STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from the First Circuit
The Honorable Maite Murphy, Circuit Court Judge

Appellate Case No.: 2025-000969

THE STATE, RESPONDENT

v.

SHANEKIA RENEE GARVIN, APPELLANT

BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

The Court of Appeals did not err in holding that Appellant knowingly waived her right to an attorney by signing a Notice of Hearing and Acknowledgment of Notice that warned her of the dangers of appearing without an attorney, having ample time to obtain an attorney, and appearing in court without having obtained one.

STATEMENT OF THE CASE

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

On October 7, 2019, and again on November 20, 2020, the Department served process on Appellant for numerous violations of her probation including failing to report multiple times, failing to communicate with her agent, failing to follow the advice and instructions of the agent, and failing to pay her supervision fees. After hearing both sets of violations, the Honorable Edgar W. Dickson ordered her to be continued on probation with zero tolerance for any further violations.

On April 4, 2023, the Department served a warrant on Appellant for violation of her conditions of probation including failing to contact her probation agent and failing to pay her supervision fees and court fines. (R.p.26-p.27). On June 19, 2023, Appellant 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, Appellant appeared at the hearing as directed by the notice. After hearing the violations as noted by her agent, the Honorable Maite Murphy asked the agent when she was given notice of the hearing. (R.p.5, l. 5-6). Upon hearing the response of June 19, 2023, Judge Murphy asked Appellant if she recalled signing the notice. Appellant said she did. Judge Murphy then asked if the notice included her right to have an attorney present. Appellant affirmed that it did and stated that she did not have an attorney. (R.p.5, l. 7-18).

After hearing Appellant's responses, Judge Murphy noted her previous violations and failures to report. After Appellant stated that she called someone on the phone, the probation agent confirmed that Appellant 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 had not complied with her conditions. Appellant then stated that she was "clean," presumably meaning having no drugs in her system. Judge Murphy then told her that she would test her and if the results 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 for both indictments. (R.p.14, l. 5 – p.15, l. 1-2).

On September 8, 2023, Appellant filed a Notice of Appeal. The South Carolina Court of Appeals affirmed the revocations in an unpublished Opinion filed January 29, 2025. Appellant filed a petition for rehearing on February 14, 2025, which was denied on April 17, 2025. Appellant submitted a petition for a writ of certiorari on May 19, 2025. Responded submitted its return on May 29, 2025. This Court granted the petition on August 13, 2025. Appellant's Brief was submitted on October 2, 2025. Respondent's brief follows.

ARGUMENT

1. **The Court of Appeals correctly determined that Appellant was fully advised of her right to counsel because she received notice of her right in the Notice of Probation Hearing and Acknowledgment of Notice that she signed. As a result, Appellant knowingly and voluntarily waived her right to counsel by appearing in court after making no effort to obtain counsel before the hearing and failing to request an attorney at the hearing.**

Appellant repeatedly makes the claim throughout her brief that the record shows no evidence that she had been provided with notice of her right to counsel and the dangers of self-representation. Her assertions are inaccurate, as the record clearly shows that the notice of hearing, which was signed by her, provided her with exactly that warning. (R.p. 1).

Specifically, it warns that, "If you choose to appear at the hearing without an attorney, you may be required to represent yourself. You are hereby advised that there are dangers and disadvantages to self-representation. An attorney may better understand courtroom procedure and may be better able to think of and present defenses to your violations. By appearing without an attorney you are acknowledging these dangers but are knowingly and voluntarily choosing to proceed without counsel."

Further, just above her signature, the notice states that "This directive has been read to me and I have been provided with a copy. I was also given an opportunity to ask questions about this directive before it was signed." (R.p. 1). (Emphasis in original.) The notice of hearing was dated June 19, 2023, nearly three months prior to the violation hearing and thus giving Appellant ample time to hire an attorney or apply for a public defender.

