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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHANEKIA RENEE GARVIN,

APPELLANT

APPELLATE CASE NO. 2025-000969

BRIEF OF PETITIONER

WANDA H. CARTER
Interim Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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[1] 422 U.S. 806 (1975).

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

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ISSUE PRESENTED

The Court of Appeals erred in holding that petitioner's signature on a notice document issued three (3) months prior to the probation revocation hearing cured the circuit court judge's failure to warn petitioner of the dangers of self-representation and to properly advise petitioner of the right to counsel in accordance with Faretta[3] and the model set forth in Bryant[4], because this meant there was no knowing and voluntary waiver of the right to counsel by petitioner, particularly where the record established that petitioner in effect pleaded in layman's terms for counsel's assistance at the beginning of the hearing held in the case.

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[3] 422 U.S. 806 (1975).

[4] 383 S.C. 410, 680 S.E.2d 11 (2009).

STATEMENT

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 See State v. Garvin, Unpublished Opinion No. 2025-UP-033 (filed S.C. Ct. App. January 29, 2025). A petition for rehearing was filed on February 14, 2025. The Court denied the petition for rehearing on April 17, 2025. On May 19, 2025, a petition for writ of certiorari was filed with this Court in the case. A return was filed by the state on May 29, 2025. On August 13, 2025, this Court granted the petition filed. This Brief of Petitioner follows.

STANDARD OF REVIEW

The appellate court's authority to review a decision revoking probation is confined to correcting errors of law unless the lack of a legal or evidentiary basis indicates the circuit judge's decision was arbitrary and capricious. State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (1999).

ARGUMENT

The Court of Appeals erred in holding that petitioner's signature on a notice document issued three (3) months prior to the probation revocation hearing cured the circuit court judge's failure to warn petitioner of the dangers of self-representation and to properly advise petitioner of the right to counsel in accordance with Faretta[5] and the model set forth in Bryant[6], because this meant there was no knowing and voluntary waiver of the right to counsel by petitioner, particularly where the record established that petitioner in effect pleaded in layman's terms for counsel's assistance at the beginning of the hearing held in the case.

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.

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

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[5] 422 U.S. 806 (1975).

[6] 383 S.C. 410, 680 S.E.2d 11 (2009).

> 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).

A.) **Absence of Warnings Regarding the Dangers of Pro Se Representation**

In this case, the record is completely devoid of any advice to petitioner regarding the dangers of self-representation. The circuit court's comments regarding counsel follow:

> 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. ROAS, lines 7-20.

Here, there was a total omission of any reference to any advisement on the dangers associated with self-representation. In a case such as this, the defendant must be advised of the right to counsel and the dangers of self-representation to ensure that the defendant "knows what he is doing," and that the choice with respect to counsel is made with his "eyes open;" and the **record** must establish that this information has been made clear prior to the legal proceeding. Prince v. State, 301 S.C. 422, 392 S.E2d 462 (1990), citing to Faretta v. California, 422 U.S. 806 (1975). Compare the probation revocation case of State v. Bryant, 383 S.C. 410, 680 S.E.2d 11 (2009), where the circuit judge properly advised as follows:

> 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.

Compare Hines v. State, 435 S.C. 476, 868 S.E.2d 387 (S.C. Ct. App. 2021), affirmed in Hines v. State, 443 S.C. 32, 902 S.E.2d 377 (2024), where trial judge stated "it's dangerous for you to proceed without an attorney since you're not one and there is a benefit in having an attorney represent you." In Hines v. State, supra, Hines received the basic admonition on the dangers of pro se representation. In Hines, supra, the following colloquy occurred:

> [The Court]: You have a right to have an attorney represent you in regard to this charge[,] and if you cannot afford one[,] the State would be required to appoint an attorney to represent you within

> some limits. That is[,] you would be appointed an attorney to represent you if you wish. If you could not afford one[,] the limitation being that you are assigned an attorney and that would be your attorney. It[']s dangerous for you to proceed without an attorney since you're not one and there is a benefit in having an attorney represent you. Do you understand that?
>
> [Petitioner]: Yes, sir.
>
> [The Court]: Do you wish to have an attorney in regard to this charge or give up that right?
>
> [Petitioner]: I give up that right.
> Hines v. State, 435 S.C. 476, 868 S.E.2d 387 (2021).

