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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHANEKIA RENEE GARVIN,

APPELLANT

APPELLATE CASE NO. 2023-001452

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The circuit court judge erred in revoking appellant's probation because appellant appeared at the hearing without the assistance of counsel, and because the record was devoid of any waiver of the right to counsel or warnings regarding the disadvantages of self-representation.

STATEMENT OF THE CASE

Appellant Shanekia Renee Garvin pled guilty to assault and battery of a high and aggravated nature during the March 2019 term of the Orangeburg County General Sessions Court before Judge Diane Goodstein and was sentenced to ten years imprisonment, suspended upon the service of five years probation. A probation revocation hearing was held on September 6, 2023, at the Orangeburg County General Sessions Court before Judge Maite Murphy, who revoked appellant's probation and imposed the ten-year sentence. South Carolina Probation Agent Kimberly Manning Brantly appeared on behalf of the state during the hearing and appellant appeared pro se.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

The appellate court's authority to review a decision revoking probation is confined to correcting errors of law unless there is a lack of a legal or an evidentiary basis that indicates that the circuit judge's decision was arbitrary and capricious. State v. Hamilton, 333 S.C.642, 511 S.E.2d 94 (Ct. App. 1999) An appellate court will not reverse the trial court's decision unless there has been an abuse of its discretion. State v. Hamilton, 333, S.C.642, 511 S.E.2d 94 (Ct. App. 1999).

An abuse of discretion occurs when the trial court's ruling is based on an error of law, such as the 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 is deemed arbitrary and capricious. Fontaine v. Perez, 291 SC 536, 354 S.E.2d 565 (1987).

ARGUMENT

The circuit court judge erred in revoking appellant's probation because appellant appeared at the hearing without the assistance of counsel, and because the record was devoid of any waiver of the right to counsel or warnings regarding the disadvantages of self-representation.

The state alleged that appellant violated her probation by failing to report and in failing to pay fees owed. Tr. 2, l. 6 – p. 4, l.4. Appellant appeared at the probation hearing pro se. There was nothing in the record that established that appellant waived her right to counsel (or the right to appointed counsel), and there was no showing on the record proving that appellant was advised of the disadvantages to appearing pro se at her hearing.

Appellant had a right to counsel at her probation revocation hearing. In Barlet v. State, 288 S.C. 481, 343 S.E.2d, 620 (1986), the Court held that Supreme Court Rule 5, which is now Rule 602(a), SCACR, requires that all persons charged with a probation violation be advised of their right to counsel and their right to appointed counsel if indigent. The Barlet Court cited Gagnon v. Scarpelli 411 U.S. 778 (1973), for the rule that the need for counsel in a probation revocation hearing would trigger a due process requirement for counsel's assistance. The deprivation of one's conditional freedom without the finding of a willful violation contravenes the Fourteenth Amendment's due process clause. Barlet, supra, citing to Bearden v. Georgia, 461 U.S. 660 (1983). The right to counsel attaches at probation revocation hearings and the erroneous deprivation of this right constitutes pro se reversible error. Salley v. State, 306 SC 213 410 S.E.2d 921 (1991).

Note further that appellant did not waive her right to counsel after being reminded at the hearing that she signed paperwork beforehand indicating that she must secure an attorney for the hearing. Here, appellant was not informed that appointed counsel would be assigned to her if she

could not afford legal representation. See Rule 602(a), SCACR. Furthermore, a waiver is an intentional relinquishment of a known right per Johnson v. Zerbst, 304 U.S. 458 (1938), and there was no indication in the record indicating that appellant waived her right to counsel. Finally, appellant was not warned of the dangers of appearing pro se. See Osbey v. State, 425 S.C. 615, 825 S.E.2d 48 (2019), citing to Faretta v. California, 422 U.S. 806 (1975).

In the case at bar, appellant stated that she called the probation office repeatedly to report, and that she was unable to report when she was working and while jailed during the summer months for nonpayment of child support. In addition, appellant informed the court that she mailed in payments previously and was in possession of a money order at the hearing for payment of fees that she was willing to submit to the circuit court. Tr. 8, l. 8 – p. 12, l. 8. Clearly, appellant was not in violation of her probation and needed the assistance of counsel at the hearing to articulate her defenses in the case.

CONCLUSION

Based on the foregoing argument, the undersigned counsel requests that appellant's probation revocation be vacated and a remand entered for a new hearing.

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ATTORNEY FOR APPELLANT

This 12th day of December, 2023.