Instead, Appellant appeared without having taken any steps to procure representation. Importantly, she did not indicate that she wished to have a lawyer either. (R.p. 5, l. 11-20). She simply acknowledged her right to have an attorney and then proceeded to state: "I don't have an attorney."

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). Yet, the Department respectfully submits that the record demonstrates that Appellant was informed of that right. The notice of hearing that was signed by Appellant nearly three months prior to her hearing noted her right to have an attorney present, warned of the dangers of appearing without an attorney, and noted that such an appearance would be a knowing and voluntary choice to proceed without counsel. (R.p.1).

As correctly affirmed by the Court of Appeals, Appellant'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.

Appellant argues that a colloquy from the court as found in Bryant is a necessity, but the Court of Appeals correctly determined this not to be the case. 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.) That other source, the Court of Appeals correctly noted, was the notice of hearing document signed by Appellant. (R.p. 1).

Appellant tries to infer that the statement, "I don't have an attorney," actually means, "I am requesting an attorney." Except that is not what she said. At no point did she explicitly, or even impliedly, request an attorney.

Unlike the probationer in Salley, Appellant did not testify as to why she did not have an attorney or state any reliance upon her probation officer's representations. The record in Salley furthermore did not contain evidence whether the probationer "had sufficient background or was apprised of her rights by some other source so as to be aware of the dangers of self-representation." Id. at 216, 410 S.E.2d at 922.

In contrast, the Court of Appeals correctly recognized that the record contains exactly what was missing in Salley. Not only did she have sufficient warning in the hearing notice, but Appellant also had a "sufficient background" in that she had appeared at two prior revocation hearings, in which each time she was continued on probation with "zero tolerance" for future violations. (R.p 6, l. 11-17). As made clear by Appellant's previous appearances for prior violations, she was familiar with the process.

As correctly noted by the Court of Appeals, Appellant was sufficiently warned. "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." State v. Thompson, 355 S.C. 255, 262-63, 584 S.E.2d 131, 135. Furthermore, "[a] defendant may waive his right to counsel through conduct." Id. Appellant had the understanding of her right to counsel, and by her conduct of appearing in court without having taken any steps to obtain an attorney, she waived that right.

Respondent would also respectfully submit that compounding Appellant's prior violations and continuances with "zero tolerance" for future violations with the fact that she also tested

positive for cocaine *at the violation hearing* is a factor to be considered per Barlet. Quoting Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973), this Court in Barlet states, "[a] factor to be considered is whether there are 'substantial reasons which justified or mitigated the violation and make revocation inappropriate.'" Respondent would submit that Appellant is facing the inverse: instead of mitigation, Appellant's repeated failures to report for probation after being warned of zero tolerance for future violations *twice*, and then testing positive for cocaine at the hearing would constitute "substantial reasons" to justify the violation. The number of violations Appellant had accrued by failing to abide by the most rudimentary requirements of supervision begs the question as to what an attorney truly could have done to salvage her case.[1]

CONCLUSION

The Court of Appeals correctly determined that Appellant had knowingly and voluntarily waived her right to counsel after having proper notice and sufficient background to appreciate her right to counsel. Her inaction in taking steps to obtain an attorney was a valid waiver of her right to counsel; therefore, this Court should uphold the decision of the Court of Appeals and affirm the probation court's revocation.

(Signature appears on following page)

[1] Respondent would ask this Court to recognize a recurring scenario at probation violation hearings in which some probationers request an appointed attorney on the day of the hearing despite having months in which to hire or apply for counsel. The attorneys appointed that day routinely request continuances which draw out what should be a relatively streamlined process solely because the probationers have sat upon their rights until the last possible moment. Instead of encouraging this practice, Respondent would respectfully request that this Court uphold that probationers who do this assume the risks, as stated to them in the notice of hearing, that the probation court may determine that they have knowingly and voluntarily waived their right to counsel by their inaction.

Respectfully submitted,

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