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**Jul 31 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

DEWEY MCNAIR,

APPELLANT

APPELLATE CASE NO. 2023-000516

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ANDERS BRIEF OF APPELLANT

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WANDA H. CARTER  
Deputy Chief 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 AUTHORITIES**

Cases

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967) ..... 6

State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)..... 4

State v. Williamson, 356 S.C. 507, 589 S.E.2d 787 (Ct. App. 2003)..... 3

**STATEMENT OF ISSUE ON APPEAL**

The circuit court judge erred in revoking appellant probation at the hearing because there was no proof that appellant willfully violated the conditions of probation in the case.

## **STATEMENT OF THE CASE**

Appellant Dewey Ray McNair pled guilty to second degree criminal domestic violence during the July 2018 term of the Anderson County General Sessions Court before Judge R. Scott Sprouse, who sentenced him to imprisonment for a period of three years, suspended upon probation for a period of three years.

Appellant appeared at the Anderson County General Sessions on March 17, 2023, before Judge Scott for a probation revocation hearing. Appellant's probation was revoked at the close of the hearing.

Appellant appealed. This brief follows.

## **STANDARD OF REVIEW**

The decision to revoke probation is in the discretion of the circuit court. An appellate court's authority to review such a decision is confined to correcting errors of law unless the lack of legal or evidentiary basis indicates that the circuit court's decision was arbitrary and capricious. State v. Williamson, 356 S.C. 507, 589 S.E.2d 787 (Ct. App. 2003).

## ARGUMENT

The circuit court judge erred in revoking appellant probation at the hearing because there was no proof that appellant willfully violated the conditions of probation in the case.

At the probation revocation hearing, SCDPPP agents submitted a list of probation violations assigned to appellant which included the failure to report and pay probation and supervision fees. R. 5, l. 23 – p. 1. 1. The alleged violations follow:

- 1.) Failure to report;
- 2.) Arrears in Supervision Fees;
- 3.) Nonpayment of Public Defender Fine;
- 4.) Nonpayment of Drug Test Fee;
- 5.) Violation of Admin. Sanctions Order; &
- 6.) Failure to Enroll in Substance Abuse Counseling.

R. 4, l. 13 – p. 5, l. 23.

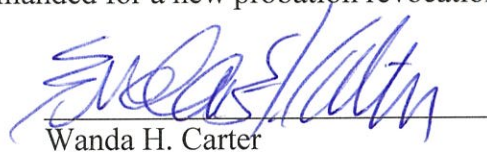
Defense counsel advised the circuit court judge that appellant had no transportation and therefore could neither travel to the probation office as required nor to a job to earn income to pay fines and fees. R. 6, l. 4 – p. 7, l. 13. This lack of transportation circumstance meant that appellant did not willfully fail to report or pay fees and fines.

Probation may not be revoked solely for the failure to pay fines or restitution without a determination that the probationer willfully failed to pay; and also a sufficient factual basis must support the circuit court judge's finding that a probationer breached the conditions of his probation. State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999). Without transportation, appellant could not meet the terms of the conditions of his probation, which

meant that he did not willfully violate the conditions of his probation in the case. The circuit court abused its discretion in revoking appellant's probation in the case.

**CONCLUSION**

Based on the foregoing argument, counsel for appellant would request that appellant's probation revocation be vacated and his case remanded for a new probation revocation hearing.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 31<sup>st</sup> day of July, 2023.

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

Counsel for Dewey McNair states:

1. She is Deputy Chief 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 R. Scott Sprouse, which was held on March 17, 2023, 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 Dewey McNair.

Respectfully Submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of July, 2023.

STATE OF SOUTH CAROLINA

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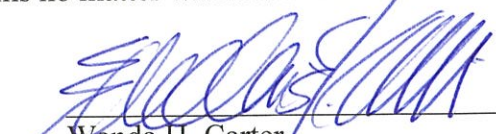
APPELLATE CASE NO. 2023-000516  
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

Appellant proposes the following be included in the Record on Appeal:

- (1) Probation Revocation Hearing Transcript dated March 17, 2023
- (2) Clerk of Court Records

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

  
\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
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PO Box 11589  
Columbia, SC 29211-1589  
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ATTORNEY FOR APPELLANT

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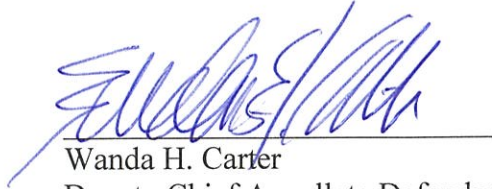
**CERTIFICATE OF COUNSEL**

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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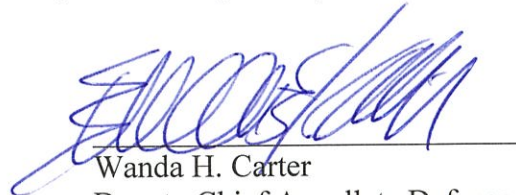
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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Dewey McNair, #390562, at Livesay Pre-Release Center, Post Office Box 580, Una, SC 29378, this 31st day of July, 2023.



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Wanda H. Carter  
Deputy Chief Appellate Defense

ATTORNEY FOR APPELLANT