

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPELLATE CASE NO. 2013-000696

---

APPEAL FROM GREENWOOD COUNTY  
FRANK R. ADDY JR., CIRCUIT COURT JUDGE  
Case No. 2012-CP-24-1485

---

State of South Carolina,

Respondent,

vs.

Regan Berkley Chrisley,

Appellant.

RECEIVED  
SEP 27 2013  
SC Court of Appeals

---

**INITIAL BRIEF OF APPELLANT**

---

Desa Ballard  
Harvey M. Watson III

**Ballard Watson Weissenstein**  
P.O. Box 6338  
West Columbia, South Carolina 29171  
Telephone 803.796.9299  
Facsimile 803.796.1066  
E-mail: [desab@desaballard.com](mailto:desab@desaballard.com)  
[harvey@desaballard.com](mailto:harvey@desaballard.com)

Carson Henderson  
**The Henderson Law Firm, PC**  
109-B Oak Avenue  
Greenwood, South Carolina 29646  
Telephone 864.229.8000  
Facsimile 864.229.8001  
Email: [carsonhenderson2@hotmail.com](mailto:carsonhenderson2@hotmail.com)

**CO-COUNSEL FOR APPELLANT**

**TABLE OF CONTENTS**

Table of Authorities ..... ii

Statement of Issue on Appeal ..... 1

Statement of the Case ..... 2

Argument ..... 4

I. THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE  
COURT’S CLEARLY ERRONEOUS RULING THAT THE APPELLANT  
VIOLATED THE TERMS OF HIS CONDITIONAL DISCHARGE ..... 4

A. Appellant was entitled to minimal due process protections  
in conjunction with this conditional discharge revocation ..... 4

B. Appellant was denied the required minimal due process  
prior to revocation of his conditional discharge ..... 6

Conclusion ..... 8

Hmw

## TABLE OF AUTHORITIES

### CASES

<u>Dangerfield v. State,</u> 376 S.C. 176, 656 S.E.2d 352 (2008) .....	5
<u>Gagnon v. Scarpelli,</u> 411 U.S. 778 (1973).....	5
<u>Moore v. Moore,</u> 376 S.C. 467, 657 S.E.2d 743 (2008) .....	6
<u>Morrissey v. Brewer,</u> 408 U.S. 471 (1972).....	5
<u>State v. Baccus,</u> 367 S.C. 41, 625 S.E.2d 216 (2006) .....	4
<u>State v. Hill,</u> 368 S.C. 649, 630 S.E.2d 274 (2006) .....	5
<u>State v. Perkins,</u> 378 S.C. 57, 661 S.E.2d 366 (2008) .....	6
<u>State v. Shuler,</u> 344 S.C. 604, 545 S.E.2d 805 (2001) .....	4
<u>State v. Williams,</u> 326 S.C. 130, 485 S.E.2d 99 (1997) .....	4
<u>State v. Wilson,</u> 345 S.C. 1, 545 S.E.2d 827 (2001) .....	4

### STATUTES

S.C. Code Ann. § 44-43-370 .....	4
S.C. Code Ann. § 44-43-450 .....	5

**STATEMENT OF ISSUE ON APPEAL**

- I. THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE COURT'S CLEARLY ERRONEOUS RULING THAT THE APPELLANT VIOLATED THE TERMS OF HIS CONDITIONAL DISCHARGE.

**STATEMENT OF THE CASE**

On September 15, 2011, Regan Berkley Chrisley (hereinafter Appellant) was arrested for simple possession of marijuana by the Greenwood County Sheriff's Office and issued Ticket #51191EW. (R \_\_\_\_). On November 14, 2011, Appellant consented to sentencing pursuant to the conditional discharge statute, S.C. Code § 44-43-450. (R \_\_\_\_). On December 14, 2011, Greenwood Magistrate C. Ryan Johnson signed an Order for Conditional Discharge pursuant to that same section, with terms of the conditional discharge scheduled to remain in effect until June 14, 2012. (R \_\_\_\_).

Magistrate Johnson's Order provided in pertinent part: "DEFENDANT SHALL TAKE URINE DRUG TESTS AND THEREAFTER IMMEDIATELY PROVIDE THE RESULTS OF EACH TEST DIRECTLY TO THE COURT DURING THE FIRST WEEK OF [January, March and May] 2012" (emphasis original). (R \_\_\_\_).

