

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

JUN 03 2024

SC Court of Appeals

Appeal from Orangeburg County Circuit Court  
The Honorable Heath Taylor, Judge

Appellate Case No. 2023-001609

SCDPPPS .....RESPONDENT

v.

MICHAEL YOUMAN, JR., .....APPELLANT

**BRIEF OF RESPONDENT**

**Matthew C. Buchanan**  
**General Counsel**  
**SC Bar 73740**

**South Carolina Department of Probation,  
Parole and Pardon Services**  
**P.O. Box 207**  
**Columbia, South Carolina 20202**  
**(803) 734-9220**

**ATTORNEY FOR RESPONDENT**

**TABLE OF CONTENTS**

Table of authorities ..... ii

Statement of issue on appeal..... iii

Statement of the case .....1

Standard of review .....2

Arguments

    1. The trial court did not err because there was sufficient evidence Appellant violated the conditions of probation .....2

Conclusion .....4

## TABLE OF AUTHORITIES

| <b>Cases</b>  | <b>Page(s)</b> |
|---|----------------|
| <i>Gagnon v. Scarpelli</i> ,<br>411 U.S. 778 (1973).....                          | 3              |
| <i>Morrissey v. Brewer</i> ,<br>408 U.S. 471 (1972).....                          | 3              |
| <i>Shannon v. Young</i> ,<br>272 S.C. 61, 248 S.E.2d 914 (1978).....              | 2              |
| <i>State v. Garris</i> ,<br>394 S.C. 336, 714 S.E.2d 888 (Ct. App. 2011).....     | 3              |
| <i>State v. Hamilton</i> ,<br>333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999).....    | 2, 3           |
| <i>State v. Proctor</i> ,<br>345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001).....    | 2              |
| <i>State v. White</i> ,<br>218 S.C. 130, 61 S.E.2d 754 (1950).....                | 2              |
| <i>State v. Williamson</i> ,<br>356 S.C. 507, 589 S.E.2d 787 (Ct. App. 2003)..... | 2, 3           |
| <i>State v. Wilson</i> ,<br>345 S.C. 1, 545 S.E.2d 827 (2001).....                | 3              |

## **STATEMENT OF ISSUE ON APPEAL**

Did the trial court abuse its discretion when it revoked Appellant's probation after finding that Appellant had violated the conditions of his probation based on Appellant's arrest for second degree domestic violence and the statements supporting the underlying facts of the pending charge?

## STATEMENT OF THE CASE

On August 28, 2022, Appellant committed an act of domestic violence, resulting in his arrest and prosecution. He subsequently pled guilty to domestic violence second degree on January 12, 2023 before the Honorable Heath Taylor. Judge Taylor sentenced him to three years incarceration provided upon the service of one day with the balance suspended to probation for two years. R.\*.

On January 26, 2023, two weeks since he was placed on probation, Appellant was alleged to again to have committed domestic violence. The victim told Orangeburg County Sheriff's deputies that Appellant had threatened her with a firearm in the presence of the victim's son. Furthermore, the victim recorded Appellant making threats to her, which were played to the deputy. After learning of these allegations, a probation violation arrest warrant was issued on July 24, 2023. R.\*.

On October 2, 2023, Appellant appeared before Judge Taylor at a hearing regarding the probation violation. At the hearing, Appellant's attorney moved for a continuance because the new arrest charge was still pending. Tr. p. 3, l. 6-7. Judge Taylor heard the allegations and then from the victim's advocate, who read a statement from the victim into the record. Tr. p. 3, l. 17-p. 4, l. 8. Judge Taylor then denied the motion for a continuance and revoked Appellant's probation in full. Tr. p. 5, l. 17-20.

Appellant filed the instant appeal arguing that the state failed to present a sufficient evidentiary basis that he had violated his probation. Respondent would submit that there was sufficient evidence to show by a preponderance of the evidence that Appellant violated the terms of his probation. Respondent's brief follows.

### Standard of Review

The decision to revoke probation is addressed to the discretion of the circuit judge. *State v. White*, 218 S.C. at 134–35, 61 S.E.2d at 756; *State v. Proctor*, 345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001); *State v. Hamilton*, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999). A reviewing court will only reverse this determination when it is based on an error of law or a lack of supporting evidence renders it arbitrary or capricious. *Proctor*, 345 S.C. at 301, 546 S.E.2d at 674. The court has much discretionary authority in dealing with guilty persons who are in a probationary status. *Shannon v. Young*, 272 S.C. 61, 248 S.E.2d 914 (1978).

### Argument

1. **The trial court did not err because there was sufficient evidence Appellant violated the conditions of probation.**

Appellant’s main argument is that there was not enough evidence that he had violated the terms of his probation. Respondent would submit that Appellant is attempting to raise the level of proof to one far closer to that found within a trial than that of a probation violation. Clearly, the trial court was convinced he violated probation through the evidence presented.

