RECEIVED
MAR 26 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
The Honorable William H. Seals, Circuit Court Judge

Appellate Case No. 2025-000856

STATE OF SOUTH CAROLINA .....RESPONDENT

v.

JOSHUA DEMAURICE BOSTON,.....APPELLANT

BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 20202
(803) 734-9220

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

STATEMENT OF APPELLANT'S ISSUE ON APPEAL

1. Whether the court erred in revoking Appellant's probation where Appellant had not been convicted of the offenses which the State alleged comprised violations of his probationary conditions, since the evidentiary showing by the State, if any, was insufficient to establish a violation or satisfy due process?

STATEMENT OF RESPONDENT'S ISSUES ON APPEAL

1. Whether the appeal before this Court is moot when Appellant has served his revocation in full, has been released from incarceration, and has pled guilty to two of the criminal charges that were the basis of his probation violation?

2. Whether the court erred in determining facts tending to establish a violation by hearing details drawn from incident reports that included officers observing injuries on the victim, damage to a wall, and the discovery of meth during Appellant's arrest?

STATEMENT OF THE CASE

Respondent agrees with the Statement of the Case by Appellant.

STANDARD OF REVIEW

The decision to revoke probation is addressed to the discretion of the circuit judge. *State v. White,* 218 S.C. 130, 134–35, 61 S.E.2d 754, 756 (1950); *State v. Proctor,* 345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001); *State v. Hamilton,* 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999). A reviewing court will only reverse this determination when it is based on an error of law or a lack of supporting evidence renders it arbitrary or capricious. *Proctor,* 345 S.C. at 301, 546 S.E.2d at 674. The court has much discretionary authority in dealing with guilty persons who are in a probationary status. *Shannon v. Young,* 272 S.C. 61, 248 S.E.2d 914 (1978). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." *Mathis v. South Carolina State Highway Dep't,* 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

Arguments

1. **This case should be dismissed as moot, as there is no practical legal effect that this Court can render.**

Respondent first respectfully submits that this Court should dismiss this matter as being moot. Appellant has served the entirety of his revocation, and upon his release from the Department of Corrections, he pled guilty on December 9, 2025, to two of the offenses that were the basis for his probation revocation. R.*.

"A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." *Mathis v. South Carolina State Highway Dep't,* 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief. *Id.* Respondent would respectfully submit that Appellant's subsequent release from confinement and guilty pleas make any relief from this Court ineffective.

The Supreme Court in *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001), recognized three exceptions to the mootness doctrine. These exceptions are, (1) if the issue raised is capable of repetition but evading review; (2) if the issue before the appellate court is a question of "imperative and manifest urgency," and (3) if the decision by the trial court may affect future events or may have collateral consequences to the parties. *Id.* See also *Sloan v. Friends of Hunley, Inc.,* 369 S.C. 20, 630 S.E.2d 474 (2006). Nothing in the present case would indicate these exceptions apply.

Probation violation hearings occur routinely throughout the state any time courts of General Sessions hold nonjury proceedings. Quite simply, any claim that this issue regarding the burden of proof as it relates to violation hearings is capable of repetition and evading review strains

credulity. Similarly, nothing in this case or the underlying facts would rise to manifest urgency. Lastly, Appellant pled guilty to two of the criminal charges that were the basis for the probation revocation. It is further worth noting that he pled guilty *after* his release from incarceration for the revocation, so he cannot argue that the violation influenced his decision to plead guilty because of continued imprisonment.

As a final point, even when appellate courts are "gravely concerned" by the allegations raised on appeal, dismissal for mootness because the appellant was released from prison while the appeal is pending is still the correct action. *Justice v. State*, 441 S.C. 623, 625, 896 S.E.2d 319, 320 (2023). Respondent does not concede that Appellant's present arguments are at all concerning (See Part 2), but the point still stands. No exceptions to the mootness doctrine apply. This Court cannot provide any effective relief to Appellant. Respectfully, this Court should dismiss the appeal.

