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Jul 20 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable Jane H. Merrill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TONY AVELLA SANDERS,

APPELLANT

APPELLATE CASE NO. 2026-000133

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Senior 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

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion by revoking Appellant's probation where there was an insufficient evidentiary basis to establish Appellant had willfully violated the conditions of his probation?

STATEMENT OF THE CASE

An Oconee County grand jury indicted Appellant on March 14, 2022, for third degree burglary. R. 17-18. Appellant was found guilty as indicted on June 20, 2023, after a jury trial before the Honorable R. Lawton McIntosh. R. 20. He was sentenced to five years suspended upon the service of three years' imprisonment and five years' probation. R. 20.

On May 1, 2024, after Appellant was released from incarceration, he began his five year term of probation. On April 10, 2025, Appellant was arrested for violating the terms of his probation.¹ R. 11. A probation revocation hearing was finally held on January 5, 2026, before the Honorable Jane H. Merrill. R. 1. Nicklaus Powell appeared on behalf of the Department of Probation, Parole, and Pardon Services. Joey Oppermann represented Appellant. R. 1.

At the conclusion of the hearing, Judge Merrill found Appellant violated the conditions of his probation and revoked 273 days, the amount of time he had served awaiting his revocation hearing, and continued Appellant on probation.² R. 7, ll. 1-10.

This appeal follows.

¹ The warrant was obtained on June 14, 2024, but not served on April 10, 2025. R. 11-12.

² The state recommended the court revoke 90 days. However, Appellant had already served more than three times that amount awaiting his revocation hearing. Accordingly, the court revoked 273 days and credited Appellant with 273 days' time served. See R. 4, ll. 2-7.

STANDARD OF REVIEW

The question of whether a defendant's probation should be revoked in whole or in part is committed to the trial court's sound discretion. State v. Knapp, 338 S.C. 541, 543, 526 S.E.2d 741, 742 (Ct. App. 2000) (citing S.C. Code. Ann. § 24-21-460 and State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)). "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. 88, 94, 634 S.E.2d 653, 655 (2006) (citing State v. King, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); State v. Hamilton, 333 S.C. 642, 648–49, 511 S.E.2d 94, 97 (Ct.App.1999)). "While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice." Id. at 94, 634 S.E.2d at 655-56 (citing White, 218 S.C. at 136, 61 S.E.2d at 756).

ARGUMENT

The trial court abused its discretion by revoking Appellant's probation where there was an insufficient evidentiary basis to establish Appellant had willfully violated the conditions of his probation.

Relevant Facts

During the revocation hearing, Agent Powell explained to the court that Appellant appeared at the probation office on May 1, 2024, after he was released from incarceration. During this appearance, Appellant signed a form indicating that he should appear again for his initial interview on May 16, 2024. However, Appellant failed to report on that date. Agent Powell further alleged that Appellant absconded from supervision by failing to provide the probation office with a valid address as evidenced by a home visit conducted on May 24, 2024. Lastly, Powell maintained Appellant failed to pay his supervision fees. R. 3, l. 8 – 5, l. 20.

Appellant invoked his Fifth Amendment right to remain silent and refused to admit that he violated the conditions of his probation. Appellant's counsel noted that Appellant's direct appeal from his underlying conviction was still pending at the time. R. 4, l. 12 – 5, l. 12.

The court found Appellant willfully violated the conditions of his probation by failing to report on May 16, 2024. It revoked 273 days, gave Appellant credit for 273 days' time served, and continued Appellant on probation. R. 6, l. 17 – 7, l. 10.

Discussion

The trial court abused its discretion by revoking Appellant's probation where there was an insufficient evidentiary basis to establish Appellant had willfully violated the conditions of his probation.

“Probation is a matter of grace; revocation is the means to enforce the conditions of probation.” State v. Williamson, 356 S.C. 507, 510, 589 S.E.2d 787, 788 (Ct. App. 2003) (quoting State v. Hamilton, 33 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999)) (internal quotation marks omitted). “However, the authority of the court to revoke probation may not be capriciously or arbitrarily exercised, but should always be predicated upon an evidentiary showing of fact tending to establish violation of the conditions.” Id. (citing State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950)). “Before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions.” Id. (quoting Hamilton, 333 S.C. at 648–49, 511 S.E.2d at 97) (internal quotation marks omitted).

