

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KAREN SHIELDS,

APPELLANT

APPELLATE CASE NO. 2013-001552

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

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Constitutional Provisions

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STATEMENT OF ISSUE ON APPEAL

Whether placing appellant in custody after her probation revocation hearing for drug addiction pending inpatient drug treatment constituted "cruel and unusual punishment" in violation of the Fourteenth Amendment?

STATEMENT OF THE CASE

Appellant pled guilty to entering a house or vessel without breaking with the intent to steal on December 12, 2011, in Lancaster County. She was sentenced to five (5) years suspended upon time served with five (5) years probation thereafter. On June 5, 2013, she was served with a probation citation. On July 8, 2013, she appeared before the Honorable Brooks P. Goldsmith for a probation revocation hearing. Judge Goldsmith ordered continued supervision and had her held in custody until she could be picked up for inpatient drug treatment. Then she was to have follow-up counseling services.

This appeal follows.

ARGUMENT

Placing appellant in custody after her probation revocation hearing for drug addiction pending inpatient drug treatment constituted "cruel and unusual punishment" in violation of the Fourteenth Amendment.

In 1972, the Supreme Court of the United States handed down the opinion of Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 setting forth minimal due process requirements for the revocation of parole. With respect to the revocation hearing the Court wrote:

We cannot write a code of procedure; that is the responsibility of each State. Most States have done so by legislation, others by judicial decision usually on due process grounds. Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.

408 U.S. at 488 – 489, 92 S.C. at 2604.

In Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756 (1973), the Court made the same procedures set out in Morrissey applicable to probation revocation. The revocation hearing in appellant's case only consisted of four typewritten pages. While the Supreme Court of

South Carolina has held that a revocation hearing can be so summary that the record is insufficient for their review,¹ it is obvious from appellant's hearing that she suffered from drug addiction. The judge's decision to hold appellant in custody until space was available for drug treatment was punishing her for her drug addiction. The Supreme Court of the United States has held in Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417 (1962), that holding someone in prison for drug addiction constitutes "cruel and unusual punishment" in violation of the Fourteenth Amendment.

¹ State v. Riddle, 277 S.C. 110, 202 S.E.2d 863 (1981)

CONCLUSION

Appellant should be released from custody.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of November, 2013.

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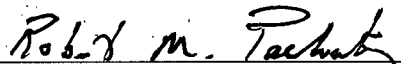
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Karen Shields states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Brooks P. Goldsmith, which was held on July 8, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Karen Shields.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of November, 2013.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Probation Violation Hearing Transcript
(July 8, 2013)
- (3) Probation Citation

I certify that this designation contains no matter which is irrelevant to this appeal.

November 7th, 2013

Robert M. Pachak
Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 7, 2013.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

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Division of Appellate Defense
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Matthew Buchanan, at the Department of Probation, Parole and Pardon Services, PO Box 50666, Columbia, SC 29250; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Karen Shields, at 6633 Bowers Lane, Kershaw, SC 29067, this 7th day of November, 2013.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of November, 2013.

Paula McVay

(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.