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**Mar 05 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CHARLES ROBERT VAUGHN,

APPELLANT.

APPELLATE CASE NO. 2024-000680

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ANDERS BRIEF OF APPELLANT

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SARAH E. SHIPE  
Appellate Defender

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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial court err denying appellant's motion to reconsider sentence where during guilty plea the state changed its recommendation from a time served sentence to a concurrent sentence and where appellant was unprepared to go forward on probation revocation?

## **STATEMENT OF THE CASE**

On November 9, 2023, a Greenville County grand jury indicted appellant for possession of methamphetamine. R. 23-24. On February 29, 2024, appellant pled guilty as indicted before the Honorable Perry H. Gravely. R. 1. William Hellams represented appellant and Andrew Miller, assistant solicitor, prosecuted for the state. R. 1.

Judge Gravely sentenced appellant to a term of five years' imprisonment, suspended to eighteen months imprisonment and three years of probation. On March 14, 2024, counsel for appellant, filed a motion to reconsider sentence. By written order, Judge Gravely denied appellant's motion to reconsider sentence on May 6, 2024.

This appeal follows.

## STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” *State v. Vick*, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009) (quoting *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is “bound by the trial court’s factual findings unless they are clearly erroneous.” *Id.* (quoting *Wilson*, 345 S.C. at 5-6, 545 S.E.2d at 829). 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 court’s ruling is supported by any evidence.” *State v. Slocumb*, 412 S.C. 88, 91, 770 S.E.2d 436, 438 (Ct. App. 2015). “A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support.” *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

## ARGUMENT

The trial court erred denying appellant's motion to reconsider sentence where during guilty plea the state changed its recommendation from a time served sentence to a concurrent sentence and where appellant was unprepared to go forward on probation revocation.

### **Relevant facts**

On February 29, 2024, appellant appeared before the court to plead guilty to possession of methamphetamine. R. 1-18. The state alleged on November 8, 2023, during a traffic stop and search appellant was found with .16 grams of methamphetamine and that he had a prior conviction for the same. R. 14, ll. 15-20. The solicitor stated at the time of the November 2023, incident appellant was on probation. R. 14, l. 21.

Appellant agreed the solicitor's facts were true and told the court he still wished to plead guilty. R. 14, l. 22—15, l. 7. After that, Ms. Monday,<sup>1</sup> told the plea court appellant had been given probation on June 14, 2023, for possession of methamphetamine. Monday alleged appellant was in violation of his probation for: failure to gain approval and notify agent of address change, absconding supervision, failure to be available for substance abuse counseling, and arrears on monetary obligations. R. 15, l. 13—16, l. 1.

The plea court asked appellant if he still wished to plead guilty knowing that it was a violation of his probation. The transcript does not reflect any response from appellant. R. 16, ll. 2-7.

The state recommended appellant's sentence run concurrent with his probation violation. Defense counsel objected stating, "[t]he last recommendation that I have was time served from Ms. Gasser." R. 16, ll. 13-14. In mitigation counsel offered that appellant had suffered from the

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<sup>1</sup> Counsel believes Ms. Monday is likely an agent for South Carolina Department of Probation Parole and Pardon Services.

disease of addiction for several years and has been trying to get clean. Counsel also stated appellant had a job opportunity lined up. Counsel asserted he had been speaking with another probation agent and it was his understanding appellant would be allowed to remain on probation. R. 16, l. 21—17, l. 22.

The plea court terminated appellant's previous probation and sentenced appellant to five years' imprisonment suspended to the service of eighteen months' imprisonment and three years of probation. R. 18, ll. 12-22.

On March 14, 2024, defense counsel filed a motion to reconsider appellant's sentence contending the state had offered a time served recommendation to appellant which induced him to plead guilty. R. 20. Counsel contended the state's recommendation at sentencing was inconsistent with their prior offer of time served. R. 20. Counsel further asserted the "state's interjection of the issue of [appellant]'s probation violation after the Court's acceptance of [appellant]'s guilty plea forced [appellant] to proceed with a hearing on the violation of probation. R. 21. Counsel requested the court reconsider appellant's sentence.

On May 6, 2024, by written order the court denied counsel's motion finding no basis to amend the sentence "regardless of recommendations by the [s]tate and negotiations with [p]robation." R. 22.

### **Discussion**

"The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear

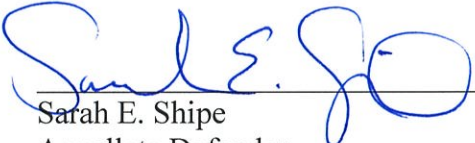
on the proper sentence for the particular defendant, given the crime committed.” *Id.* (citing *Wasman v. United States*, 468 U.S. 559, 563, 104 S.Ct. 3217, 82 L.Ed.2d 424 (1984)).

In a criminal prosecution, punishment of the offender is recognized as a proper motivation for a sentencing trial judge. *State v. Fletcher*, 322 S.C. 256, 471 S.E.2d 702 (Ct.App.1996). However, another legitimate interest at sentencing is the defendant's prospect for rehabilitation and restoration to a useful place in society. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996). *See also* 24 C.J.S. Criminal Law § 1460 (rehabilitation is considered to be one purpose of sentencing).

The court erred in denying appellant's motion to reconsider sentence where the state went back on its prior offer to recommend time served and improperly interjected the issue of appellant's probation violation at his guilty plea hearing.

**CONCLUSION**

By reason of the foregoing argument, appellant's sentence should be vacated, and this case remanded for resentencing.

  
Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of March, 2025.

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APPELLATE CASE NO. 2024-000680

\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Charles Vaughn 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 , which was held on Feb. 29, 2024, 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 Charles Vaughn.

Respectfully Submitted,

  
\_\_\_\_\_  
Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of March, 2025.

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

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

- (1) True-billed indictment;
- (2) Sentence Sheet;
- (3) Guilty Plea Transcript;
- (4) Motion to Reconsider;
- (5) Order Denying Motion to Reconsider.

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



Sarah E. Shipe  
Appellate Defender

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ATTORNEY FOR APPELLANT

This 5th day of March, 2025.

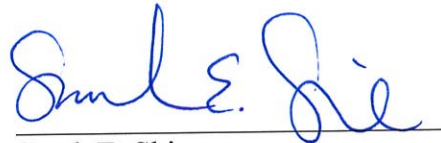
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CERTIFICATE OF COUNSEL

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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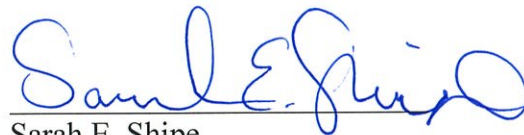
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CERTIFICATE OF SERVICE  
\_\_\_\_\_

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 Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Charles Vaughn, at is private residence via US Mail, this 5th day of March, 2025.



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