RECEIVED
May 12 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Florence County

Honorable William H. Seals, Circuit Court Judge

---

THE STATE, RESPONDENT,

V.

JOSHUA DEMAURICE BOSTON, APPELLANT

APPELLATE CASE NO. 2025-000856

---

# FINAL BRIEF OF APPELLANT

---

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

# TABLE OF CONTENTS

TABLE OF CONTENTS ........ i

TABLE OF AUTHORITIES ........ ii

STATEMENT OF ISSUE ON APPEAL ........ 1

STATEMENT OF THE CASE ........ 2

STANDARD OF REVIEW ........ 3

ARGUMENT

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 ........ 4

Relevant facts ........ 4
Discussion ........ 5

CONCLUSION ........ 9

## TABLE OF AUTHORITIES

**Cases**

*Crawford v. Washington*, 541 U.S. 36 (2004) .......... 6

*Gagnon v. Scarpelli*, 411 U.S. 778 (1973) .......... 5, 8

*Morrissey v. Brewer*, 408 U.S. 471 (1972) .......... 5, 7, 8

*State v. Allen*, 370 S.C. 88, 634 S.E.2d 653 (2006) .......... 5, 6, 7

*State v. Barlow*, 372 S.C. 534, 643 S.E.2d 682 (2007) .......... 2

*State v. Gleaton*, 172 S.C. 300, 174 S.E. 12 (1934) .......... 7

*State v. Hamilton*, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999) .......... 3

*State v. Hill*, 368 S.C. 649, 630 S.E.2d 274 (2006) .......... 6

*State v. Pauling*, 371 S.C. 435, 639 S.E.2d 680 (Ct. App. 2006) .......... 6

*State v. Riddle*, 277 S.C. 110, 282 S.E.2d 863 (1981) .......... 7

*State v. White*, 218 S.C. 130, 61 S.E.2d 754 (1950) .......... 6

*State v. Williamson*, 356 S.C. 507, 589 S.E.2d 787 (Ct. App. 2003) .......... 6

**Constitutional provisions**

U.S. Const. amend. XIV .......... 8

## STATEMENT OF ISSUE ON APPEAL

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 THE CASE

On November 30, 2023, a Florence County Grand Jury indicted Appellant for second-degree domestic violence. R. 12 – 13. On January 15, 2025, Appellant appeared before the Honorable H. S. DeBerry, IV, and pleaded guilty to the offense. Appellant was sentenced to serve eighteen months' incarceration suspended upon the completion of two years' probation. R. 11 – 12.

On April 25, 2025, Appellant appeared before the Honorable William H. Seals for a probation revocation hearing. R. 1. Appellant was represented by Chandler Norville. Agent Jessica Brayboy appeared on behalf of the State.[1] R. 2. The court found a willful violation occurred. It ordered Appellant's suspended sentence be partially revoked and that he serve a period of incarceration for one year, with the balance of probation terminated. R. 13; R. 7, ll. 2-4.

This appeal follows.

[1] *See State v. Barlow*, 372 S.C. 534, 539, 643 S.E.2d 682, 685 (2007) (holding that a probation agent may present a revocation case without his actions amounting to the unauthorized practice of law).

## STANDARD OF REVIEW

The appellate court's authority to review a decision revoking probation is confined to correcting errors of law unless the lack of a legal or evidentiary basis indicates the circuit judge's decision was arbitrary and capricious. *State v. Hamilton*, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999).

## ARGUMENT

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.

***Relevant facts***

Appellant did not concede a willful violation of his probation. R. 4, ll. 2-4. However, Agent Brayboy alleged that warrants and incident reports from the Florence Police Department stated: 1) on March 2nd, Appellant "walked into a residence unannounced and put his hands around the victim's neck and pushed her against the wall causing a four foot hole"; 2) on March 22nd, Appellant committed the crime of domestic violence where "the victim told police that upon getting out of a truck and walking up a driveway, the offender smacked her with an open hand in the face . . . The officer did notate that the side of the victim's face appeared to be swollen"; 3) on April 3rd, Appellant "went into the victim's residence and began banging on the door, demanding entry. After being advised to leave, which was also witnessed by multiple witnesses . . . There are multiple documents, instanced of unwanted contact with the victim at the incident location and we believe—and affidavits also"; 4) Appellant failed to refrain from using drugs, as while "officers were attempting to take the subject into custody, he was [ob]served dropping 1.5 grams of methamphetamine in tablet form." R. 4, l. 13 – 5, l. 22. None of the documentation was made an exhibit.

Counsel responded, "The problem that we have with the – the violation allegations is that they're based on pending charges alone. Even the violation that was labeled failure to refrain from using controlled substances seems to come also directly from that incident report." R. 6, ll.

2-7. The agent is "reading an incident report, and the incident report came from a – a different police officer writing down what someone told him." R. 6, ll. 8-13. "[W]e're aware that these probation violation hearings have, you know, less procedural protections than criminal proceedings do, but I don't think that they're so much less that we can violate someone based solely on double-hearsay." R. 6, ll. 14-18. "[W]e would ask that you find no violation." R. 6, l. 25 – 7, l. 1.

The court ruled, "I'm going to find a willful violation." R. 7, l. 2-3.

