

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY
Court of General Sessions
The Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2018-000564
Case Nos. 2012-GS-23-07504,07507

Appellate Case No. 2021-000873

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S.C. SUPREME COURT

THE STATE, RESPONDENT

v.

GEORGE CLEVELAND, III, PETITIONER

RETURN TO PETITION FOR WRIT OF CERTIORARI

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General Counsel**

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STATEMENT OF THE CASE

On or about May 7, 2012, in Greenville County, the Petitioner George Cleveland III was found to be in possession of stolen vehicles. He was subsequently charged for receiving, possessing, concealing, selling, or disposing of a stolen vehicle valued more than \$10,000, and an additional charge for a vehicle valued more than \$2,000 but less than \$10,000, both in violation of S.C. Code §16-21-80. He was also charged with two counts of removing or falsifying a Vehicle Identification Number with the intent to conceal its identity, and obtaining signature or property under false pretenses of a value more than \$2,000 but less than \$10,000.

On November 5, 2013, the Petitioner appeared before the Honorable Judge Edward W. Miller in Greenville County General Sessions Court. He received five years incarceration on all counts except for possessing, concealing, selling, or disposing of a stolen vehicle valued at more than \$10,000, for which he received ten years provided on the service of six years, with the balance suspended upon five years probation.

On October 13, 2014, the Petitioner in Oconee County pled to three additional offenses related to possession of stolen vehicles and altering VINs, receiving five years suspended to five years probation, consecutive to the Greenville County charges.

In the probation cases, the court also issued an order of restitution for \$11,300.00 as a special condition.

The Petitioner was released from the Department of Corrections and started his probation on April 3, 2017. The Petitioner fell behind in his payments of restitution and was brought to court for a violation hearing before the Honorable Judge Lawton McIntosh on February 23, 2018. Judge McIntosh found the Petitioner to be in willful violation for not paying his restitution and revoked

him for ninety days and continued him on probation. The Petitioner subsequently filed a motion for reconsideration on March 11, 2018, which was denied on March 22.

The Petitioner then appealed the court's revocation, alleging that the court lacked subject matter jurisdiction to hear the probation matter, as well as that the court did not have the authority to revoke for failure to pay restitution under the South Carolina Constitution. The Court of Appeals dismissed these arguments in Opinion No. 2021-UP-121, holding that the circuit court had not abused its discretion when it found Petitioner had found he had failed to make a bona fide effort to pay. Furthermore, the Court of Appeals found Petitioner's argument that the circuit court lacked subject matter jurisdiction due to federal law to be without merit. Petitioner filed a motion for reconsideration, with the Court of Appeals denied on July 14, 2021.

Petitioner now requests this Court grant certiorari, arguing the same issues ruled upon by the Court of Appeals. The Respondent herein respectfully requests this Court deny the petition for certiorari, because there are no appealable issues in the Court of Appeals' decision.

ARGUMENT

1. The General Sessions court had jurisdiction to hear the probation violation and impose a revocation of ninety days.

The Petitioner again claims that because the vehicles at issue in his arrest and subsequent conviction were from a dealership located in Georgia, then federal law is implicated. He cites the United States Code which prohibits knowingly transporting stolen vehicles in interstate commerce (18 U.S.C.A. § 2312, "Whoever transports in interstate or foreign commerce a motor vehicle, vessel, or aircraft, knowing the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both."). Because there is a federal law prohibiting an act the Petitioner apparently committed, he argues that the Court of General Sessions lacked subject matter jurisdiction to hear his probation violation.

As the Court of Appeals found, this argument is without merit. The federal law prohibits the *transport* of stolen vehicles in interstate commerce. South Carolina’s law for which the Petitioner was convicted prohibited knowingly receiving, possessing, concealing, selling or disposing of a stolen vehicle, which occurred in Greenville County, South Carolina. Rather than being concerned with the stolen vehicle’s movement across state lines, South Carolina’s law found in §16-21-80 simply prohibits knowingly possessing, selling or disposing of a stolen vehicle.¹

While it is entirely possible that – based on the means the Petitioner obtained the stolen vehicle from the Georgia dealership – the Petitioner violated 18 U.S.C.A. § 2312, that is entirely irrelevant to the matter that was before Judge McIntosh on February 23, 2018.

