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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

Opinion No. (S.C. Ct. App. Filed January 29, 2025)

Lower Court Case No. 2018-GS-38-00390

THE STATE,

RESPONDENT,

V.

SHANEKIA RENEE GARVIN,

PETITIONER

APPELLATE CASE NO. 2023-001452

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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[1] 383 S.C. 410, 680 S.E.2d 11 (2009).

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that pursuant to the South Carolina Court of Appeals' Opinion issued on January 29, 2025, a Petition for Rehearing was filed on February 14, 2025, which was denied on April 17, 2025.

QUESTION PRESENTED

The Court of Appeals erred in holding that the counsel violations that occurred in this case were cured via a notice of hearing document signed by petitioner three months prior because petitioner neither understood nor validly waived her right to counsel where the record established that she in effect pleaded for counsel's assistance at the hearing, and where no warning was given to her before the hearing regarding the dangers of pro se representation, and where no reiteration of the right to counsel and the waiver requirements were explained to her, all of which violated the Sixth and Fourteenth Amendments and the case of State v. Bryant[2], which addressed a similar scenario involving a defendant who had previously appeared in court for several probation revocations, but received the required advisements on the counsel issues nonetheless in accordance with Faretta v. California, 422 U.S. 806 (1975).

[2] 383 S.C. 410, 680 S.E.2d 11 (2009).

STATEMENT OF THE CASE

Petitioner Shanekia Renee Garvin pled guilty to assault and battery of a high and aggravated nature during the March 2019 term of the Orangeburg County General Sessions Court before Judge Diane Goodstein and was sentenced to ten years imprisonment, suspended upon the service of five years probation. A probation revocation hearing was held on September 6, 2023, at the Orangeburg County General Sessions Court before Judge Maite Murphy, who revoked petitioner's probation and imposed the ten-year sentence. South Carolina Probation Agent Kimberly Manning Brantly appeared on behalf of the state during the hearing, and petitioner appeared pro se at the hearing

Petitioner appealed and on January 29, 2025, the South Carolina Court of Appeals affirmed her probation revocation. See State v. Garvin, Unpublished Opinion No. 2025-UP-033 (filed January 29, 2025). A petition for rehearing was filed on February 14, 2025. The Court denied the petition for rehearing on April 17, 2025. This petition for writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in holding that the counsel violations that occurred in this case were cured via a notice of hearing document signed by petitioner three months prior because petitioner neither understood nor validly waived her right to counsel where the record established that she in effect pleaded for counsel's assistance at the hearing, and where no warning was given to her before the hearing regarding the dangers of pro se representation, and where no reiteration of the right to counsel and the waiver requirements were explained to her, all of which violated the Sixth and Fourteenth Amendments and the case of State v. Bryant[3], which addressed a similar scenario involving a defendant who had previously appeared in court for several probation revocations, but received the required advisements on the counsel issues nonetheless in accordance with Faretta v. California, 422 U.S. 806 (1975).

Petitioner's probation was revoked, and the original ten-year sentence imposed upon her became reinstated. At the hearing, the state alleged that petitioner violated her probation by failing to report and pay fees owed. Petitioner appeared pro se at the probation revocation hearing. However, there was nothing in the record from the probation revocation hearing establishing that petitioner was advised of her right to counsel and whether she chose to waive her right to counsel; and furthermore, there was nothing in the record establishing that petitioner was warned of the disadvantages of pro se representation.

On appeal, the following issue was presented to this Court:

> The circuit court judge erred in revoking appellant's probation because appellant appeared at the hearing without the assistance of counsel, and because the record was devoid of any waiver of the right to counsel or warnings regarding the disadvantages of self-representation.

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[3] 383 S.C. 410, 680 S.E.2d 11 (2009).

This Court issued the following findings regarding the right to and waiver of counsel:

> ("The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." (quoting *Faretta v. California*, 422 U.S. 806, 807 (1975))); *Salley v. State*, 306 S.C. 213, 215, 410 S.E.2d 921, 922 (1991) ("The right to counsel attaches in probation revocation hearings."). We find Garvin was sufficiently informed of her right to counsel because she signed a notice of her probation hearing less than three months before the hearing and the probation court confirmed she signed the notice that "included [her] right to have an attorney represent [her]." *See State v. Bryant*, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (Ct. App. 2009) ("It is the trial court's responsibility to determine whether there was a knowing and intelligent waiver [of the right to counsel] by the accused."); *id.* at 416, 680 S.E.2d at 14 (finding the "probation court's colloquy adequately informed Bryant of her right to counsel"); *State v. McLauren*, 349 S.C. 488, 494, 563 S.E.2d 346, 349 (Ct. App. 2002) ("In the absence of a specific inquiry by the trial judge addressing the disadvantages of a pro se defense . . . the appellate court will look to the record to determine whether [the defendant] had sufficient background or was apprised of his rights by some other source."). Moreover, we hold the notice of hearing and Garvin's prior two appearances before the probation court sufficiently warned her of the dangers and disadvantages of appearing pro se. *See Thompson*, 355 S.C. at 262-63, 584 S.E.2d at 135 ("While a specific inquiry by the trial judge expressly addressing the disadvantages of a pro se defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding."); *Bryant*, 383 S.C. at 417, 680 S.E.2d at 14 (finding Bryant was adequately apprised of the dangers and disadvantages of appearing pro se from the evidence of her signature of the probation notice, her two prior appearances before the probation court, and having been represented by counsel for her other probation violations).

