STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPELLATE CASE NO. 2013-000696

APPEAL FROM GREENWOOD COUNTY
FRANK R. ADDY JR., CIRCUIT COURT JUDGE
Case No. 2012-CP-24-1485

State of South Carolina,

Respondent,

vs.

Regan Berkley Chrisley,

Appellant.

AMENDED INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUE ON APPEAL

I. THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE COURT'S CLEARLY ERRONEOUS RULING THAT THE APPELLANT VIOLATED THE TERMS OF HIS CONDITIONAL DISCHARGE.

STATEMENT OF THE CASE

On September 15, 2011, Regan Berkley Chrisley (hereinafter Appellant) was arrested for simple possession of marijuana by the Greenwood County Sheriff's Office and issued Ticket #51191EW. (Ticket #51191EW). On November 14, 2011, Appellant consented to sentencing pursuant to the conditional discharge statute, S.C. Code § 44-43-450. (Order for Conditional Discharge). On December 14, 2011, Greenwood Magistrate C. Ryan Johnson signed an Order for Conditional Discharge pursuant to that same section, with terms of the conditional discharge scheduled to remain in effect until June 14, 2012. (Order for Conditional Discharge).

Magistrate Johnson's Order provided in pertinent part: "DEFENDANT SHALL TAKE URINE DRUG TESTS AND THEREAFTER IMMEDIATELY PROVIDE THE RESULTS OF EACH TEST DIRECTLY TO THE COURT DURING THE FIRST WEEK OF [January, March and May] 2012" (emphasis original). (Order for Conditional Discharge).

A hearing was held by Magistrate Johnson on May 29, 2012 where he found Appellant in contempt for failure to appear and imposed a sentence on the conditional discharge for an alleged failed drug test. Those findings were appealed and subsequently vacated for lack of notice to Appellant. (Order vacating decision dated December 12, 2012).

On December 21, 2012, Magistrate Johnson reconvened a rule to show cause hearing to determine if Appellant had violated his conditional discharge by testing positive for a banned substance on May 14, 2012. (Transcript of hearing in Magistrate's

Court on December 21, 2012). At the hearing, Magistrate Johnson failed to provide the Appellant or Appellant's attorney with a copy of the document which allegedly indicated that the Appellant tested positive for cocaine on May 14, 2012. The Court denied the Appellant's repeated requests for an evidentiary hearing and thereafter found that Appellant had violated the terms of his conditional discharge. (Transcript of hearing in Magistrate's Court on December 21, 2012, p. 2, line 9 – p. 3, line 23).

On December 21, 2012, the Appellant appealed the conviction and sentence imposed by Magistrate Johnson to the Greenwood County Court of Common Pleas. (Petition of Appeal to Circuit Court dated December 21, 2012). Magistrate Johnson filed a Return to Appeal on January 3, 2013, which said the Appellant failed a "drug test by hair sample." (Return to Appeal in Circuit Court dated January 3, 2013). Magistrate Johnson had previously ordered that the Appellant take urine drug tests. (Order for Conditional Discharge dated December 14, 2011). Magistrate Johnson failed to produce a copy of the Appellant's alleged failed drug test along with the Return to Appeal for the Circuit Court to review. (Return to Appeal in Circuit Court dated January 3, 2013).

Circuit Judge Frank R. Addy, Jr. heard Appellant's appeal on February 19, 2013 and issued a Form 4 Order dated February 19, 2013, affirming Magistrate Johnson's ruling. (Order affirming lower court decision dated February 19, 2013). The Appellant filed and served a Motion to Reconsider on February 26, 2013. (Appellant's Motion to Reconsider dated February 26, 2013). Judge Addy thereafter issued another Order on March 18, 2013, reaffirming his prior ruling. (Order denying reconsideration by Frank R. Addy, Jr. dated March 18, 2013). Appellant timely filed this appeal to the Court of Appeals. (Notice of Appeal filed April 2, 2013).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE COURT'S CLEARLY ERRONEOUS RULING THAT THE APPELLANT VIOLATED THE TERMS OF HIS CONDITIONAL DISCHARGE.

