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ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable L. Casey Manning, Circuit Court Judge

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SEP 19 2019

SC Court of Appeals
RESPONDENT,

THE STATE,

V.

CEDRICT HOPKINS,

APPELLANT

APPELLATE CASE NO. 2018-002060

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred when it revoked appellant's probation where the probation violation citation was only issued after appellant's term of probation had expired, since a citation must be issued during the term of probation to confer revocation authority on the court?

STATEMENT OF THE CASE

On April 12, 2013, a Richland County Grand Jury indicted appellant for the offenses of burglary in the first degree and burglary in the second degree. R. 18 – 21. On June 6, 2013, appellant appeared before the Honorable DeAndrea Benjamin and pleaded guilty as indicted to second degree burglary and he pleaded guilty to another count of second degree burglary as a lesser-included offense. R. 22 – 23. Appellant was represented by undersigned counsel and the state was represented by Saquisha Tobin. R. 22 – 23.

The court sentenced appellant pursuant to the Youthful Offender Act (YOA) to concurrent sentences not to exceed six years suspended upon the service of three years of probation. R. 22 – 23.

On September 23, 2016, appellant appeared before the Honorable Frank Addy, Jr. for a probation revocation hearing. R. 11 – 12. The court continued appellant on probation but extended his probation by two years. R. 11 – 12.

On October 19, 2018, appellant appeared before the Honorable Casey L. Manning for a probation revocation hearing. R. 1. Alice Phillips represented appellant, and Shree Duckett appeared on behalf of the South Carolina Department of Probation, Parole, and Pardon Services (SCDPPPS). R. 1. The court revoked appellant's YOA sentence and terminated his probation. R. 4, ll. 16-18.

On October 26, 2018, defense counsel filed a motion to reconsider the sentence. R. 6 – 8. On November 8, 2018, the court issued an order denying appellant's motion to reconsider the sentence. R. 9 – 10.

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). 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.

ARGUMENT

The court erred when it revoked appellant's probation where a probation violation citation was only issued after appellant's term of probation had expired, since a citation must be issued during the term of probation to confer revocation authority on the court.

Appellant's probationary term had ended when the probation violation citation was issued and when the court revoked his probation. Therefore, the court was without authority to revoke appellant's probation.

Relevant facts

On June 6, 2013, appellant was sentenced pursuant to the Youthful Offender Act¹ to a term not to exceed six years, but that sentence was suspended upon the service of three years' probation. R. 22 – 23. On September 23, 2016, appellant's probation was extended by two years, for a total of five years' probation. R. 11 – 12. Therefore, his probationary term ended on June 6, 2018—five years from his original sentencing date.

Nevertheless, on August 3, 2018, after the expiration of appellant's probation, a probation agent signed an affidavit and alleged that appellant violated his probation by, inter alia, failing a drug test and being in arrears financially. R. 16 – 17. On August 8, 2018, SCDPPPS issued the accompanying citation. R. 16 – 17.

When the circuit court subsequently revoked appellant's probation on October 19, 2018, it was without the authority to do so, since appellant was no longer on probation at the time of the revocation hearing nor was he on probation when the violation citation was filed. Defense counsel timely brought this issue to the court's attention by filing a motion to reconsider. R. 6 – 8. Counsel correctly argued that appellant's probationary period had already ended when the

¹ See S.C. Code Ann. § 24-19-10.

agent filed a violation citation. Counsel noted that probation was statutorily limited to a maximum term of five years, and that the five year term in appellant's case ended on June 6, 2018. Counsel explained,

Pursuant to S.C. Code Ann. § 24-21-440, [appellant's] probation was required to terminate no later than June 6, 2018, five (5) years after he was originally sentenced to probation. His period of probation could not exceed five years and could only be continued or extended within that five year limit . . . Probation Agent Duckett issued her recent probation warrant on August 3, 2018, almost two months after that statutory expiration date.

R. 7. Counsel cited S.C. Code Ann. § 24-21-450 and noted that per statute, "in the absence of the timely issuance of [a] warrant, the court is without authority to revoke the probation after the probationary period has passed . . ." R. 7.

The court denied the motion to reconsider in a written order. R. 9 – 10. The court wrote that despite "[h]aving fully considered [appellant's] request" it found "the sentence imposed [wa]s not improper or excessive." R. 10. The order also stated that per SCDPPPS, appellant's probation "was extended two years from the date of [the September 23, 2016] probation hearing." R. 9.

Discussion

S.C. Code Ann. § 24-21-300 provides in relevant part that, "At any time **during a period of supervision**, a probation agent, instead of issuing a warrant, may issue a written citation and affidavit setting forth that the probationer . . . in the agent's judgment violates the conditions of his release or suspended sentence." (emphasis added).

