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**Mar 08 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Orangeburg County

Honorable Heath P. Taylor, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

RYAN EDWARD STEVENS,

APPELLANT

APPELLATE CASE NO. 2023-001610

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ANDERS BRIEF OF APPELLANT

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KATHRINE H. HUDGINS  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the probation revocation judge abuse his discretion in revoking probation without a sufficient evidentiary basis?

## STATEMENT OF THE CASE

On March 24, 2023, Appellant, Ryan E. Stevens, appeared before the Honorable Heath P. Taylor and pled guilty to domestic violence third degree, indictment #2020-GS-38-01327, and domestic violence second degree, indictment #2023-GS-32-01558. (R. pp. 1-2; 5-6). Judge Taylor sentenced Appellant to ninety (90) days provided upon the service of one (1) day the balance is suspended with two (2) years of probation for domestic violence third offense and three (3) years provided upon the service of two (2) days the balance is suspended with (2) years of probation for domestic violence second degree. (R. p. 3, p. 7). On June 27, 2023, during an administrative hearing, Appellant was found to have violated the conditions of his probation. (Summary of Administrative Hearing R. pp. 12-14).

On October 2, 2023, Appellant appeared before the Honorable Heath P. Taylor for a probation violation hearing. R. Douglas Mellard represented Appellant at the hearing. Agent Marie Brewer appeared on behalf of the Department of Probation, Parole and Pardon Services. Judge Taylor revoked Appellant's probation in full on both cases. (Orders revoking probation R. pp. 26-27). A timely notice of intent to appeal was served on October 3, 2023. This appeal follows.

### **STANDARD OF REVIEW**

“The determination of whether or not to revoke probation is within the trial court's discretion. State v. Proctor, 345 S.C. 299, 301, 546 S.E.2d 673, 674 (Ct.App.2001). ‘This court's authority to review such a decision is confined to correcting errors of law unless the lack of a legal or evidentiary basis indicates the circuit judge's decision was arbitrary and capricious.’ State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct.App.1999).” State v. Pauling, 371 S.C. 435, 436–37, 639 S.E.2d 680, 681 (Ct. App. 2006).

## ARGUMENT

**The probation revocation judge abused his discretion in revoking probation without a sufficient evidentiary basis.**

During the probation revocation hearing the probation agent told the judge that Appellant violated his probation by failing to refrain from “harassing and stalking behavior” on social media. (R. p. 16, lines 12-19). During the hearing a victim advocate read a statement from the victim. (R. p. 17, line 12 – p. 18, p. 19, lines 1-17). The agent also told the judge that Appellant was fifty dollars (\$50) in arrears on supervision fees, twenty-six dollars and eighty-two cents (\$26.82) in arrears on court fees and failed to report for his initial intake on April 7, 2023. (R. p. 16, lines 20-24). It appears that the judge was shown a Facebook post. (R. p. 20, lines 18-20). The agent recommended a full revocation. (R. p. 23, lines 20-24).

Counsel for Appellant told the judge that the “harassing and stalking behavior” resulted in criminal charges pending in another county. (R. p. 20, line 23 – p. 21, lines 1-19). Counsel told the judge that Appellant denied the alleged behavior and asserted that an ex-girlfriend posted the offensive material. (R. p. 21, lines 2-5). Although counsel admitted that he had not seen the probation packet, counsel asserted that the State may have authentication and hearsay problems with the social media posts. (R. p. 20, lines 2-15). Counsel asked that the judge wait on the decision on whether to revoke probation until the pending charges could be resolved. (R. p. 21, lines 19-21). Alternatively, counsel asked the judge to continue probation as the other violations were simply failure to pay and failure to report. (R. p. 21, lines 21-25). Appellant admitted to the failure to pay and failure to report but told the judge he was unable to report because he was living in another county. (R. p. 22, line 22 – p. 23, lines 1-19). The judge revoked in full. (R. p. 24, lines 2-3). The judge erred.