2. **The trial court did not err when it revoked Appellant's probation, because a factual basis was presented that established a violation.**

Respondent would submit that the question of mootness is dispositive and no further analysis is necessary. However, even were this case not moot, this Court should find the circuit court did not err when it relied upon the information presented to determine Appellant had violated his probation.

The probation revocation court has the authority to determine if the conditions of probation were violated. *See State v. Hamilton,* 333 S.C. at 647, 511 S.E.2d at 96. "[T]he authority of the revoking court should always be predicated upon an evidentiary showing of fact tending to establish a violation of the conditions. *White*, at 135, 61 S.E.2d at 756; *State v. Miller*, 122 S.C. 468, 475, 115 S.E. 742, 745 (1923)."

Appellant argues that the State offered no evidentiary support for the arrests. App. Br. p 7. This is inaccurate. A lack of evidentiary support would be to read the names of the charges, or simply submit to the court that he had been arrested. Instead, the agent submitted details about each arrest which included witness statements and the investigating officers' own observations that supported the allegations.

This use of the incident report is sufficient. Note that the U.S. Supreme Court emphasized "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, 489 (1972). Respondent would submit that a sufficiently-detailed incident report describing evidence of criminal activity would fall under "other material" that a revocation court may consider. Remember, appellate courts' authority is confined to correcting errors of law unless the lack of an evidentiary basis indicates the circuit court's decision was arbitrary and capricious. *White*, 218 S.C. at 136-6, 61 S.E.2d at 756.

The circuit court is fully capable of weighing the information within the incident reports and considering the facts alleged by the details provided and the completeness of the officers' investigations. When officers report that they observed evidence of injuries or property damage while taking statements of witnesses or victims, as well as locate contraband on a defendant they are arresting, such information is far from "double hearsay" as Appellant's attorney decried.

Again, information that would not normally be admissible in a criminal trial may be considered in a revocation proceeding. *Morrissey* was decided in the context of parole revocations. The U.S. Supreme Court followed that up with *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), which held that the same due process protections for parole also applied to probation. The Court in *Gagnon* further provided:

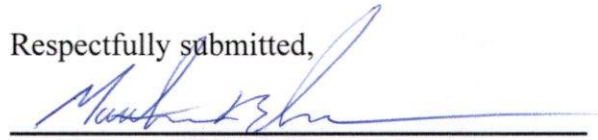
> An additional comment is warranted with respect to the rights to present witnesses and to confront and cross-examine adverse witnesses. Petitioner's greatest concern is with the difficulty and expense of procuring witnesses from perhaps thousands of miles away. While in some cases there is simply no adequate alternative to live testimony, we emphasize that we did not in *Morrissey* intend to prohibit use where appropriate of the conventional substitutes for live testimony, including affidavits, depositions, and documentary evidence. Nor did we intend to foreclose the States from holding both the preliminary and the final hearings at the place of violation or from developing other creative solutions to the practical difficulties of the *Morrissey* requirements.

Gagnon, 411 U.S. at 782, fn 5, 93 S.Ct. at 1760, fn 5. Accordingly, our appellate courts have refused to "deviate from the long tradition of limiting a defendant's rights in probation revocation proceedings, where the evidence is often limited to the testimony of a probation officer or . . . affidavits of victims or police officers." *State v. Pauling*, 371 S.C. 435, 439, 639 S.E.2d 680, 682 (Ct. App. 2006) (holding that the Sixth Amendment—including the Supreme Court's holding in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004)—does not apply to probation revocation hearings). Thus, arguing that certain evidence is hearsay should not be grounds to overturn a finding by the circuit court that Appellant had violated his probation.

Conclusion

This matter is clearly moot, as Appellant has completed the partial revocation of his sentence and then, when he was released from incarceration, pled guilty to two of the underlying offenses for which he had been charged that were the basis of his revocation. Even were this matter not moot, the circuit court did not err by relying on the details of an incident report that showed clear evidence of facts tending to establish a violation. The appeal should be dismissed.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

Columbia, South Carolina
March 25, 2026