Nothing like the above colloquies in Bryant and Hines occurred in the instant case. Our case law is replete with reversals where the record is devoid of advisements to defendants on the dangers of self-representation: For example, see reversals on this issue in Watts v. State, 347 S.C. 399, 556 S.E.2d 368 (2001), Birdwell v. State, 306 S.C. 518, 413 S.E.2d 30 (1992), and Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990), and Gardner v. State, 351 S.C. 407, 570 S.E.2d 84 (2002). Note also in Hines, the Court referred to the judges' omissions in Wroten and Gardner with respect to the lack of specific warnings on the dangers of self-representation and held that no valid waivers of the right to counsel resulted in those cases. Note the same scenarios occurred in the reversals in Watts and Birdwell where the proper pro se warnings were omitted.

B.) **Absence of any Reiteration Regarding the Right to Counsel Advisement**

During the hearing, the circuit judge relied solely on a reference to words on a printed notice document summarizing the right to counsel signed by petitioner three (3) months prior to the hearing. The circuit court judge never outright verbally reiterated for the sake of clarity the proper guarantee to petitioner that she had the right to counsel at that hearing. There was no oral advisement given to petitioner of her right to counsel at that hearing. Clearly, it was error for the circuit court judge to rely on paperwork to alert petitioner of her right to counsel as opposed to

delivering spoken words to her on the right to counsel in order to make certain that the same was understood by her. The relevant exchange at the hearing in connection with this matter follows:

> 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, lines 7-20.

Defendants have the right to counsel in court proceedings and the right to counsel extends to adjudications in probation revocation court proceedings. Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986) See Turner v. State, 384 SC 451, 682 S.E.2d 292 (2009) where the Court held that in "South Carolina...all persons charged with probation violations have a right to counsel and must be informed of this right (to counsel) pursuant to Court Rules." Rule, 602 SCACR.

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 model colloquy occurred at the probation revocation proceeding even though 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?

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 colloquy that included an oral and definite statement of the right to counsel verbally in Bryant did not occur in the case at bar. Petitioner was not given the benefit of an oral recitation of the right to counsel prior to her probation revocation hearing. Moreover, petitioner was not informed that appointed counsel would be assigned to her if she could not afford (and desired) legal representation under Rule 602(a), SCACR.

C.) **Absence of Waiver of the Right to Counsel**

1.) **Absence of an Understanding of the Right to Counsel**

In Hines v. State, supra, the Court held that with respect to the right to counsel, it is the understanding of the right to counsel that matters rather than words on a waiver form, and that "the test is what the defendant understands about the scope of the right [to counsel that] he wishes to discard" Compare Iowa v. Tovar, 541 U.S. 77 (2004), where the Supreme Court held that the issue is always whether there is any understanding of one's right to be counseled. Also, again as argued earlier, there was no information reiterated verbally to petitioner regarding her right to counsel and how appointed counsel could be obtained. Note that in Hines, the defendant was advised orally of his right to counsel and his right to appointed counsel in addition to what was contained on a waiver form. Additionally, petitioner did not understand that she had the right to counsel, and did not comprehend that fact that she needed counsel's assistance due to her

misunderstanding of the case since she believed the matter had been resolved. Petitioner voiced her position at the hearing as follows:

> 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

The information petitioner received in the case indicated her misunderstanding of the case based on conversations with probation officials who led her to believe 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 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.

Compare also, Salley 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 Salley, 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.

Petitioner believed that her calls and mailed in payments meant that she had satisfied her obligations based on assurances from probation office personnel, which she relied upon (as did the defendant in Salley) in thinking that the matters had been settled, and thus no court proceeding or need for counsel would be necessary. Petitioner's misunderstanding of her case affected her understanding of the right to counsel, which was not explored and covered at the hearing. 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.

2.) **Absence of a Knowing and Intelligent Choice to Waive Counsel's Assistance**

The threshold question to first be answered in analyzing a waiver of counsel matter question is whether, as an initial inquiry, the defendant was advised of the right to counsel and warned of the dangers of self-representation, and thereafter chose self-representation with his "eyes open." Hines supra citing to Faretta, supra. Here, it is painfully clear that at no point was petitioner warned by the circuit court judge on the dangers of pro-se representation, and that as a result, she did not waive her right to counsel knowingly and intelligently. Without notice of such dangers associated with self-representation, there can be no knowing and intelligent waiver of the right to counsel. See Osbey v. State, 425 S.C. 615, 825 S.E. 48(2019). In Osbey, the Court held that the defendant was not advised of dangers of self-representation; and therefore, the defendant's pleas were not given knowingly and voluntarily, and a new trial was granted. In Osbey, the Court held as follows:

