. 27, 324  
S.E.2d 329 (Ct. App. 1984)..... 6

**STATEMENT OF ISSUE ON APPEAL**

Whether the lower court erred in revoking Appellant's probation where the circuit court judge did not determine on the record that there was sufficient evidence to establish that Appellant had violated the terms of his probation?

## STATEMENT OF THE CASE

On July 19, 2016, Appellant was arrested in Charleston County and charged with Burglary second degree (non-violent). R. 17-18. Appellant appeared before the Honorable R. Markley Dennis, Jr. to enter a guilty plea as charged on January 18, 2017. R. 19. Appellant was sentenced to a term of imprisonment for ten years suspended upon the service of five years and four years of probation. R. 7, ll. 14-16; R. 19.

On November 24, 2019, Appellant was arrested for receiving stolen goods, third or subsequent property crime. R. 21-22. Appellant was served with a probation violation citation on April 28, 2020. R. 23. That same day Appellant appeared before the Honorable Roger Young to enter a guilty plea to the receiving stolen goods charge and to address the probation violation citation. R. 1; R. 4, ll. 10-14; R. 7, l. 10. The state was represented by Julie Rochester and Appellant was represented by David Schwacke. R. 2.

Appellant was sentenced to ninety days, credit for time served, on the receiving stolen goods charge. R. 14, ll. 13-15; R. 20. Appellant's probation was revoked for two years and terminated, to run concurrent with the receiving stolen goods charge, with credit for time served. R. 14, ll. 15-24; R. 25.

## **STANDARD OF REVIEW**

The determination of whether or not to revoke probation is within the trial court's discretion. 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. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006). 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 lower court erred in revoking Appellant's probation where the circuit court judge did not determine on the record that there was sufficient evidence to establish that Appellant had violated the terms of his probation.

### **Relevant Facts**

Appellant was released from SCDC and placed on probation on January 2, 2019. R. 7, ll. 13-14. On November 24, 2019, law enforcement was patrolling the Foxborough subdivision of Berkley County, South Carolina, when they observed a vehicle parked in an intersection with its bright lights on. R. 10, ll. 21-25. Appellant was the driver and sole occupant of the vehicle. A check of the license plate revealed that it was stolen. R. 11, ll. 1-7. Appellant was subsequently arrested and charged with receiving stolen goods.

On April 28, 2020, Appellant appeared via videoconference to waive presentment on the receiving stolen goods charge and enter a guilty plea. R. 1; R. 4, l. 15-R. 5, l.1. He was also served with a probation citation alleging he had violated "conditions 6, 7, 9 and 10" of his probation. R. 23. In the accompanying affidavit, probation stated that Appellant had violated his probation by "failing to follow the advice and instructions of the agent, by failing to report, by failing to pay all monies ordered in the original probation case, and by being convicted of new charges in Charleston County General Sessions court." R. 24.

According to Counsel Schwacke, Appellant always reported as required, including times where he reported but his probation agent was not available, until he was re-arrested. R. 12, l. 22-R. 13, l. 1. Appellant stated that he never failed to report prior to being re-arrested. R. 13, ll. 18-21. The trial court sentenced Appellant to time served on the receiving stolen goods charge and revoked Appellant's probation for two years, terminating any further supervision. R. 14, ll.

13-17. At no point during the hearing did the trial court make any findings on the record. This including failing to find that a substantial basis existed for the plea and failing to find that there was evidence sufficient to revoke Appellant's probation. On the Form 9 order Appellant was found to have violated conditions 6, 7, 9 and 10 of his probation. R. 25.

### **Discussion**

According to the Form 9 order, Appellant's probation was revoked on four grounds: 1) failure to follow the advice and instructions of the agent, 2) failure to report, 3) failure to pay all monies ordered in the original probation case, and 4) being convicted of new charges in Charleston County General Sessions court. However, prior to revoking Appellant's probation, the trial court made no factual findings or determinations on the record that a sufficient factual basis existed to support the revocation of probation. Respectfully, this was an error of law that necessitates reversal.

Appellate courts only sit to consider errors of law in relation to probation revocations and "[a] finding of fact by the court of general sessions as to a breach of the conditions of a suspended sentence is final." State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950). Therefore, "before revoking probation, the circuit judge *must determine* if there is sufficient evidence to establish that the probationer has violated his probation conditions." State v. Hamilton, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct. App. 1999) (emphasis added). "[T]he authority of the court of general sessions to revoke such suspension of sentence *should always be predicted upon an evidentiary showing of fact tending to establish violations* of the conditions." White at 135, 61 S.E.2d at 756 (1950) (emphasis added).

