

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the First Circuit
The Honorable Maite Murphy, Circuit Court Judge

Appellate Case No.: 2023-001452

RECEIVED

JAN 12 2024

SC Court of Appeals

THE STATE,

RESPONDENT

v.

SHANEKIA RENEE GARVIN,

APPELLANT

INITIAL BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

Octavia Wright
Assistant General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220**

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

The circuit judge did not err in revoking Appellant's probation because the record shows she knowingly waived her right to an attorney by signing a Notice of Hearing and Acknowledgment of Notice that warned her of the dangers of appearing without an attorney, having ample time to obtain an attorney, and appearing in court without obtaining one.

STATEMENT OF THE CASE

On April 21, 2016, the Appellant was charged with two counts of unlawful neglect of child or helpless person. On July 26, 2016, she pled guilty to these charges before the Honorable Benjamin H. Culbertson, who sentenced her to five years incarceration suspended to three years of probation. On January 9, 2018, she was arrested for failing to pay child support and was released on January 12, 2018.

On January 12, 2018, the Appellant was charged with two counts of Assault & Battery of a High and Aggravated nature (ABHAN) and two counts of filing a false report of a felony violation. On October 2, 2018, she pled guilty to these charges before the Honorable Diane S. Goodstein, who sentenced her to ten years with five years of probation for the ABHAN charges and five years at SCDC with five years of probation for the false report of a felony violation charges. She was credited with thirteen days of service and ordered to not have any contact with the victim.

On November 20, 2020, the Department served a warrant on the Appellant for numerous violations of her probation including failing to report multiple times, failing to communicate with her agent, failing to follow the advice and instructions of the agent, and pay her supervision fees. On March 17, 2021, the Appellant appeared before the Honorable Edgar W. Dickson for these violations. She was ordered to be continued on probation with zero tolerance for any further violations.

On April 4, 2023, the Department served a warrant on the Appellant for violation of her probation conditions including her continuing failure to contact her probation agent and failing to pay her supervision fees and court fines. On June 19, 2023, the Appellant signed a Notice of

Probation Hearing and Acknowledgment of Notice that informed her that she was directed to appear at a violation hearing on September 6, 2023 in the Orangeburg County Courthouse. R.*

On September 6, 2023, the Appellant appeared at the hearing as directed by the notice. After hearing the violations as noted by the Appellant's agent, the Honorable Maite Murphy asked the agent when she was given notice of the hearing. R.* Upon hearing the response of June 19, 2023, Judge Murphy asked the Appellant if she recalled signing the notice. The Appellant said she did. Judge Murphy then asked if the notice included her right to have an attorney present. The Appellant affirmed that it did and stated that she did not have an attorney. R.*

After hearing the Appellant's position, Judge Murphy noted her previous violations and failures to report. After the Appellant stated that she called someone on the phone, the probation agent confirmed that the Appellant had made one phone call on January 13, 2022 and then called earlier on the day of the hearing. Judge Murphy also noted she had violated two prior zero tolerance orders and still hadn't complied with her conditions. The Appellant then stated that she was clean. Judge Murphy then told her that she would test her and if it came back positive, she was going to give her a full revocation. After a break for the testing, the drug test came back positive for cocaine. As a result, Judge Murphy ordered a full revocation. R.*

On September 8, 2023, the Appellant filed a Notice of Appeal. On December 12, 2023, the Office of Appellate Defense served its Initial Brief of the Appellant on the Department, which now responds with this Initial Brief of the Respondent.

ARGUMENT

- 1. The Appellant received notice of her right to counsel within the Notice of Probation Hearing and Acknowledgment of Notice that she signed and received. As a result, the Appellant waived her right to counsel and the circuit court's revocation order should be upheld.**

As noted in the record, the trial court established that the Appellant had advance notice of her September 6, 2023 hearing. Tr. 4, l. 5-10. Furthermore, there is evidence in the record that established that she waived her right to counsel. Tr. 4, l. 11-20. It is important to also note that this was not the Appellant's first revocation hearing. She had previously been advised of her right to a counsel at her previous violation hearings. In addition, she could have asked the court for an attorney but failed to do so. Instead, she simply acknowledged her right to have an attorney and then proceeded to state: "I don't have an attorney."

