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Mar 28 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AARON CHARLES CLOUSE,

APPELLANT.

APPELLATE CASE NO. 2021-001079

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
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

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STATEMENT OF ISSUE ON APPEAL

Did the probation revocation judge abuse his discretion by revoking Appellant's suspended sentence and ordering him to serve three years, the remainder of his original sentence for possession of methamphetamine, and five years, the remainder of his original sentence for possession with intent to distribute methamphetamine since, despite admitting he willfully violated the terms of his probation, Appellant had been "clean" for seven months, had steady employment as a mechanic, was up to date on his supervision fees, and had maintained stable housing?

STATEMENT OF THE CASE

An Abbeville Grand Jury indicted Appellant on October 23, 2015 for possession with intent to distribute methamphetamine. R. 15-16. On May 25, 2016, Appellant pled guilty to the lesser included offense of possession of methamphetamine before the Honorable R. Scott Sprouse. R. 19. Appellant was sentenced to three years' imprisonment suspended upon the service of five years' probation. R. 19.

An Anderson County Grand Jury indicted Appellant on February 18, 2020 for possession with intent to distribute methamphetamine. R. 17-18. On March 3, 2020, Appellant pled guilty as indicted before the Honorable R. Scott Sprouse. R. 20. He was sentenced to five years' imprisonment suspended upon the service of three years' probation. R. 20.

On September 10, 2021, Appellant appeared before the Honorable R. Lawton McIntosh for a probation violation hearing. R. 1. Agent Jerry Edge appeared on behalf of the Department of Probation, Parole, and Pardon Services (the Department). R. 1. Matthew C. Bradley represented Appellant. R. 1. Judge McIntosh found Appellant willfully violated the terms of his probation and ordered him to serve three years imprisonment, the remainder of his original sentence for possession of methamphetamine, and five years imprisonment, the remainder of his original sentence for possession with intent to distribute methamphetamine. R. 7, ll. 11-16; R. 13-14.

This appeal follows.

STANDARD OF REVIEW

“The question of whether a defendant’s probation should be revoked in whole or in part is committed to the circuit court’s sound discretion.” State v. Knapp, 338 S.C. 541, 543, 526 S.E.2d 741, 742 (Ct. App. 2000) (citing S.C. Code. Ann. § 24-21-460 and State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)).

ARGUMENT

The probation revocation judge abused his discretion by revoking Appellant's suspended sentence and ordering him to serve three years, the remainder of his original sentence for possession of methamphetamine, and five years, the remainder of his original sentence for possession with intent to distribute methamphetamine since, despite admitting he willfully violated the terms of his probation, Appellant had been "clean" for seven months, had steady employment as a mechanic, was up to date on his supervision fees, and had maintained stable housing.

Relevant Facts

The Department alleged Appellant had not reported as instructed since August 22, 2018, thus absconding from supervision, and had moved without notifying his agent. R. 4, l. 12 – 5, l. 8. It further alleged Appellant was convicted of possession with intent to distribute methamphetamine in Anderson County while he was on probation for his Abbeville conviction for possession of methamphetamine. R. 4, l. 24 – 5, l. 2.

Appellant admitted he willfully violated the terms of his probation. R. 4, l. 4 – 5, l. 8. However, he presented significant mitigation evidence and requested the revocation judge continue him on probation. R. 6, l. 24 – 7, l. 10. Appellant suffers from drug addiction. After Appellant pled guilty to possession with intent to distribute methamphetamine on March 3, 2020, he was held in jail waiting for bed space to become available at an inpatient treatment facility. However, once the Covid-19 pandemic began shortly thereafter, inpatient facilities closed and Appellant was unable to receive the treatment he needed. He was released from jail and began using drugs again. R. 5, ll. 13-23.

Appellant was forty-seven years old at the time of the hearing. R. 5, l. 24. He had been “clean” since February 13, 2021, about seven months before the hearing. R. 6, l. 3. He had two minor children who he regularly visited and supported. At the time, Appellant was employed at Ashley Automotive as a mechanic. He had earned enough money through his employment to buy a home for his ex-wife and children, and a separate home for himself that was located near his children. Appellant also had recently paid over two thousand seven hundred dollars in supervision fees. R. 5, l. 24 – 6, l. 5; R. 6, ll. 22-24.

