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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MATTHEW DALE BARTON,

APPELLANT

APPELLATE CASE NO. 2025-001490

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the lower court err in denying appellant the right to cross-examine the state's witness on the ground that no right to cross-examination exists in a probation revocation hearing despite clear authority from the United States Supreme Court acknowledging basic aspects of due process apply, including confrontation of witnesses?

Did the lower court err in applying an "any evidence" standard in determining if appellant violated the terms of his probation and whether this Court should advise the lower courts on the proper evidentiary basis on which to judge whether to revoke probation?

STATEMENT OF THE CASE

Appellant plead guilty to assault and battery in the first degree from an incident arising on January 26, 2023, and was sentenced to serve under the youthful offender statute for a term not to exceed six (6) years, suspended on the service of three (3) years of probation. R. 30-31. A probation warrant was served claiming appellant violated the terms of his probation. R. 25. An evidentiary hearing was held before the Honorable G.D. Morgan, Jr., on July 11, 2025. R. 1. Attorney Paul Neely appeared on behalf of appellant and probation agents Gregory and Dye appeared on behalf of the state. R. 1.

Following the evidentiary hearing, Judge Morgan revoked appellant's probation. R. 27. This appeal follows.

STANDARD OF REVIEW

The lower court's "legal and constitutional conclusions are reviewed *de novo*." Gulfstream Cafe, Inc. v. Georgetown Cnty., 447 S.C. 1, 923 S.E.2d 632, 637 (2025).

ARGUMENTS

I. The lower court erred in denying appellant the right to cross-examine the state's witness on the ground that no right to cross-examination exists in a probation revocation hearing despite clear authority from the United States Supreme Court acknowledging basic aspects of due process apply, including confrontation of witnesses.

A. Basic due process protections apply during probation revocation hearings.

"The Due Process Clause of the Fourteenth Amendment imposes procedural and substantive limits on the revocation of the conditional liberty created by probation." Black v. Romano, 471 U.S. 606, 610 (1985). Originally, the United States Supreme Court set forth fundamental elements of due process that must be followed during parole revocation hearings:

> 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.

Morrissey v. Brewer, 408 U.S. 471, 488-489 (1972). The right to cross-examine witnesses, due to its significant role in our judicial history, was recognized as part of these fundamental protections

of due process that must be present. *See* State v. McMillian, 349 S.C. 17, 561 S.E.2d 602 (2002); State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001).

After Morrissey, the United States Supreme Court extended these same fundamental due process rights to probation revocation actions. *See* Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973) (holding that probation revocation "does result in a loss of liberty" and "that a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in *Morrissey v. Brewer*").

> The final hearing is a less summary one because the decision under consideration is the ultimate decision to revoke rather than a mere determination of probable cause, but the 'minimum requirements of due process' include very similar elements:
>
> '(a) written notice of the claimed violations of (probation or) parole; (b) disclosure to the (probationer or) 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 (probation or) parole.' *Morrissey v. Brewer*, *supra*, at 489, 92 S.Ct. at 2604.

Scarpelli, 411 U.S. at 786. These requirements "protect the defendant against revocation of probation in a constitutionally unfair manner." Black, 471 U.S. at 613.

B. The lower court deprived appellant of the right to cross-examine witnesses in contravention to those basic due process protections.

Here, relying on its interpretation of State v. Pauling, 371 S.C. 435, 639 S.E.2d 680 (Ct. App. 2006), the lower court denied appellant the right to cross-examine witnesses during the probation revocation hearing.

THE COURT: All right. Anything else from probation?

PROBATION AGENT GREGORY: No, sir, Your Honor.

THE COURT: All right. Mr. Neely?

MR. NEELY: Before the agent walks away ---

PROBATION AGENT DYE: Yes, sir.

MR. NEELY: Yes, sir.
THE COURT: No. State vs. Pollen [phonetic] doesn't allow you to cross-examine the witnesses now.

MR. NEELY: We're now at an evidentiary hearing.

THE COURT: Well, it's a probation.

MR. NEELY: I mean, if they're presenting testimony, I think I do have the right.

THE COURT: I don't believe you do.

R. 18, ll. 10 – 23.

Based upon this ruling, trial counsel was denied the opportunity to cross-examine the probation agent.

Read properly, State v. Pauling, 371 S.C. 435, 639 S.E.2d 680 (Ct. App. 2006) is a limitation on the application of the confrontation clause as a basis for objecting to testimony, not a general prohibition on the right to cross-examination: "However, like the Seventh Circuit Court of Appeals, we decline to extend the *Crawford* analysis to probation revocation proceedings." Pauling, 371 S.C. at 439, 639 S.E.2d at 682. Pauling does not contradict Morrissey or Black and does not support the lower court's erroneous opinion that the right to cross-examine witnesses does not exist in a probation revocation setting. Importantly, this issue would potentially exist in every probation revocation hearing if the trial court operated under the same misapprehension of Pauling.