In State v. Hamilton, 333 S.C. 642, 648–49, 511 S.E.2d 94, 97 (Ct. App. 1999), the South Carolina Court of Appeals wrote:

Probation is a matter of grace; revocation is the means to enforce the conditions of probation. State v. McCray, 222 S.C. 391, 396, 73 S.E.2d 1, 3 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950). However, the authority of the revoking court should always be predicated upon an evidentiary showing of fact tending to establish a violation of the conditions. White, at 135, 61 S.E.2d at 756; State v. Miller, 122 S.C. 468, 475, 115 S.E. 742, 745 (1923). Thus, before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions.

As the Court wrote in State v. Williamson, 356 S.C. 507, 510, 589 S.E.2d 787, 788 (Ct. App. 2003), “. . . [T]he authority of the court to revoke [probation] may not be capriciously or arbitrarily exercised, but should always be predicated upon an evidentiary showing of fact tending to establish violation of the conditions. State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950).” In the present case there was insufficient evidence to establish that Appellant violated his probation.

In State v. Williamson, 356 S.C. 507, 510, 589 S.E.2d 787, 788 (Ct. App. 2003), the Appellant, while on probation for burglary, was arrested for domestic violence involving his mother, referred to as CDVHAN in the opinion. As a result of the arrest, Williamson was charged with violating probation. During the revocation hearing the State introduced the mother's affidavit, her voluntary statement, and photographs of her injuries. The trial judge revoked probation. On appeal Williamson argued that there was an insufficient evidentiary basis to establish that he had violated conditions of his probation because he had not been convicted of the CDVHAN charge. The appellate court disagreed and wrote,

Here, the trial court heard testimony and determined that Williamson committed an act of violence against his mother. Since there was a sufficient evidentiary basis to support the finding, we conclude that the trial court did not abuse its discretion when it revoked Williamson's probation. See State v. Clough, 220 S.C. 390, 400, 68 S.E.2d 329, 334 (1951) (sustaining the revocation of the appellant's probation,

where appellant had not been officially charged with assault and battery because “there [was] sufficient evidentiary showing of fact tending to support the conclusion reached by [the trial court] that the appellant committed an assault and battery ... thereby violating ... his suspended sentence.”).

State v. Williamson, 356 S.C. 507, 511–12, 589 S.E.2d 787, 789 (Ct. App. 2003). In contrast, in the present case there was insufficient evidence to establish that Appellant violated his probation.

In State v. Pauling, 371 S.C. 435, 639 S.E.2d 680 (Ct. App. 2006), the Court of Appeals declined to extend the right to confront witnesses to a probationer in a revocation proceeding. While Appellant in the present case did not have a right to confront witnesses at the probation revocation hearing, the revocation judge was still required to determine if there was sufficient evidence to establish that Appellant violated the conditions of his probation. The only evidence before the judge in the present case was a statement from the victim, read by the victim advocate, and an unauthenticated Facebook post. The judge had insufficient evidence to establish that Appellant violated his probation. It is unclear from the record if the statement read by the victim advocate was in affidavit form, as in Williamson. Appellant denied making the Facebook post. (R. p. 21, lines 3-5). The State failed to present the judge with any additional evidence or testimony associated with the arrest in another county. The judge erred in revoking probation without sufficient evidence.

**CONCLUSION**

Based on the above argument, this Court should reverse the revocation of probation and remand for a new revocation hearing.



Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 8<sup>th</sup> day of March, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ryan Edward Stevens states:

1. She is 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 Heath P. Taylor, which was held on October 2, 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 Ryan Edward Stevens.

Respectfully Submitted,

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 8<sup>th</sup> day of March, 2024.

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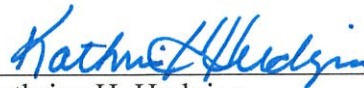
APPELLATE CASE NO. 2023-001610

**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) Indictments and Sentence Sheets;
- (2) Waiver of Venue and Jurisdiction;
- (3) Violation Report;
- (4) Summary of Administrative Hearing;
- (5) Probation Revocation Hearing Transcript; and
- (6) Orders Revoking Probation.

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



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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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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 Matthew C. Buchanan, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Ryan Edward Stevens, #275675, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 8<sup>th</sup> day of March, 2024.

  
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