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Jun 24 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY WILLIAM PYLE,

APPELLANT

APPELLATE CASE NO. 2020-001484

ANDERS BRIEF OF APPELLANT

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 circuit court erred in revoking Appellant's probation?

STATEMENT OF THE CASE

Appellant was indicted in Greenville County in April 2019 for possession of methamphetamine. R. 14 – 15. According to the sentence sheet, he pleaded guilty and received a sentence of five years, suspended to two years' probation. R. 16. He was also indicted in 2019 for leaving the scene of an accident with property damage. R. 17 – 18. He received a sentence of one year, suspended to probation. R. 19.

On October 23, 2020, he appeared before the Honorable Edward W. Miller for a probation revocation hearing. R. 1. He was represented by John Shipman; a probation agent appeared on behalf of the Department of Probation, Parole, and Pardon Services.

Judge Miller revoked eighteen months' probation and terminated.¹ R. 5, ll. 15 – 16. This disposition was reflected in the two orders signed by Judge Miller at the conclusion of the hearing. R. 12 – 13.

This appeal follows.

¹ Appellant originally received a suspended one-year sentence on the leaving the scene charge (19-GS-23-07486). The resulting revocation would have required him to serve eighteen months, a lengthier sentence than he originally received. Based on representations from opposing counsel, and upon information and belief, the South Carolina Department of Corrections caught the discrepancy. The undersigned believes Appellant was only required to serve one year on the leaving the scene charge following revocation.

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.

Relevant facts

At the outset of the probation revocation hearing Appellant admitted to absconding, in violation of the terms of his probation. R. 4, ll. 7 – 14. When asked by the revocation judge if he had a legal reason to excuse the absconding, Appellant answered in the negative. R. 4, ll. 15 – 17. The revocation judge found him in willful violation.

Counsel for Appellant requested a time-served revocation of forty-five days. R. 4, l. 20 – 5, l. 5. The probation agent responded that this was Appellant's "third probation case" and remarked on Appellant's prior record. R. 5, ll. 8 – 14.

Judge Miller revoked eighteen months and terminated probation. R. 5, ll. 15 – 16. No objections were made during the short hearing.

Discussion

Probation is a matter of judicial grace, and revocation is committed to the sound discretion of the trial court. S.C. Code §§ 24-21-450, *et. seq.*; State v. Lee, 350 S.C. 125, 564 S.E.2d 372 (Ct. App. 2002); State v. White, 218 S.C. 130, 61 S.E.2d 754 (1950). Nevertheless, a circuit court should not order revocation unless "predicated upon an evidentiary showing of fact tending to establish violations of conditions." *Id.*; State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (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 (1989). The trial court must determine whether the State has presented sufficient

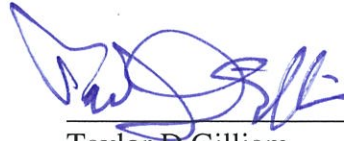
evidence to establish that a probationer has violated the conditions of his probation. State v. King, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); State v Hamilton, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct. App. 1999). “While probation is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

Appellant admitted to absconding. Nonetheless, the circuit court judge erred in revoking eighteen months, where Appellant was cooperating with his probation agent by appearing for the revocation hearing.

CONCLUSION

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



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of June, 2021.

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IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

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TIMOTHY WILLIAM PYLE,

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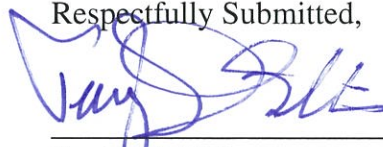
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy William Pyle 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 Edward W. Miller, which was held on October 23, 2020, 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 Timothy William Pyle.

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

This 24th day of June, 2021.

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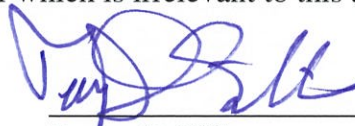
APPELLANT

**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) Parole violation hearing transcript dated October 23, 2020;
- (3) Violation report;
- (4) Arrest warrant; and
- (5) Two orders following probation revocation.

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



Taylor D Gilliam
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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."



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June 24, 2021.