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus the appellate court is bound by the findings of the trial court unless they are unsupported by the evidence, clearly wrong, or controlled by an error of law. State v. Williams, 326 S.C. 130, 135, 485 S.E.2d 99, 102 (1997). 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 judge's ruling is supported by any evidence." State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). "A finding is clearly erroneous if it is not supported by the record." State v. Shuler, 344 S.C. 604, 620, 545 S.E.2d 805, 813 (2001).

For the reasons set forth below, the trial court failed to provide basic due process to Appellant, and the record fails to have any evidence to support the findings of fact and conclusions of law. Those failures constitute errors of law that compel reversal and remand back to the magistrate court.

A. Appellant was entitled to minimal due process protections in conjunction with this conditional discharge revocation.

At the time of the Petitioner's arrest on September 15, 2011, state law provided in pertinent part:

> Whenever any person who has not previously been convicted of any offense under this article or any offense under any state or federal statute relating to marijuana... pleads guilty to or is found guilty of possession of a controlled substance under Section 44-43-370[c] and (d) ... the court,

> without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires... Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.
>
> S.C. Code Ann. § 44-53-450(A) (1976)

By its express language, a conditional discharge is a form of probation. A probationer charged with a probation violation must be afforded minimal due process. State v. Hill, 368 S.C. 649, 659-660, 630 S.E.2d 274, 280 (2006). The U.S. Supreme Court has previously described the nature of such minimal due process in the specific area of parole revocation: written notice of the alleged violations; disclosure to the parolee of the evidence against him; an opportunity to be heard in person and to present witnesses and evidence; the right to confront and to cross-examine; a neutral and detached hearing body; and a written decision from the hearing body. Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972). That holding was extended by the Supreme Court to probation revocation hearings shortly thereafter. Gagnon v. Scarpelli, 411 U.S. 778 (1973).

The South Carolina Supreme Court has recently addressed related matters in several cases in recent years. It first held that imposition of a suspended sentence by a magistrate without first having an evidentiary hearing violated a defendant's right to due process. Dangerfield v. State, 376 S.C. 176, 656 S.E.2d 352 (2008). In Dangerfield, the defendant pled guilty to passing fraudulent checks, and the magistrate imposed a sentence but suspended the sentence conditioned upon the payment of restitution. When Dangerfield failed to pay restitution, the magistrate issued a bench warrant. Dangerfield was then arrested and sentenced without a hearing. The Court held that imposition of a

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suspended sentence in Dangerfield's case was constitutionally equivalent to the revocation of parole or probation, meaning that Dangerfield was entitled to a pre-revocation hearing to contest the allegations. Id. at 180, 354.

The South Carolina Supreme Court has also held that "a Drug Court Program participant is entitled to notice and a hearing to determine whether he has violated the conditions of his suspended sentence before his sentence may be imposed." State v. Perkins, 378 S.C. 57, 61, 661 S.E.2d 366, 368 (2008). The recited facts in the Perkins opinion makes clear that a Circuit Court Judge heard evidence about the defendant's failure to comply with the Drug Court Program's terms, and then heard from the defendant in response thereto prior to imposing the suspended sentence.

In a third case decided in 2008, the State Supreme Court said: "Procedural '[d]ue process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.'" Moore v. Moore, 376 S.C. 467, 473, 657 S.E.2d 743, 746 (2008). Furthermore, "Where important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses." Id.

B. Appellant was denied the required minimal due process prior to revocation of his conditional discharge.

In the case at hand, Magistrate Johnson acted as both judge and prosecutor, but even a prosecutor is required to make disclosure to the defendant. Magistrate Johnson had possession of an alleged failed hair follicle drug report, although Appellant was only required to take urine drug tests under the terms of the conditional discharge order, but failed to provide Appellant with this document prior to, during, and to this day after the

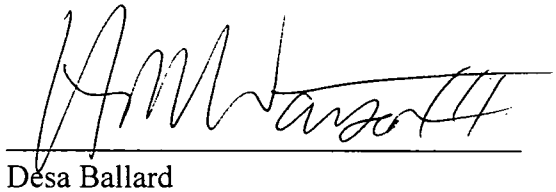
hearing in question. (Transcript of hearing in Magistrate's Court on December 21, 2012). Magistrate Johnson also failed to require the State, who was not represented at the hearing, either by the solicitor's office or a member of law enforcement, to lay a proper foundation and otherwise make a lawful introduction of purported drug test results into evidence. As such, Appellant could not cross-examine the party obtaining or presenting the evidence to determine the reliability of the evidence presented, including the manner of collection, handling, analysis, etc.