A hearing was held by Magistrate Johnson on May 29, 2012 where he found Appellant in contempt for failure to appear and imposed a sentence on the conditional discharge for an alleged failed drug test. Those findings were appealed and subsequently vacated for lack of notice to Appellant. (R \_\_\_\_).

On December 21, 2012, Magistrate Johnson reconvened a rule to show cause hearing to determine if Appellant had violated his conditional discharge by testing positive for a banned substance on May 14, 2012. (R \_\_\_\_). At the hearing, Magistrate Johnson failed to provide the Appellant or Appellant's attorney with a copy of the document which allegedly indicated that the Appellant tested positive for cocaine on May 14, 2012. (R \_\_\_\_). The Court denied the Appellant's repeated requests for an

*Handwritten mark*

evidentiary hearing and thereafter found that Appellant had violated the terms of his conditional discharge. (R \_\_\_\_).

On December 21, 2012, the Appellant appealed the conviction and sentence imposed by Magistrate Johnson to the Greenwood County Court of Common Pleas. (R \_\_\_\_). Magistrate Johnson filed a Return to Appeal on January 3, 2013, which said the Appellant failed a "drug test by hair sample." (R \_\_\_\_). Magistrate Johnson had previously ordered that the Appellant take urine drug tests. (R \_\_\_\_). Magistrate Johnson failed to produce a copy of the Appellant's alleged failed drug test along with the Return to Appeal for the Circuit Court to review. (R \_\_\_\_).

Circuit Judge Frank R. Addy, Jr., heard Appellant's appeal on February 19, 2013 and issued a Form 4 Order dated February 19, 2013, affirming Magistrate Johnson's ruling. (R \_\_\_\_). The Appellant filed and served a Motion to Reconsider on February 26, 2013. (R \_\_\_\_). Judge Addy thereafter issued another Order on March 18, 2013, reaffirming his prior ruling. (R \_\_\_\_). Appellant timely filed this appeal to the Court of Appeals. (R \_\_\_\_).

## ARGUMENT

### I. THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE COURT'S CLEARLY ERRONEOUS RULING THAT THE APPELLANT VIOLATED THE TERMS OF HIS CONDITIONAL DISCHARGE.

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus the appellate court is bound by the findings of the trial court unless they are unsupported by the evidence, clearly wrong, or controlled by an error of law. State v. Williams, 326 S.C. 130, 135, 485 S.E.2d 99, 102 (1997). The reviewing court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence." State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). "A finding is clearly erroneous if it is not supported by the record." State v. Shuler, 344 S.C. 604, 620, 545 S.E.2d 805, 813 (2001).

For the reasons set forth below, the trial court failed to provide basic due process to Appellant, and the record fails to have any evidence to support the findings of fact and conclusions of law. Those failures constitute errors of law that compel reversal and remand back to the magistrate court.

A. Appellant was entitled to minimal due process protections in conjunction with this conditional discharge revocation.

At the time of the Petitioner's arrest on September 15, 2011, state law provided in pertinent part:

Whenever any person who has not previously been convicted of any offense under this article or any offense under any state or federal statute relating to marijuana... pleads guilty to or is found guilty of possession of a controlled substance under Section 44-43-370[c] and (d) ... the court,

without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires... Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

S.C. Code Ann. § 44-53-450(A) (1976)

By its express language, a conditional discharge is a form of probation. A probationer charged with a probation violation must be afforded minimal due process. State v. Hill, 368 S.C. 649, 659-660, 630 S.E.2d 274, 280 (2006). The U.S. Supreme Court has previously described the nature of such minimal due process in the specific area of parole revocation: written notice of the alleged violations; disclosure to the parolee of the evidence against him; an opportunity to be heard in person and to present witnesses and evidence; the right to confront and to cross-examine; a neutral and detached hearing body; and a written decision from the hearing body. Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972). That holding was extended by the Supreme Court to probation revocation hearings shortly thereafter. Gagnon v. Scarpelli, 411 U.S. 778 (1973).