Clearly, petitioner's signature on a notice form signed three months prior to the probation revocation hearing at issue was not a controlling factor on the counsel issues (right to counsel and waiver of the right to counsel) because an examination of the dialogue that occurred at the

hearing proved that petitioner desired counsel's assistance at the hearing, and that she did not validly waive the right to counsel at that time, and moreover that she was unaware of the dangers of pro se representation.

The colloquy from the hearing established indeed that petitioner requested in effect counsel's assistance at that time. Also at that hearing, petitioner was not informed that appointed counsel would be assigned to her if she could not afford legal representation. See Rule 602(a), SCACR. Additionally, there was no mention of anything in the record of the hearing indicating that petitioner validly waived her right to counsel. To the contrary, petitioner informed the judge that she had no attorney, which in turn apparently meant in effect that she was open to receive and wanted counsel's assistance at the hearing. Finally, petitioner was not warned of the dangers of appearing pro se at the probation revocation hearing. See Osbey v. State, 425 S.C. 615, 825 S.E.2d 48 (2019), citing to Faretta v. California, 422 U.S. 806 (1975), where the holdings clearly stated the requirements of advising defendants of the right to counsel and the dangers of pro se representation in such cases.

During the probation revocation hearing held in the case at bar, the following colloquy occurred on the subject of the assistance of counsel:

> Probation Officer: She was given notice on June 19th of 2023 that her—she needed to have an attorney to represent her for the September 6th hearing.
>
> The Court: All right. Ms. Garvin, do you recall signing that letter with today's notice of being here?
>
> Petitioner: Yes, ma'am.
>
> The Court: And it included your right to have an attorney represent you?
>
> Petitioner: Yes, ma'am. I don't have an attorney.

> The Court: Well, you've had since June. ROA 5, lines 7-20.
>
> Petitioner: No, ma'am. I promise I have called in. I called last month, and I came straight—July. I got out July 7th. I called in when I got out of jail. I called the next day. She said, ma'am—I called that Monday. She said, don't have to report in; you have to call. I had to call in. I called back the following Thursday, and I spoke with someone. I even got the address where I could send the other money order to, send to a Columbia address. I sent that off. That was a money order for $75. And I called today, and I told her I didn't have an attorney. That was early this morning, and I said, do I have to be in the big court or the little court? She told me that. And I also told her I would bring—but she told me just bring the money order in with you and make sure I would be there, and just keep calling. I spoke with someone. ROA 9, l.5-p. 10, l.7

This background information indicated that petitioner's understanding of the case from conversations with probation officials was that she would not have to come to court because she reported by calling in and had the money orders to mail in as fee payments. Therefore, there was no need in her mind to seek counsel apparently because she believed the assertions from probation office workers assuring her that the money orders and calls to them would suffice and thus no court proceeding would occur. Furthermore, petitioner t indicated **twice** at the start of the hearing that she did not have an attorney. Undoubtedly, the inference is that petitioner desired counsel's assistance at her probation revocation hearing. These **two** pleas in effect from petitioner for counsel's assistance entered at the hearing meant not only did she desire counsel's assistance, but also that she did not project a valid waiver of her right to counsel; and equally important was the fact that she had no understanding of the dangers of pro-se representation.

Obviously, a stale three-month old probation notice of a future hearing paper document cannot outweigh petitioner's clear message and in effect request at the hearing indicating by inference that she desired counsel's assistance at that time. Note that the probation revocation judge did not respond to petitioner's **two** pleas referencing counsel or inquire further by at least

questioning petitioner about the counsel issues. Rather, the judge summarily dismissed what was obviously a request for counsel entered by petitioner at the hearing.

Defendants have the right to counsel in court proceedings,[4] and this right to counsel extends to adjudications in probation revocation hearings as well. See Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986). Additionally, it is not only apparent that petitioner desired counsel's assistance at the hearing, but it was also certain that petitioner did not waive her right to counsel prior to the hearing. A defendant may waive the right to counsel verbally, or by conduct or forfeiture. State v. Boykin, 324 S.C. 552, 478 S.E.2d 689 (Ct. App. 1996). The record is devoid of any language indicating that petitioner verbally waived her right to counsel. Furthermore, petitioner's conduct did not waive her right to counsel. Hence, it was error to assume and rule that petitioner comprehended the contents included in a three-month old notice document as being the equivalent of knowing and understanding her right to counsel, and/or the option of exercising a waiver, and understanding the warning regarding the disadvantages of pro se representation.

