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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Orangeburg County Circuit Court
The Honorable Maite Murphy

Opinion No. 2025-UP-033
Appellate Case No. 2023-001452

STATE OF SOUTH CAROLINARESPONDENT

v.

SHANEKIA RENEE GARVIN.....PETITIONER

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

1. Whether the Court of Appeals correctly determined that the Petitioner validly waived her right to counsel by signing a Notice of Hearing and Acknowledgment of Notice document three months prior to her revocation hearing?
2. Whether the Court of Appeals correctly held that the Petitioner's prior two appearances before the probation court sufficiently warned her of the dangers and disadvantages of appearing pro se?

STATEMENT OF THE CASE

On April 21, 2016, the Petitioner was charged with two counts of unlawful neglect of child or helpless person. On July 26, 2016, she pled guilty to these charges before the Honorable Benjamin H. Culbertson, who sentenced her to five years incarceration suspended to three years of probation. On January 9, 2018, she was arrested for failing to pay child support and was released on January 12, 2018.

On January 12, 2018, the Petitioner was charged with two counts of Assault & Battery of a High and Aggravated nature (ABHAN) and two counts of filing a false report of a felony violation. On October 2, 2018, she pled guilty to these charges before the Honorable Diane S. Goodstein, who sentenced her to ten years with five years of probation for the ABHAN charges and five years at SCDC with five years of probation for the false report of a felony violation charge. She was credited with thirteen days of service and ordered to not have any contact with the victim. (R. p. 17-23).

On November 20, 2020, the Department served a warrant on the Petitioner for numerous violations of her probation including failure to report multiple times, failing to communicate with her agent, failing to follow the advice and instructions of the agent, and pay her supervision fees. On March 17, 2021, the Petitioner appeared before the Honorable Edgar W. Dickson for these violations. She was ordered to be continued on probation with zero tolerance for any further violations.

On April 4, 2023, the Department served a warrant on the Petitioner for violation of her probation conditions including her continuing failure to contact her probation agent and failing to pay her supervision fees and court fines. (R.p.26-p.27). On June 19, 2023, the Petitioner signed a Notice of Probation Hearing and Acknowledgment of Notice that informed her that she was

directed to appear at a violation hearing on September 6, 2023 in the Orangeburg County Courthouse. (R.p.1).

On September 6, 2023, the Petitioner appeared at the hearing as directed by the notice. After hearing the violations as noted by the Petitioner's agent, the Honorable Maite Murphy asked the agent when she was given notice of the hearing. (R.p.5, 1. 5-6). Upon hearing the response of June 19, 2023, Judge Murphy asked the Petitioner if she recalled signing the notice. The Petitioner said she did. Judge Murphy then asked if the notice included her right to have an attorney present. The Petitioner affirmed that it did and stated that she did not have an attorney. (R.p.5, 1. 7-18).

After hearing the Petitioner's position, Judge Murphy noted her previous violations and failures to report. After the Petitioner stated that she called someone on the phone, the probation agent confirmed that the Petitioner had made one phone call on January 13, 2022 and then called earlier on the day of the hearing. Judge Murphy also noted she had violated two prior zero tolerance orders and still hadn't complied with her conditions. The Petitioner then stated that she was clean, meaning that she did not have any illegal drugs in her system. Judge Murphy then told her that she would test her and if it came back positive, she was going to give her a full revocation. After a break for the testing, the drug test came back positive for cocaine. As a result, Judge Murphy ordered a full revocation. (R.p.14, 1. 5 – p. 15, 1. 1-2).

On September 8, 2023, the Petitioner filed a Notice of Appeal. On December 12, 2023, the Office of Appellate Defense served its Initial Brief of the Appellant on the Department. On February 8, 2024, the Office of Appellate Defense served its Final Brief on the Department. On February 14, 2024, the Department served its Final Brief of the Respondent on the Office of Appellate Defense and with the South Carolina Court of Appeals. On January 29, 2025, the South Carolina Court of Appeals affirmed Judge Murphy's circuit court order. On February 14, 2025,

the Office of Appellate Defense served its Petition for Rehearing on the Department and the South Carolina Court of Appeals. On April 17, 2025, the South Carolina Court of Appeals filed its Order that denied the Appellant's Petition for rehearing. On May 19, 2025, the Office of Appellate Defense served its Petition for Writ of Certiorari to the Court of Appeals on the Department, which now responds with this Return to Petition for Writ of Certiorari.