The South Carolina Supreme Court has recently addressed related matters in several cases in recent years. It first held that imposition of a suspended sentence by a magistrate without first having an evidentiary hearing violated a defendant's right to due process. Dangerfield v. State, 376 S.C. 176, 656 S.E.2d 352 (2008). In Dangerfield, the defendant pled guilty to passing fraudulent checks, and the magistrate imposed a sentence but suspended the sentence conditioned upon the payment of restitution. When Dangerfield failed to pay restitution, the magistrate issued a bench warrant. Dangerfield was then arrested and sentenced without a hearing. The Court held that imposition of a

suspended sentence in Dangerfield's case was constitutionally equivalent to the revocation of parole or probation, meaning that Dangerfield was entitled to a pre-revocation hearing to contest the allegations. Id. at 180, 354.

The South Carolina Supreme Court has also held that "a Drug Court Program participant is entitled to notice and a hearing to determine whether he has violated the conditions of his suspended sentence before his sentence may be imposed." State v. Perkins, 378 S.C. 57, 61, 661 S.E.2d 366, 368 (2008). The recited facts in the Perkins opinion makes clear that a Circuit Court Judge heard evidence about the defendant's failure to comply with the Drug Court Program's terms, and then heard from the defendant in response thereto prior to imposing the suspended sentence.

In a third case decided in 2008, the State Supreme Court said: "Procedural '[d]ue process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.'" Moore v. Moore, 376 S.C. 467, 473, 657 S.E.2d 743, 746 (2008). Furthermore, "Where important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses." Id.

B. Appellant was denied the required minimal due process prior to revocation of his conditional discharge.

In the case at hand, Magistrate Johnson acted as both judge and prosecutor, but even a prosecutor is required to make disclosure to the defendant. Magistrate Johnson had possession of an alleged failed hair follicle drug report, although Appellant was only required to take urine drug tests under the terms of the conditional discharge order, but failed to provide Appellant with this document prior to, during, and to this day after the

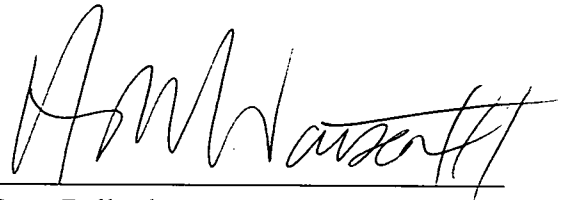
hearing in question. (R \_\_\_\_). Magistrate Johnson also failed to require the State, who was not represented at the hearing, either by the solicitor's office or a member of law enforcement, to lay a proper foundation and otherwise make a lawful introduction of purported drug test results into evidence. As such, Appellant could not cross-examine the party obtaining or presenting the evidence to determine the reliability of the evidence presented, including the manner of collection, handling, analysis, etc.

Appellant was also denied the opportunity to challenge any factual representations or conclusions contained within the report itself because the report was never entered into evidence. (R \_\_\_\_). The party bearing the burden of proof has not only failed to meet its burden, it has failed to appear or submit any evidence at all. As such, the record is devoid of sufficient information and evidence that would support a proper factual and legal determination that Appellant violated the terms of his conditional discharge. This Court, sitting in review of the proceedings, is not being asked to reevaluate facts or weigh evidence, but instead to recognize that no evidence exists at all, and thus any factual finding on that basis is clearly erroneous.

**CONCLUSION**

For all of the foregoing reasons, it is respectfully submitted that the Order of the Circuit Court should be reversed.

Respectfully submitted,



Desa Ballard  
Harvey M. Watson III

**Ballard Watson Weissenstein**  
P.O. Box 6338  
West Columbia, South Carolina 29171  
Telephone 803.796.9299  
Facsimile 803.796.1066  
Email: [desab@desaballard.com](mailto:desab@desaballard.com)  
[harvey@desaballard.com](mailto:harvey@desaballard.com)

Carson Henderson  
**The Henderson Law Firm, PC**  
109-B Oak Avenue  
Greenwood, South Carolina 29646  
Telephone 864.229.8000  
Facsimile 864.229.8001  
Email: [carsonhenderson2@hotmail.com](mailto:carsonhenderson2@hotmail.com)

September 25, 2013

CO-COUNSEL FOR APPELLANT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPELLATE CASE NO. 2013-000696

APPEAL FROM GREENWOOD COUNTY  
FRANK R. ADDY JR., CIRCUIT COURT JUDGE  
Case No. 2012-CP-24-1485

RECEIVED  
SEP 27 2013  
SC Court of Appeals

State of South Carolina,

Respondent,

vs.

Regan Berkley Chrisley,

Appellant.