A waiver of the right to counsel is not a proper or valid waiver without a warning being given and an understanding being made on the dangers and disadvantages of pro se representation, which did not occur in this case. No such warnings appeared on the record in this case. In order for a waiver of counsel to be knowingly and intelligently made, the petitioner should be made aware of the dangers and disadvantages of pro se representation. Prince v. State, 301, S.C. 422, 392 S.E,2d 462 (1990). See the reversals in Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002), and Osbey v. State, 425 S.C. 615, 825 S.E.2d 48 (2019), where the Court found no waivers of the right to counsel because the defendants were not adequately warned of

[4] Faretta v. California, 422 U.S. 806 (1975); Gideon v. Wainwright, 372 U.S. 335 (1963).

the dangers and disadvantages of pro se representation. Compare also, Sally v. State, 306 S.C. 213 410 S.E.2d 921 (1991), where the Court held that in the absence of specific questions regarding knowledge that self-representation involved dangers, there must be a review to ascertain whether one had sufficient background to understand the counsel matter or was apprised of the counsel issue via another source. In Sally, where the defendant stated that she did not seek counsel because her agent stated that he would get the probation vacated, the Court held that no waiver of counsel occurred because the defendant relied on her probation officer's promise and did not seek counsel as a result. Similarly, in the case at bar, petitioner stated that she had been calling and was assured by office officials that sending in money orders and calling in would constitute reporting and payment, and that she "didn't have to come into the office," and that all she had to do was "continue with the money orders" R. 8, l.21-p. 9, l.3, R. 9, l. 15-p. 10, l. 7, R. 10, l.11-p. 11, l.6; Clearly, petitioner believed that her calls and mailed in money meant that she had satisfied her obligations based on assurances from probation office personnel, which she relied upon (as did the defendant in Sally) in thinking that the matters had been settled, and thus no court proceeding or need for counsel would be necessary. Had petitioner not been misled, then it appeared as though she would have sought the assistance of counsel before her hearing. Petitioner explained the advice she received as follows:

> Petitioner: Yes, but I don't have a cell—I don't even have that cell, but I promise I called. My mother is out there. I called. It wasn't July 7th; it was that following Monday. It was that following Monday I called. I talked to her, she gave me the address and everything. She told me to call that Thursday. She told me what to do, where to send the money order to, and I also called her this morning—well, that was yesterday. I asked her, I said, do I go to the big court or small court? She said whatever you do, she said just be in court. I said, I will. I actually called. And he told me, she said, bring your money order in, do what you have to do. I promise I called. R. 11, l.16-p. 12, 4.

In State v. Bryant, 383 S.C. 410, 680 S.E.2d 11 (2009), the Court held that the probationer waived the right to counsel, in part because it was a third court appearance for alleged prior violations. **However, note that in Bryant, the following colloquy occurred at the probation revocation proceeding regardless of the fact that he received prior adjudications at previous revocation hearings:**

> Q: Do you understand that you have a right to have a lawyer represent you in connection with these proceedings?
>
> A: Yes, sir.
>
> Q: Do you wish for the court to inquire as to whether you would be entitled to a court appointed lawyer or do you wish to go forward today?
>
> A: I want to go forward
>
> Q: Okay. Do you understand that an attorney may be of benefit to you, for example, there may be things I need to be told that you do not know to tell me, and that if you talk with a lawyer you and the lawyer would learn these things, do you understand that?
>
> A: Yes, sir.
>
> Q: Understanding that, do you still wish to waive your right to counsel and go forward?
>
> A: Yes, sir.
>
> Q: Alright. At any time before I make a determination in this matter, if you desire to talk to a lawyer all you have to do is tell me and I'll stand aside and give you a chance to talk to a lawyer, do you understand?
>
> A: Yes, sir.

This type of exchange that took place in Bryant did not occur at petitioner's hearing. Therefore, despite petitioner's prior appearance at a previous probation revocation hearing;

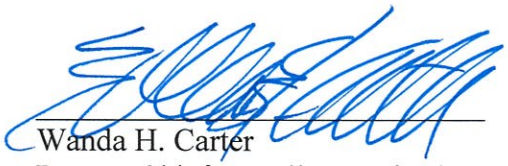
nonetheless, the benefit of the receipt of counsel warnings by the court in this case (as set forth in Bryant) prior to petitioner's instant hearing did not occur.

Petitioner was denied the right to counsel (a right which was not validly waived) at her probation revocation hearing inasmuch as her responses at the hearing indicated a desire for counsel's assistance, which again she never waived. Further, petitioner was not warned of the dangers of pro se representation prior to the hearing. Finally, none of the above counsel violations were cured by petitioner's signature on a three-month old stale notice document where the actual hearing testimony contradicted the position that matters on the counsel issues had been resolved.

CONCLUSION

Based on the foregoing argument above, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above raised counsel issues.

Respectfully Submitted,



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This 19th day of May, 2025.