“[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. Williamson*, 356 S.C. 507, 510, 589 S.E.2d 787, 788 (Ct. App. 2003) (citing *State v. White*, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950)).

Note that all it takes are facts “tending to establish” a violation for the court to properly revoke probation. *Id.* Statements from the victim read into the record, statements that he possessed

a firearm, and a report that the officer heard a recording of Appellant threatening to blow the victims' head off clearly are evidence of violations of probation.

The United States Supreme Court emphasized “there is no thought to equate this second stage of parole<sup>1</sup> revocation to a criminal prosecution in any sense,” when discussing the due process requirements of revocation hearings. *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972). “It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.” *Id.*

Clearly, the letter from the victim read into the record and the incident report referred to by the agent falls within the scope of letters and affidavits. The trial court was certainly within its authority to review the information presented and to determine that facts “tending to establish” a violation existed. *Williamson*, 356 S.C. at 510, 589 S.E.2d at 788. The appellate court’s authority to review revocations of probation are “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.” *Hamilton*, 333 S.C. at 96, 511 S.E. 2d at 647 (citations omitted). Furthermore, appellate courts are bound by the lower court’s factual findings and are to only review errors of law, unless the factual findings are “clearly erroneous.” *State v. Garris*, 394 S.C. 336, 344, 714 S.E.2d 888, 893 (Ct. App. 2011) (citing *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)).

Contrary to Appellant’s assertions that there was no evidence to support his revocation, Respondent would submit that the trial court weighed the evidence presented and subsequently determined facts tending to establish a violation existed. With this information being plainly in the record, Respondent respectfully would submit that this Court is therefore bound to accept the lower

---

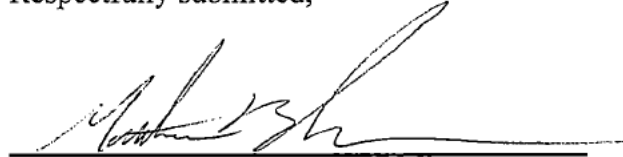
<sup>1</sup> Probation violation hearings are “constitutionally indistinguishable from the revocation of parole.” *Gagnon v. Scarpelli*, 411 U.S. 778, 782 fn. 3 (1973).

court's factual findings. Consequently, this Court should uphold the decision of the lower court and dismiss this appeal.

**Conclusion**

Appellant argues that there was not a sufficient evidentiary basis for the revocation of his probation. However, statements from the victim that plainly reflect violations, as well as the information underlying Appellant's arrest for domestic violence, show sufficient evidence that he violated probation. Because of this, the trial court's decision should be affirmed.

Respectfully submitted,



---

**Matthew C. Buchanan**  
**General Counsel**

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

Columbia, South Carolina  
May 29, 2024

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**  
JUN 03 2024  
SC Court of Appeals

Appeal from Orangeburg County Circuit Court  
The Honorable Heath Taylor, Judge

Appellate Case No. 2023-001609

SCDPPPS .....RESPONDENT

v.

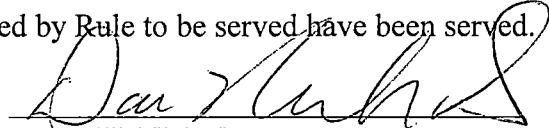
MICHAEL YOUMAN, JR., .....APPELLANT

**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 May 29, 2024, on Appellant the 29<sup>th</sup> day of May, 2024, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Lara Caudy, 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**  
**Executive Assistant**  
South Carolina Department of Probation,  
Parole, and Pardon Services  
P. O. Box 207  
Columbia, South Carolina 29202

State of South Carolina  
Department of Probation, Parole and Pardon Services

HENRY McMASTER  
Governor



JODI GALLMAN  
Acting Director

293 GREYSTONE BLVD  
POST OFFICE BOX 207  
COLUMBIA, SOUTH CAROLINA 29202  
Telephone: (803) 734-9220  
Facsimile: (803) 734-9440  
[www.dppps.sc.gov/](http://www.dppps.sc.gov/)

RECEIVED  
JUN 03 2024  
SC Court of Appeals

May 29, 2024

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

**Re: SCDPPPS v. Michael Youmans**  
**23-001609**

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter, 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: Lara M. Caudy, Appellate Defender

State of South Carolina

Department of Probation, Parole, and Pardon Services

293 GREYSTONE BOULEVARD, POST OFFICE BOX 207  
COLUMBIA, SOUTH CAROLINA 29202



US POSTAGE<sup>SM</sup> PITNEY BOWES



ZIP 29210 \$ 001.12<sup>0</sup>  
02 4W

0000000410 MAY 20 2024

**RECEIVED**

JUN 03 2024

SC Court of Appeals

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

292111629 8012