Arguments

The Court of Appeals did not err when it determined that the Petitioner validly waived her right to counsel by signing a Notice of Hearing and Acknowledgment of Notice document three months prior to her revocation hearing and that her prior appearances before the probation court sufficiently warned her of the dangers of appearing pro se.

As noted in the record, the trial court established that the Petitioner had advance notice of her September 6, 2023 hearing. (R.p. 5, l. 5-10). Furthermore, there is evidence in the record that established that she waived her right to counsel. (R.p. 5, l. 11-20). It is important to also note that this was not the Petitioner's first revocation hearing. She had previously been advised of her right to counsel at her previous violation hearings. In addition, she could have asked the court for an attorney but failed to do so. Instead, she simply acknowledged her right to have an attorney and then proceeded to state: "I don't have an attorney." Petitioner's attempt to conflate that statement into an inferred request for counsel is, respectfully, not grounds for the granting of certiorari.

The notice that was signed by the Petitioner nearly three months prior to her hearing informed her of her right to have an attorney and warned of the dangers of appearing without an attorney as well as warns that such an appearance would be a knowing and voluntary choice to proceed without counsel. (R.p.1). As stated in Salley v. State, 306 S.C. 213, 215, 410 S.E.2d 921, 922 (1991), "this court will look to the record to discern whether there are facts to show the defendant had sufficient background or was apprised of his rights *by some other source* so as to constitute a knowing and

intelligent waiver of the right to counsel.” (Emphasis added.) Unlike Salley, the Petitioner did not testify as to why she did not have an attorney or state any reliance upon her probation officer’s representations. By appearing without an attorney, she decided to appear *pro se*.

As noted in the record, the Petitioner’s decision to represent herself was made with an understanding of the risks of self-representation as described in the notice. This case mirrors the situation in State v. Bryant, 383 S.C. 410, 417, 680 S.E.2d 11, 15 (2009) where the court held that the Defendant validly waived her right to counsel after noting the Probation Notice she signed with her probation officer along with her previous experience in the criminal justice system, her previous representation by counsel, and the probation court’s colloquy with her that she had both a sufficient background and was apprised of her rights by some other source.

Respondent acknowledges that probationers must be advised of their right to counsel, as well as the right to appointed counsel if indigent. Barlet v. State, 288 S.C. 481, 483, 343 S.E.2d 620, 622 (1986). However, Petitioner in this instance was clearly notified.

Petitioner cites to the fact that there was no warning by the trial court of the dangers of self-representation. However, “[t]he extent of the inquiries made by the trial [court] ... is not conclusive,” as noted by Hines v. State, 435 S.C. 476, 495, 868 S.E.2d 387, 397 (Ct. App. 2021), quoting Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). As made clear by Petitioner’s previous appearances before judges for her prior violations, she was familiar with the process and – importantly – continued on probation with “zero tolerance” for future violations.

Petitioner continued to violate the conditions of her probation and thereafter was provided a notice to come to court with clear information about her right to counsel. Petitioner’s own inaction toward that end, when given nearly three months in which she could have retained an attorney or

contacted the public defender's office, should not be grounds to overturn the trial court's revocation of Petitioner's probation.

In the same vein as the court noted in Bryant, this court should affirm the circuit court's finding that the Petitioner validly waived her right to counsel by appearing without an attorney after being advised of her right to counsel and having ample time to obtain counsel before the hearing.

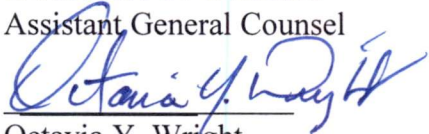
CONCLUSION

Based on the foregoing arguments, the Department respectfully requests Petitioner's arguments be dismissed and the final decision of the probation violation court be affirmed.

Respectfully submitted,

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May 29, 2025