In *State v. Ellis*, 397 S.C. 576, 581, 726 S.E.2d 5, 8 (2012), the South Carolina Supreme Court explained, "Circuit courts gain the authority to revoke a defendant's probation through the issuance of a probation revocation warrant pursuant to section 24-21-450 of the South Carolina

Code or through the use of a citation and affidavit in lieu of a warrant pursuant to section 24-21-300 of the South Carolina Code.” *Accord State v. Felder*, 313 S.C. 55, 437 S.E.2d 42 (1993). Here, because the citation was not issued during a period of supervision, but instead was issued after supervision had ended, the court was without authority to revoke appellant’s probation.

In *State v. Crouch*, 355 S.C. 355, 360, 585 S.E.2d 288, 291 (2003), the South Carolina Supreme Court found that a probation arrest warrant was a nullity since it was not issued during the time of probation. Similarly, in *State v. Hutto*, 252 S.C. 36, 46, 165 S.E.2d 72, 77 (1968), the South Carolina Supreme Court concluded that absent a warrant issued during the probationary period, the order of revocation was void. However, *Crouch* and *Hutto* were decided before *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005), and spoke in terms of whether the circuit court had “jurisdiction” to revoke. In *Ellis*, 397 S.C. at 581, 726 S.E.2d at 8, the South Carolina Supreme Court noted that while the “circuit court clearly has subject matter jurisdiction to adjudicate probation violation revocations . . .” the issuance of a citation or warrant “confer[s] authority on those courts already in possession of jurisdiction.”² The salient inquiry is thus whether the court possessed the authority to revoke and not whether the court had jurisdiction.

Defense counsel correctly argued in her motion to reconsider that the revocation was improper because appellant’s probationary period had ended before the agent filed a probation violation citation. Appellant’s probation was only for a term of five years, and that term had expired when the agent filed the citation. Appellant’s probationary term was limited to five years

² In *Gentry*, 363 S.C. at 100, 610 S.E.2d at 498, the South Carolina Supreme Court explained that “subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong . . .” “Circuit courts obviously have subject matter jurisdiction to try criminal matters.” *Id.* at 101, 610 S.E.2d at 499. Appellant recognizes that the circuit court here had subject matter jurisdiction to adjudicate probation violation revocations. Critically, however, the circuit court lacked the authority to revoke appellant’s probation since the citation was not issued during the probationary period.

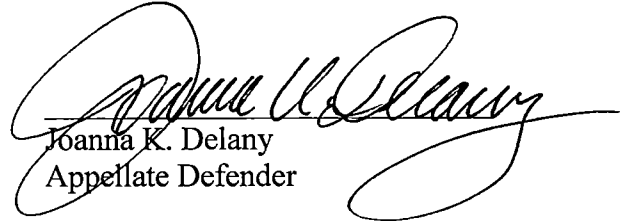
by the prior rulings of the court—a three year term of probation was originally imposed by Judge Benjamin and an additional two year term of probation was imposed by Judge Addy. Judge Addy’s extension of appellant’s probation was by two years—giving appellant a total of five years’ probation. Therefore, appellant’s probation ended five years after it was originally imposed: it was imposed on June 6, 2013 and ended on June 6, 2018.

Additionally, probation is limited by statute to no more than a five year period. S.C. Code Ann. § 24-21-440 provides, “The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended within the above limit.” *Accord State v. Sumpter*, 334 S.C. 369, 513 S.E.2d 373 (Ct. App. 1999). Therefore, by statute, appellant’s probationary period had ended before the violation citation was issued.

The court erred when it revoked appellant’s probation, where the revocation was premised on a citation that was issued after appellant’s probation ended. Because the citation was issued after appellant’s probation had expired, the court was without authority to revoke appellant’s probation. This Court should reverse.

CONCLUSION

Based on the foregoing argument, this Court should reverse the decision of the circuit court and vacate the order revoking probation.



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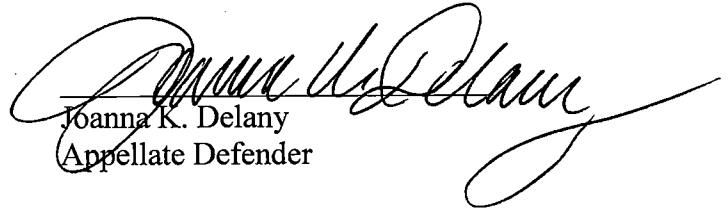
ATTORNEY FOR APPELLANT

This 19th day of September, 2019.

CERTIFICATE OF COUNSEL

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

September 19, 2019.



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