Appellant was also denied the opportunity to challenge any factual representations or conclusions contained within the report itself because the report was never entered into evidence. (Transcript of hearing in Magistrate's Court on December 21, 2012, p. 2, lines 9 – p. 3, line 19). The party bearing the burden of proof has not only failed to meet its burden, it has failed to appear or submit any evidence at all. As such, the record is devoid of sufficient information and evidence that would support a proper factual and legal determination that Appellant violated the terms of his conditional discharge. This Court, sitting in review of the proceedings, is not being asked to reevaluate facts or weigh evidence, but instead to recognize that no evidence exists at all, and thus any factual finding on that basis is clearly erroneous.

CONCLUSION

For all of the foregoing reasons, it is respectively submitted that the Order of the Circuit Court should be reversed.

Respectfully submitted,



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November 6, 2013

CO-COUNSEL FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPELLANT'S AMENDED INITIAL DESIGNATIONS

Pursuant to Rule 209(a) and (b), SCACR, Appellant hereby designates the following matter, which was before the lower court (as defined in Rule 202(b)(1)) to be included in the Record on Appeal in this matter. Appellant reserves the right to supplement these designations in conjunction with the submission of their initial reply brief.

All designated matter does not include proof of service or exhibits unless otherwise specified:

1. Order for Conditional Discharge dated December 14, 2011
2. Order vacating decision dated December 12, 2012
3. Order affirming lower court decision dated February 19, 2013
4. Order denying reconsideration by Frank R. Addy, Jr.,dated March 18, 2013
5. Notice of Appeal dated April 2, 2013

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6. Petition in Support of Appeal to Circuit Court dated December 21, 2012
7. Return to Appeal in Circuit Court dated January 3, 2013
8. Appellant's Motion to Reconsider dated February 26, 2013
9. Transcript of hearing in Magistrate's Court on December 21, 2012
10. Transcript of the hearing in Circuit Court on February 19, 2013
11. Traffic ticket #51191EW.

The undersigned is informed and believes, and therefore certifies, that the matter designated is relevant to the appeal in this matter.

Respectfully submitted,

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November 6, 2013

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CERTIFICATE OF SERVICE

I, Beth Cogan, an employee with the Law Offices of Ballard Watson Weissenstein, do hereby certify that on November 6, 2013, I served a copy of the **Amended Initial Brief of Appellants** and **Appellant's Amended Initial Designation of Matter** in the above-captioned case on the following individuals by standard US Mail:

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November 6, 2013
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November 6, 2013

Via United States Mail
Claire Allen
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *State v. Regan Berkley Chrisley*
Appellate Case No. 2013-000696

Dear Ms. Allen:

We are in receipt of Mr. Aplin's motion in the above-referenced matter, as well as your letter dated October 29, 2013 requesting a response to the same within ten days. Mr. Chrisley's matter is one that need not be further delayed, so in response to the motion, we have gone ahead and prepared an amended initial brief to be filed in substitution for the previously filed version. Upon information and belief this amended version is sufficient to render the motion moot and allow this matter to move forward in briefing and eventual consideration on the merits.

Accordingly, please find enclosed an original and one copy of an Amended Initial Brief of Appellant for filing. We ask that you please return a clocked copy to our office in the enclosed, self-addressed, stamped envelope.

Please contact our office if you have any questions. With warm personal regards, I am,

Sincerely yours,

Harvey M. Watson III

Enclosure

cc: Carson Henderson, Esquire (via email)
Benjamin Aplin, Esquire