In Williamson, the defendant was arrested for criminal domestic violence of a high and aggravated nature. As a result of his arrest, he was charged with violating the conditions of his probation. The trial court, relying largely on the complainant’s affidavit and photographs of her injuries, found Williamson had violated his probation and revoked a portion of his suspended sentence. Id. at 509, 589 S.E.2d at 788. Williamson argued on appeal that there was an insufficient evidentiary basis to establish that he had violated the conditions of his probation because he had not been convicted of the criminal domestic violence charge. Id. at 509-10, 589 S.E.2d at 788. This Court disagreed.

The Court held the trial court did not abuse its discretion when it revoked Williamson’s probation because there was a sufficient evidentiary basis to support the finding that Williamson committed an act of violence against his mother. In support of its holding, this Court emphasized that during the revocation rehearing, the state introduced the mother’s affidavit, her

voluntary statement, and photographs of her injuries. In the documents, the mother stated Williamson had cut her on the arm with a knife. Id. at 510-11, 589 S.E.2d at 788-89.

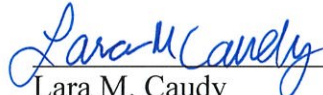
In this case, the state alleged Appellant violated the conditions of his probation by failing to report, failing to provide the probation office with a valid address, and by failing to pay his supervision fees. Agent Powell presented no evidence to support these alleged violations apart from his own word. Accordingly, the trial court abused its discretion by revoking Appellant's probation when the state failed to present sufficient evidence that Appellant willfully violated the conditions of his probation.

Respectfully, this Court should hold the trial court abused its discretion by revoking Appellant's probation and remand for a new revocation hearing.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court hold the trial court abused its discretion by revoking his probation and remand for a new revocation hearing.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of July, 2026.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable Jane H Merrill, Circuit Court Judge

THE STATE,

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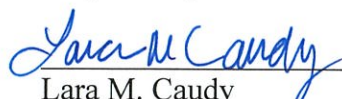
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tony A. Sanders states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's probation revocation hearing, which was held on January 5, 2026, before the Honorable Jane H. Merrill, and, in her opinion, the appeal is without legal merit sufficient to warrant a new hearing.
3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the proceeding.

WHEREFORE, she asks the Court to relieve her as counsel for Tony A. Sanders.

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of July, 2026.

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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) Complete Transcript Dated January 5, 2026;
- (2) Standard Conditions of Probation;
- (3) Probation Arrest Warrant;
- (4) Summary of Administrative Hearing;
- (5) Order Revoking Probation;
- (6) Indictment;
- (7) Sentence Sheet.

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



Lara M. Caudy
Senior Appellate Defender

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Division of Appellate Defense
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Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 20th day of July, 2026.

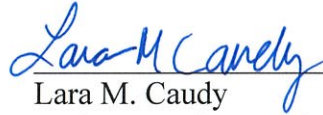
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the 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."



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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Matthew C. Buchanan, Esquire, at his primary email address listed in the Attorney Information System (AIS); and on Tony A. Sanders, at 107 Country Place Circle, Seneca, SC 29678, this 20th day of July, 2026.



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

From: [Mcinnis, Sara](#)
To: [Matthew Buchanan](#)
Cc: [SC - NICHOLS DAWN](#); [Caudy, Lara](#)
Subject: 2026-00133 The State v. Tony A. Sanders Anders Brief of Appellant and Record on Appeal
Date: Monday, July 20, 2026 11:33:00 AM
Attachments: 2026-000133 The State v. Tony A. Sanders Anders Brief of Appellant.pdf
2026-000133 The State v. Tony A. Sanders Record on Appeal.pdf

Good morning Mr. Buchanan,

Attached for service in the above-referenced case are the Anders Brief of Appellant and the Record on Appeal, which will be filed with the Court of Appeals today, July 20, 2026, via email filing.

Thank you,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330

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