Given this mitigation evidence, Appellant requested the revocation judge sentence him to 99 days’ time served and terminate his original probation, which was set to end August 8, 2021, and then continue him on his probation that started in March 2020. R. 6, l. 22 – 7, l. 2. Appellant’s counsel again emphasized that Appellant “got clean” and worked hard over the course of the previous year to obtain stable housing for his family and steady employment and did not “want to lose it.” R. 7, ll. 3-10.

The judge found Appellant willfully violated the terms of his probation by failing to report since August 22, 2018, pleading guilty to charges while on probation, and changing his address without notifying his agent. R. 7, ll. 11-16. Because the judge concluded Appellant “didn’t do anything he was supposed to do whatsoever,” he revoked Appellant’s probation “in full” and ordered him to serve three years, the remainder of his original sentence for possession of methamphetamine, and five years, the remainder of his original sentence for possession with intent to distribute methamphetamine. R. 7, ll. 16-17.

Discussion

The probation revocation judge abused his discretion by revoking Appellant’s suspended sentence and ordering him to serve three years, the remainder of his original sentence for

possession of methamphetamine, and five years, the remainder of his original sentence for possession with intent to distribute methamphetamine.

“The question of whether a defendant’s probation should be revoked in whole or in part is committed to the circuit court’s sound discretion.” State v. Knapp, 338 S.C. 541, 543, 526 S.E.2d 741, 742 (Ct. App. 2000) (citing S.C. Code. Ann. § 24-21-460 and State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)).

Despite admitting he willfully violated the terms of his probation, Appellant had been “clean” for seven months, had steady employment as a mechanic, was up to date on his supervision fees, and had maintained stable housing. Given this mitigation evidence, the judge should have terminated Appellant’s original probation, which was set to end in August 2021, and continued him on the probation that had started in March 2020 after he pled guilty to possession with intent to distribute methamphetamine.

During the hearing, Appellant’s probation agent claimed, “If he [Appellant] knew that he needed the drug treatment [when] he was released from the detention center, he could have done that on his own. There was nothing stopping him from finding somewhere to go on his own . . .” R. 6, ll. 15-18. The agent’s claim ignored the realities of the Covid-19 pandemic and the restrictions it caused. If the government could not find bed space at a treatment facility for Appellant, there was little chance Appellant could have found treatment on his own given his limited means. Nonetheless, as emphasized by Appellant’s counsel during the revocation hearing, Appellant did ultimately “get clean” in February 2021 and turned his life around. He had maintained steady employment, which in turn allowed him to obtain stable housing for him and his family, support his children, and stay up to date on the monies he owed for his probation supervision.

Respectfully, this Court should hold the probation revocation judge abused his discretion by revoking Appellant's probation in full and remand for a new probation revocation hearing.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court hold the probation revocation judge abused his discretion and remand for a new revocation hearing.

Respectfully submitted,

s/ Lara M. Caudy _____
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of March, 2022.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Aaron Charles Clouse states:

1. She is an 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 probation revocation hearing, which was held on September 10, 2021 before the Honorable R. Lawton McIntosh, and, in her opinion, the appeal is without legal merit sufficient to warrant a new hearing.
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 proceeding.

WHEREFORE, she asks the Court to relieve her as counsel for Aaron Charles Clouse.

Respectfully Submitted,

s/ Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of March, 2022.

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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) Complete Revocation Hearing Transcript Dated September 10, 2021;
- (2) Violation Report for 2015-GS-01-00332;
- (3) Violation Report for 2020-GS-04-00444;
- (4) Revocation Order for 2015-GS-01-00332;
- (5) Revocation Order for 2020-GS-04-00444;
- (6) True-Billed Indictments;
- (7) Sentence Sheets.

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

s/ Lara M. Caudy _____
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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.”

s/ Lara M. Caudy_____

Lara M. Caudy
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