The requirement that a lower court make findings of fact and determinations on the record to support its legal conclusions is well settled in South Carolina jurisprudence. See e.g.,

Timothy C. Doughtie Advertising, Inc. v. Nelsen Steel and Wire Co., Inc. 384 S.C. 27, 324 S.E.2d 329 (Ct. App. 1984) (holding remand proper where the trial judge failed to set forth any findings of fact to support its legal conclusions, thereby precluding review by appellate courts); Gandy v. Gandy, 297 S.C. 411, 377 S.E.2d 312 (1989) (finding remand proper where trial judge failed to make any specific findings regarding the character, fitness, attitude and inclinations of the parents in a custody proceeding); Kiawah Property Owners Group v. Public Service Com'n of South Carolina, 338 S.C. 92, 525 S.E.2d 863 (1999) (ordering remand where an administrative body failed to make findings sufficiently detailed to enable a reviewing court to determine whether the findings were supported by the evidence and whether the law had been applied properly to those findings); In re Treatment and Care of Luckabaugh; 351 S.C. 122, 568 S.E.2d 338 (2002) (holding a new commitment hearing was required where the trial court order did not contain any facts to support its legal conclusions).

As stated in Luckabaugh, “[w]e do not require a lower court to set out findings on all the myriad factual questions arising in a particular case. But *the findings must be sufficient to allow this Court, sitting in its appellate capacity, to ensure the law is faithfully executed below.* The absence of factual findings makes our task of reviewing the court order impossible because the reasons underlying the decision [are] left to speculation.” Luckabaugh at 133, 568 S.E.2d at 343 (2002) (internal citations and quotations removed) (emphasis added). In the context of a probation revocation, a circuit judge is not required to make a finding that a violation of probation was willful unless the case involves the failure to pay fines or restitution. Then a circuit judge must, *in addition to finding sufficient factual evidence of the violation*, make an additional finding of willfulness. See Hamilton at 649; 511 S.E.2d at 97 (emphasis added).

The lower court did not make any factual findings during Appellant's plea hearing and probation revocation. While the Form 9 stated that Appellant violated four conditions of his probation, there is nothing in the record to support that conclusion. Probation only stated that Appellant had "not done well" on supervision without further elaborating on the alleged violations. Counsel for Appellant directly contradicted the alleged failure to report and there was no finding of willfulness for failure to pay nor were there any details about how much Appellant was allegedly in arrears.

Admittedly, Appellant did enter a guilty plea to new charges. However, the lower court failed to make a finding that the plea was supported by a factual basis and was knowingly and voluntarily entered. With the record being devoid of factual findings, this court can only speculate as to the reasons Appellant's probation was revoked. Thus, the failure to make the required findings necessitates that Appellant's probation revocation be reversed and remanded to the lower court for a new hearing.

**CONCLUSION**

Based on the foregoing, Appellant's probation revocation should be reversed, and the case remanded for a new probation revocation hearing.

s/Jessica M. Saxon  
Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of December, 2020.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**Dec 07 2020**

**SC Court of Appeals**

\_\_\_\_\_  
Appeal from Berkeley County

Honorable Roger M. Young, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

ANTHONY HOULK CRAVEN,

APPELLANT

\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Anthony Houlk Craven states:

1. She is 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 Roger M. Young, which was held on April 28, 2020, 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 Anthony Houlk Craven.

Respectfully Submitted,

s/Jessica M. Saxon  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 7th day of December, 2020.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

Dec 07 2020

SC Court of Appeals

Appeal from Berkeley County  
Honorable Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY HOULK CRAVEN,

APPELLANT

**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) and Sentence Sheets:
- (2) Transcript of Probation Revocation Hearing dated April 28, 2020
- (3) Probation Citation
- (4) Probation Affidavit
- (5) Form 9 Order

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

December 7, 2020

s/Jessica M. Saxon  
Jessica M. Saxon  
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

**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.”

December 7, 2020.

s/Jessica M. Saxon  
Jessica M. Saxon  
Appellate Defender

**RECEIVED**  
**Dec 07 2020**  
**SC Court of Appeals**

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

ATTORNEY FOR APPELLANT