Since the lower court denied appellant a fundamental aspect of due process, this Court should reverse the revocation decision and remand this matter for a new hearing that comports with the basic safeguards outlined by the United States Supreme Court in Morrissey v. Brewer, 408 U.S. 471 (1972); *see also* Salley v. State, 306 S.C. 213, 216, 410 S.E.2d 921, 922 (1991)(finding reversible error when probationer "was neither informed of the dangers of self-representation nor desired to proceed without counsel. Therefore, she did not knowingly and intelligently waive her right to counsel.").

II. The lower court erred in applying an "any evidence" standard in determining appellant violated the terms of his probation and this Court should advise the lower court on the proper evidentiary basis on which to judge whether to revoke probation.

Trial counsel asserted that the evidence presented during the revocation proceeding was insufficient to establish that appellant was improperly in possession of a firearm justifying revocation of his probation. R. 18, l. 24 – 19, l. 18. The trial court objected to any assertion that the violation had to be willful:

> THE COURT: You do agree that as long -- *the standard on the case law is in a probation revocation hearing, is there any evidence tending to show the violation.* It's not a willful. Only as to money.
>
> MR. NEELY: If Your Honor says that's what the standard is, I trust your judgment on the law on that. And I would have to go -- I would have to go back and read it.
>
> THE COURT: That's what the Supreme Court says.

R. 21, ll. 3 – 11.

The lower court was correct regarding the standard of review *on appeal*. *See* State v. Herndon, 403 S.C. 84, 89, 742 S.E.2d 375, 378 (2013) ("This Court's authority to review the findings of a lower court regarding probation revocation and related issues is confined to the correction of errors of law, unless it appears that the action of the circuit court amounted to a manifest abuse of discretion."). The lower court's application of the "any evidence" standard during the evidentiary hearing was an error of law requiring reversal.

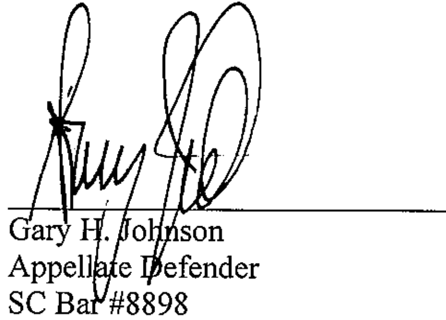
A decision to revoke probation "should always be predicated upon an evidentiary showing of fact tending to establish a violation of the conditions." State v. Hamilton, 333 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999). "Thus, before revoking probation, the circuit judge must determine if there is sufficient evidence to establish the probationer has violated his probation conditions." State v. Lee, 350 S.C. 125, 131, 564 S.E.2d 372, 375 (Ct. App. 2002). The decision must be based upon the preponderance of the evidence standard, not the "any evidence in the record" standard adopted for appellate review. *See* Gibson v. State, 328 Md. 687, 690, 616 A.2d 877, 879 (1992) ("The trial court may revoke probation if it is reasonably satisfied by a preponderance of the evidence that a violation has occurred."); Johnson v. United States, 763 A.2d 707, 712 (D.C. 2000) ("In keeping with what appears to be the majority rule, we hold that the standard for the revocation of probation is 'preponderance of the evidence.'").

While appellant has found no case in South Carolina providing guidance to the lower court regarding what standard of proof is required to revoke probation, the general rule of preponderance of the evidence is implied by the requirements that the burden is on the state to bring forth facts "tending to establish a violation of the conditions." Hamilton, 333 S.C. at 648, 511 S.E.2d at 97. Moreover, the lower court must "determine if there is *sufficient evidence* to establish the probationer has violated his probation conditions." Lee, 350 S.C. at 131, 564 S.E.2d at 375

(emphasis added). To meet the requirements of Hamilton and Lee, South Carolina courts should apply the preponderance of the evidence standard. The lower court committed an error of law in applying an "any evidence" standard.

CONCLUSION

As the lower court revoked probation through application of two significant errors of law, this Court should reverse and remand this matter for a new revocation hearing that both comports with basis due process protections and applies the correct burden of proof.



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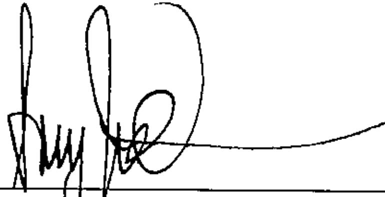
This 24th day of February 2026.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 24, 2026.



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