**APPELLANT'S INITIAL DESIGNATIONS**

Pursuant to Rule 209(a) and (b), SCACR, Appellant hereby designates the following matter, which was before the lower court (as defined in Rule 202(b)(1)) to be included in the Record on Appeal in this matter. Appellant reserves the right to supplement these designations in conjunction with the submission of their initial reply brief.

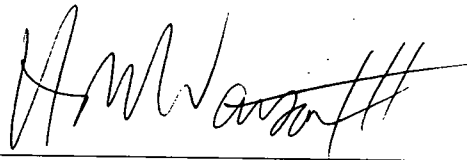
All designated matter does not include proof of service or exhibits unless otherwise specified:

1. Order for Conditional Discharge dated December 14, 2011
2. Order vacating decision dated December 12, 2012
3. Order affirming lower court decision dated February 19, 2013
4. Order denying reconsideration by Frank R. Addy, Jr., dated March 18, 2013

5. Petition in Support of Appeal to Circuit Court dated December 21, 2012
6. Return to Appeal in Circuit Court dated January 3, 2013
7. Appellant's Motion to Reconsider dated February 26, 2013
8. Transcript of hearing in Magistrate's Court on December 21, 2012
9. Transcript of the hearing in Circuit Court on February 19, 2013
10. Traffic ticket #51191EW.

The undersigned is informed and believes, and therefore certifies, that the matter designated is relevant to the appeal in this matter.

Respectfully submitted,



---

Desa Ballard  
Harvey M. Watson III

**Ballard Watson Weissenstein**  
P.O. Box 6338  
West Columbia, South Carolina 29171  
Telephone 803.796.9299  
Facsimile 803.796.1066  
Email: [desab@desaballard.com](mailto:desab@desaballard.com)  
[harvey@desaballard.com](mailto:harvey@desaballard.com)

Carson Henderson  
**The Henderson Law Firm, PC**  
109-B Oak Avenue  
Greenwood, South Carolina 29646  
Telephone 864.229.8000  
Facsimile 864.229.8001  
Email: [carsonhenderson2@hotmail.com](mailto:carsonhenderson2@hotmail.com)

September 25, 2013

CO-COUNSEL FOR APPELLANT

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM GREENWOOD COUNTY  
FRANK R. ADDY JR., CIRCUIT COURT JUDGE  
Case No. 2012-CP-24-1485

---

State of South Carolina,

Respondent,

v.

Regan Berkley Chrisley,

Appellant.

---

**CERTIFICATE OF SERVICE**

---

I, Beth Cogan, an employee with the Law Offices of Ballard Watson Weissenstein, do hereby certify that on September 25, 2013, I served a copy of the **Appellant's Initial Brief** and **Appellant's Designation of Matter** in the above-captioned case on the following individuals by standard US Mail:

**Salley W. Elliott, Esquire**  
**Office of the Attorney General**  
**Post Office Box 11549**  
**Columbia, South Carolina 29211**



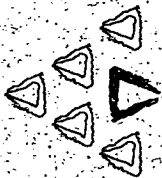
Beth Cogan, Paralegal

September 25, 2013  
West Columbia, South Carolina



SEP 27 2013

**SC Court of Appeals**



**Ballard  
Watson Weissenstein**  
PERSISTENT. UNWAVERING.

Desa Ballard  
Harvey M. Watson III  
Stephanie Weissenstein  
Attorneys at Law

Post Office Box 6338 | West Columbia, SC 29171  
226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.796.1066 | [desaballard.com](http://desaballard.com)

September 25, 2013

Via United States Mail

Honorable Jenny A. Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RECEIVED  
SEP 27 2013  
SC Court of Appeals

Re: State v. Regan Berkley Chrisley  
*Appeal Related to Case Number 2012-CP-24-1485*

Dear Ms. Kitchings:

Please find enclosed for filing an original and one (1) copy of the **Appellant's Initial Brief** in the above-referenced matter. Also enclosed are an original and one copy of **Appellant's Designation of Matter** pursuant to Rule 209, SCACR. After both have been filed, please return the clocked copies to our office in the enclosed, self-addressed, stamped envelope.

Please do not hesitate to contact our office if you should have any questions. With warm personal regards, I am,

Sincerely yours,

Beth Cogan, Paralegal  
[beth@desaballard.com](mailto:beth@desaballard.com)

Enclosure

cc: Carson Henderson, Esquire  
Salley W. Elliott, Esquire