> In this case, the plea court did not mention to Osbey the dangers of self-representation. When this happens, we look to the record to determine if it shows the factual basis for the waiver. See, e.g., Gardner, 351 S.C. at 412, 570 S.E.2d at 186 ("In a PCR action, if the record fails to demonstrate the petitioner made an informed choice to proceed pro se, with 'eyes open,' then the petitioner did not make a knowing and voluntary waiver of counsel, and the case should be remanded for a new trial."); Prince, 301 S.C. at 424, 392 S.E.2d at 463 (finding no valid waiver because the record "[did] not demonstrate petitioner was sufficiently aware of the dangers of self-representation"). There is nothing else in the record to indicate Osbey was aware of the dangers of representing himself. We find this is an insufficient basis on which to find Osbey actually understood the dangers of self-representation. Osbey v. State, supra, overruling State v. Robertson, 382 S.C. 185, 675 S.E.2d 732 (2019).

The record here is devoid of any showing of a basis in support of a knowing and voluntary waiver of the right to counsel from petitioner. The record is completely devoid of any information given to petitioner regarding the dangers of representation, which in and of itself established that no knowing and voluntary waiver of counsel existed in this case. If a defendant does not make an informed choice to proceed pro se with his "eyes open," then said defendant did not knowingly and voluntarily waive the right to counsel. Gardner v. State, 351 S.C. 407, 570 S.E.2d 184(2002). A waiver of the right to counsel is not a proper or valid waiver without a warning being given to the defendant, and an understanding by the defendant with respect to the dangers and disadvantages of pro se representation, which did not occur in this case. No such warnings appeared in the record of this case. It bears repeating that in order for a waiver of counsel to be knowingly and intelligently made, a defendant must be apprised of the dangers and disadvantages of pro se representation. Prince v. State, 301, S.C. 422, 392 S.E,2d 462 (1990). Again, compare 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. Also, again, there can be no waiver if there is no recitation given warning the defendant of the dangers of self-representation. Osbey v. State, supra. Therefore, without petitioner's understanding of the dangers of pro se representation, which cannot be made sans being informed of the same, then no knowing and intelligent waiver of the right to counsel was entered in this case.

3.) **Absence of a Waiver by Verbal Request or Conduct**

The Faretta waiver applies to a waiver that is alleged to be an affirmative one, or by verbal request or conduct. State v. Boykin, 324 S.C. 552, 478S.E.2d 689 (1996). A waiver by

conduct or verbal indication did not occur in this case. Petitioner did not waive her right to counsel by conduct because she appeared in court for her case, and behaved in such a manner that indicated that she desired counsel's assistance. See State v. Bolick, Unpublished Opinion 2024-UP-221 (June 22, 2024), where the trial judge gave Bolick time to recruit counsel, but Bolick never reappeared back in court. In addition, there was no verbal consent on petitioner's behalf to waive the right to counsel. Petitioner never agreed verbally to waive the right to counsel and appear pro-se. To the contrary, quite the opposite happened, as petitioner in effect pleaded for the assistance of counsel. Petitioner's layman's request for counsel's assistance follows:

> 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

4.) **Absence of a Waiver of Counsel via Printed Paper**

In Hines v. State, supra, the Court referenced paper signatures on waiver forms as follows:

> We appreciate Hines' argument that the advice concerning his right to counsel—both the admonitions given by Judge Hayes and those contained on the waiver from—were general. We also agree with Hines that it is his understanding of the right—not the incantations of the trial judge or the words on a printed form—that controls our inquiry into whether the waiver is good. State v. Brewer, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997). Because the

> test is what the defendant understands about the scope of the right t counsel.

Here, petitioner never signed a waiver form indicating that she waived her right to counsel. Furthermore, petitioner's signature on a mere notice document signed three (3) months prior did not constitute sufficient warning or understanding of her rights under Faretta.

Courts safeguard a defendant's rights by ensuring that constitutional rights waived are knowingly and intelligently waived. Johnson v. Zerbst, 304 U.S. 458 (1938), overruled on other grounds in Edwards v. Arizona, 451 U.S. 477 (1981). In the case at bar, there was no waiver by petitioner of her right to counsel in light of the circuit court judge's failure to advise petitioner of the dangers of self-representation and to properly (verbally) apprise petitioner of the right to counsel. Compare again the Byrant model below of Faretta coverage that did not occur in this case:

> 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.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that the Court reverse petitioner's probation revocation and remand for a new hearing.

Wanda H. Carter
Interim Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of October, 2025.