The Petitioner was convicted by plea to possessing, selling, or disposing of a stolen vehicle valued at \$10,000 or more, pursuant to South Carolina law. This occurred in the County of Greenville in Court of General Sessions. The Petitioner was sentenced in state court to a state sentence under state law.

The Petitioner was brought to court based on a probation citation for the nonpayment of financial obligations – notably restitution. As required in S.C. Code §17-25-322(C), the “department, through its agents, must initiate legal process to bring every probation, whose restitution is six months in arrears, back to court, regardless of willful failure to pay. The judge shall make an order addressing the probationer’s failure to pay.”

¹ S.C. Code §16-21-80: A person not entitled to the possession of a vehicle who receives, possesses, conceals, sells, or disposes of it, knowing it to be stolen or converted under circumstances constituting a crime, is guilty of a:
(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the vehicle is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both;
(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the value of the vehicle is more than two thousand dollars but less than ten thousand dollars;
(3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the value of the vehicle is ten thousand dollars or more.

“Subject matter jurisdiction to revoke an individual’s probation is conferred on the General Sessions Court by either the issuance of a probation violation warrant or the issuance of a probation violation citation and affidavit in lieu of a warrant.” *State v. Lee*, 350 S.C. 125, 132, 564 S.E.2d 372, 376 (Ct. App. 2002) (citing *State v. Felder*, 313 S.C. 55, 437 S.E.2d 42 (1993) and *State v. Hutto*, 252 S.C. 36, 165 S.E.2d 72 (1968)).

In this case, probation agents issued a citation because the Petitioner had not paid restitution or other financial obligations. Therefore, the Court of Appeals appropriately determined the circuit court had subject matter jurisdiction to hear the Petitioner’s probation violation.

2. The General Sessions court did not abuse its discretion when it imposed a revocation for willful failure to pay.

The Petitioner continues to argue that the South Carolina Constitution prohibits imprisonment for debt, which the Court of Appeals ignored when it upheld the circuit court’s decision to revoke him for nonpayment of restitution.

The Petitioner mischaracterizes what the judge did when he revoked ninety days of his suspended sentence. The Petitioner was not imprisoned for having a debt of restitution, as he asserts. Instead, Judge McIntosh found the Petitioner to have willfully refused to pay his court-ordered obligation to make restitution for his criminal convictions.

The decision to revoke probation is in the sound discretion of the circuit judge. *State v. White*, 218 S.C. 130, 135-6, 61 S.E.2d 754, 756 (1950). The Court of Appeals’ authority to review the lower court’s decision is limited to correcting errors of law, or in determining whether a lack of legal or evidentiary basis indicates the circuit judge’s decision was arbitrary and capricious. *Id.*

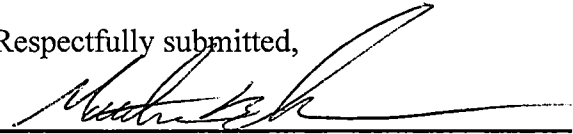
“[A] court may not revoke probation solely on the basis of the failure to pay money unless the court makes certain findings of fact regarding the willfulness of the failure to pay.” *State v. Coker*, 397 S.C. 244, 245, 723 S.E.2d 619, 620 (Ct.App. 2012). As the Court of Appeals

found, the trial court did, however, make a finding of willful failure to pay. Therefore, Petitioner's reliance on *State v. Spare*, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007) is misplaced. In *Spare*, the case was remanded because the circuit court made no finding, while Judge McIntosh did. Consequently, there was no abuse of discretion or violation of the South Carolina Constitution in the revocation for Petitioner's willful refusal to pay restitution.

CONCLUSION

There was no error by the Court of Appeals in its opinion upholding the circuit court's subject matter jurisdiction and its exercise of discretion in revoking Petitioner for a willful failure to pay restitution. Therefore, this Court should decline to issue certiorari.

Respectfully submitted,



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