STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

SHANEKIA RENEE GARVIN,

APPELLANT

APPELLATE CASE NO. 2023-001452

Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

Opinion No. 2025-UP-033

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, counsel for appellant would petition for rehearing regarding this Court's holding in the case that appellant was advised of and waived the right to counsel, and that appellant was warned of the dangers of pro se representation because although appellant signed a notice hearing document three months prior, this Court might have overlooked evidence in the record from the probation revocation hearing that evidenced appellant's plea for counsel's assistance in effect, and the lack of any waiver of the right to counsel thereof, and the absence of appellant's understanding of the dangers of self-representation. In support of this petition, counsel would submit the following information.

1. Appellant 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 appellant's probation and imposed the ten-year sentence.

2. The state alleged that appellant violated her probation by failing to report and pay fees owed. Appellant appeared pro se at the probation revocation hearing. However, there was nothing in the record of the probation revocation hearing establishing that appellant was advised of her right to counsel and that she waived her right to counsel, and there was nothing in the record establishing that appellant was advised of the disadvantages of pro se representation.

3. 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.

4. 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).

5. Clearly, appellant'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 because an examination of the dialogue that occurred at the hearing proved that appellant desired counsel's assistance at the hearing, and that she did not waive the right to counsel at that time, and that she was unaware of the dangers of pro se representation.

6. At the probation revocation hearing, note that appellant did not waive her right to counsel despite the reference to the matter of counsel contained within the signed paperwork dated three months beforehand in the case. The colloquy from the hearing established indeed that appellant requested in effect counsel's assistance and was not informed at the hearing that appointed counsel would be assigned to her if she could not afford legal representation. See Rule 602(a), SCACR. Also, there was no mention of anything in the record indicating that

appellant waived her right to counsel. To the contrary, appellant informed the judge that she had no attorney, which in turn apparently meant that she was open to receive and wanted counsel's assistance at the hearing. Additionally, appellant was not warned of the dangers of appearing pro se at the probation revocation hearing. See the rules outlined in Osbey v. State, 425 S.C. 615, 825 S.E.2d 48 (2019), citing to Faretta v. California, 422 U.S. 806 (1975), requiring courts to advise defendants of the right to counsel and the dangers of pro se representation.

7. During the probation revocation hearing in the case at bar, the following colloquy on the subject occurred:

> 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?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: And it included your right to have an attorney represent you?
>
> THE DEFENDANT: Yes, ma'am. I don't have an attorney.
>
> THE COURT: Well, you've had since June. ROA 5, lines 7-20.
>
> THE DEFENDANT: 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 appellant'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 to seek counsel because she believed the assertions form probation office workers assuring her that the money orders and calls to them would suffice and thus no court proceeding would occur. Furthermore, appellant indicated **twice** at the start of the hearing that she did not have an attorney. Undoubtedly, the inference is that appellant wanted counsel's assistance at her probation revocation hearing. These **two** pleas in effect from appellant for counsel's assistance entered at the hearing meant that not only did she desire counsel's assistance, but also that she did not project a waiver of her right to counsel and had no understanding of the dangers of pro-se representation.

8. Obviously, a stale three-month old probation notice of a future hearing cannot outweigh appellant's clear message and in effect request at the hearing which implied that she desired counsel's assistance at the hearing. Note that the circuit court judge did not delve into appellant's **two** pleas referencing counsel to learn more about or at least question appellant about the counsel issues rather than summarily dismissing the same. Defendants have the right to counsel in court proceedings,[1] 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 appellant desired counsel's assistance at the proceeding, but it was also certain that appellant did not waive her right to counsel. A

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

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 appellant verbally waived her right to counsel. Furthermore, appellant's conduct did not waive her right to counsel. Hence it was error to assume appellant comprehended the contents included in a three-month old notice document as being the equivalent of knowledge of the right to counsel or the option of exercising a waiver.

9. Also, a waiver of the right to counsel is not a proper or valid waiver without an understanding of 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 appellant 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 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, appellant 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 to "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, appellant believed that her calls and mailed in money meant that she had satisfied her obligations based on assurances from office personnel, which she relied upon (as did the defendant in Sally) thinking that the matters had been settled and thus no court proceeding or need for counsel would be necessary. Had appellant not been misled, then it appeared as though she would have sought the assistance of counsel before her hearing. Appellant explained the advice she received as follows:

> THE DEFENDANT: 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.

10. 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, nonetheless, the following colloquy occurred at the proceeding despite 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 anytime 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.

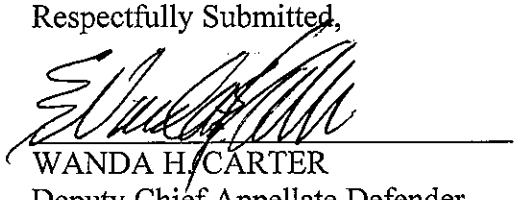
This type of exchange that took place in Bryant did not occur at appellant's hearing. Therefore, despite appellant's appearances at two prior probation revocations; nonetheless, the benefit of the receipt of counsel warnings by the court in this case (as what was set forth in Bryant) prior to appellant's hearing would have brought to light clarification on the counsel issues in the case at bar.

Appellant was denied the right to counsel (a right which was not waived) at her probation revocation hearing inasmuch her responses at the hearing indicated a desire for counsel's assistance, which she never waived. Moreover, appellant was not warned of the dangers of pro se representation prior to the hearing. Finally, none of the above counsel violations were cured by appellant's signature on a three-month old stale notice document where

the actual hearing testimony contradicted the position that questions on counsel issues were resolved.

WHEREFORE, based on the foregoing information, counsel for appellant would request a rehearing on the points raised in this petition.

Respectfully Submitted,



WANDA H. CARTER
Deputy Chief Appellate Defender

This 14th day of February, 2025.

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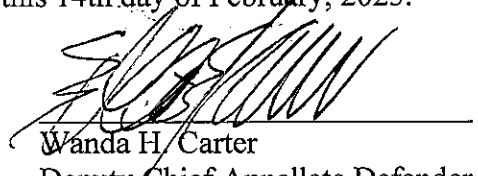
APPELLATE CASE NO. 2023-001452

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Matthew C. Buchanan, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Shanekia Renee Garvin, #391948, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC, 29210, this 14th day of February, 2025.



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