The notice that was signed by the Appellant nearly three months prior to her hearing noted her right to have an attorney present and warned of the dangers of appearing without an attorney and notes that such an appearance would be a knowing and voluntary choice to proceed without counsel. R.* As stated in Salley v. State, 306 S.C. 213, 215, 410 S.E.2d 921, 922 (1991), "this court will look to the record to discern whether there are facts to show the defendant had sufficient background or was apprised of his rights *by some other source* so as to constitute a knowing and intelligent waiver of the right to counsel." (Emphasis added.) Unlike Salley, the Appellant did not testify as to why she did not have an attorney or state any reliance upon her probation officer's representations. By appearing without an attorney, she decided to appear *pro se*.

As noted in the record, the Appellant's decision to represent herself was made with an understanding of the risks of self-representation as described in the notice. This case mirrors the situation in State v. Bryant, 383 S.C. 410, 417, 680 S.E.2d 11, 15 (2009) where the court held that the Defendant validly waived her right to counsel after noting the Probation Notice she signed with

her probation officer along with her previous experience in the criminal justice system, her previous representation by counsel, and the probation court's colloquy with her that she had both a sufficient background and was apprised of her rights by some other source.

Respondent acknowledges that probationers must be advised of their right to counsel, as well as the right to appointed counsel if indigent. Barlet v. State, 288 S.C. 481, 483, 343 S.E.2d 620, 622 (1986). However, Appellant in this instance was clearly notified.

Appellant cites to the fact that there was no warning by the trial court of the dangers of self-representation. However, "[t]he extent of the inquiries made by the trial [court] ... is not conclusive," as noted by Hines v. State, 435 S.C. 476, 495, 868 S.E.2d 387, 397 (Ct. App. 2021), quoting Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). As made clear by Appellant's previous appearances before judges for her prior violations, she was familiar with the process and – importantly – continued on probation with "zero tolerance" for future violations.

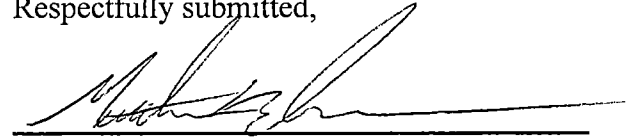
Appellant continued to violate the conditions of her probation and thereafter was provided a notice to come to court with clear information about her right to counsel. Appellant's own inaction toward that end, when given nearly three months in which she could have retained an attorney or contacted the public defender's office, should not be grounds to overturn the trial court's revocation of Appellant's probation.

In the same vein as the court noted in Bryant, this court should affirm the circuit court's finding that the Appellant validly waived her right to counsel by appearing without an attorney after being advised of her right to counsel and having ample time to obtain counsel before the hearing.

CONCLUSION

Based on the foregoing arguments, the Department respectfully requests Appellant's arguments be dismissed and the final decision of the probation violation court be affirmed.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

Octavia Wright
Assistant General Counsel

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Columbia, South Carolina
January 11, 2024

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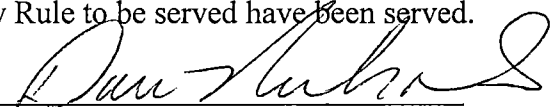
APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within *Initial Brief of Respondent and Designation of Matter* dated January 11, 2024, on Appellant the 11th day of January, 2024, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

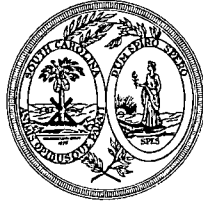
Wanda Carter, Appellate Defender
SC Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.


Dawn K. Nichols
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SC Court of Appeals

January 11, 2024

The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: State v. Shanekia Garvin
2023-001452

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter dated January 11, 2024, along with proof of service in the above referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan".

Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures

cc: Wanda Carter, Appellate Defender

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