***Discussion***

Although the revocation of probation or parole is not a stage of criminal prosecution, "a probationer or parolee has a constitutionally protected liberty interest and cannot be denied due process simply because probation has been described as an act of grace." *State v. Allen*, 370 S.C. 88, 96–97, 634 S.E.2d 653, 657 (2006) (citing *Morrissey v. Brewer*, 408 U.S. 471, 480-90 (1972)). "[A] probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in *Morrissey v. Brewer*[.]" *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). The minimum requirements of due process "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." *Morrissey v. Brewer*, 408 U.S. at 488–89. "*Morrissey* and *Gagnon* establish that a probationer

charged with a violation must be afforded minimal due process." *State v. Hill*, 368 S.C. 649, 657, 630 S.E.2d 274, 279 (2006).

The State must make a sufficient evidentiary showing to support revocation. *See State v. White*, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950) ("[T]he authority of the court of general sessions to revoke such suspension of sentence may not be capriciously or arbitrarily exercised, but should always be predicted upon an evidentiary showing of fact tending to establish violation of the conditions."). "The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation." *State v. Allen*, 370 S.C. at 94, 634 S.E.2d at 655.

In *State v. Williamson*, 356 S.C. 507, 509-10, 589 S.E.2d 787, 788 (Ct. App. 2003), this Court addressed whether there was a sufficient basis to revoke probation based upon the defendant's arrest for criminal domestic violence of a high and aggravated nature where he had not been convicted of that crime. The circuit court, relying largely on the alleged *victim's affidavit and pictures of the victim's injuries*, found the defendant had violated his probation. *Id.* This Court concluded there was a sufficient evidentiary basis to support the circuit court's finding the defendant committed an act of violence against his mother. *Id.*, 356 S.C. at 511-12, 589 S.E.2d at 789. In *State v. Pauling*, 371 S.C. 435, 436, 639 S.E.2d 680, 681 (Ct. App. 2006), "While on probation, Pauling was arrested for assault and battery with intent to kill and pointing and presenting a firearm. At the time of his probation revocation hearing, Pauling had not been tried on these charges. At the hearing, the State relied on the arrest warrants and *affidavits of police officers and investigators*." (emphasis added). Pauling argued that pursuant to *Crawford v. Washington*, 541 U.S. 36 (2004), he should have been afforded the right to confront these witnesses. *Id.* This Court held Pauling had no right to confront the witnesses. *Pauling*, 371 S.C.

at 438, 639 S.E.2d at 682. Notably, in both *Williamson* and *Pauling*, affidavits were presented to the court from the officers who investigated the subsequent crimes.

In this case, the State offered no evidentiary support for the arrests. There was no testimony by a witness: Brayboy did not witness any of the alleged conduct. Brayboy admitted her information came from incident reports and warrants. She did not witness the offenses and thus could not be cross-examined on them. It was, as counsel termed it, "double-hearsay." *See Morrissey v. Brewer*, 408 U.S. at 488–89 (minimum requirements of due process include the right to confront and cross-examine adverse witnesses). And, unlike in *Williamson* or *Pauling*, *supra*, the State did not present any photographs or any affidavits from the victim or investigating officers.

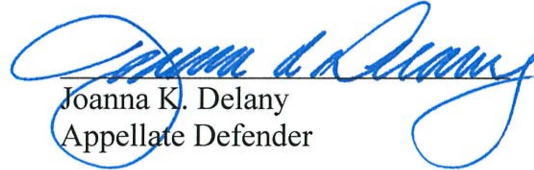
Moreover, there was no showing Appellant had been convicted of any of the offenses cited—and he should be considered innocent until proven guilty. *See State v. Gleaton*, 172 S.C. 300, 174 S.E. 12, 14 (1934) (noting that when a defendant is alleged to have breached conditions by the commission of a subsequent crime, the judge may rely upon the record of conviction for the subsequent crime or may take testimony and determine the question himself, impanel a jury to decide the issue, or hold the matter in abeyance until the defendant has been convicted of the crime, with the final option being the safest course to pursue).

The information presented to the court in this case was constitutionally insufficient to support a finding Appellant willfully violated his probation. *See State v. Allen*, 370 S.C. at 94, 634 S.E.2d at 655 (State must present "sufficient evidence to establish that a probationer has violated the conditions of his probation"). Relatedly, the court did not make any written findings "as to the evidence relied on and reasons for revoking parole." *Morrissey v. Brewer*, 408 U.S. at 489. *See also State v. Riddle*, 277 S.C. 110, 110, 282 S.E.2d 863, 863 (1981) (reversed and

remanded: "revocation hearing was so summary that the record is insufficient for our review"). The circuit court abused its discretion by revoking Appellant's probation. Counsel correctly argued that the showing made by the State was insufficient to comply with the required procedural protections to which Appellant was entitled and there was no sufficient basis for revocation. *Morrissey v. Brewer*, 408 U.S. at 488–89; *Gagnon v. Scarpelli*, 411 U.S. at 782; U.S. Const. amend. XIV.

## CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse the decision of the circuit court and remand for a new revocation hearing.



Joanna K. Delany
Appellate Defender

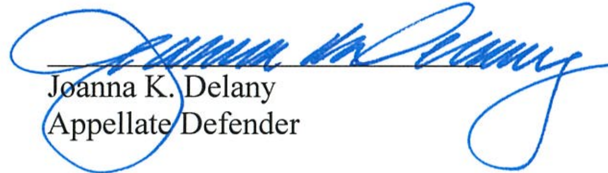
ATTORNEY FOR APPELLANT

This 12th day of May, 2026.

RECEIVED
May 12 2026
SC Court of Appeals

**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."



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 12th day of May, 2026.