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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY KEITH YARBROUGH,

APPELLANT

APPELLATE CASE NO. 2025-001980

ANDERS BRIEF OF APPELLANT

W. CHANDLER NORVILLE
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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the probation court's decision to revoke Appellant's probation was an abuse of discretion where the decision was based, at least in substantial part, on the probation court's unsupported assertion that Appellant was "selling" drugs?

STATEMENT OF THE CASE

On July 12, 2024, an Abbeville County grand jury indicted Appellant for possession with intent to distribute (PWID) methamphetamine. R. 1-2. On July 18, 2024, Appellant pleaded guilty to PWID methamphetamine, second offense, before the Honorable Frank R. Addy, Jr. Tristian Shaffer represented Appellant; Wade Downtin represented the state. R. 3. Judge Addy sentenced Appellant to eight years' imprisonment, suspended upon the service of three years' probation. R. 8, ll. 21-23. Judge Addy further ordered that probation would terminate after twelve months if Appellant completed all the conditions of his probation. R. 9, ll. 4-6.

On August 6, 2025, Appellant was cited for a probation violation. R. 17-18. A On September 12, 2025, a hearing for the probation violation was held before the Honorable R. Lawton McIntosh. T. Matthew Bradley represented Appellant; probation agent Washburn represented the state. R. 19. Judge McIntosh revoked Appellant's probation in full. R. 23, l. 5.

This appeal follows.

STATEMENT OF FACTS

Appellant pleaded guilty to PWID methamphetamine, second offense, after law enforcement found five (5) grams of methamphetamine in his car during a traffic stop. R. 6, ll. 9-14. The state recommended probation as part of the plea. Judge Addy followed that recommendation and sentenced Appellant to three years of probation, with a suspended prison term of eight years. R. 8, ll. 21-23. As part of the sentence, Appellant was required to submit to random drug testing in the probation department's discretion. R. 8, ll. 23-25.

On July 17, 2025, Appellant pleaded guilty to possession of methamphetamine. R. 21, ll. 21-24; R. 17-18. Judge McIntosh also presided over that plea hearing and sentenced Appellant to two years' imprisonment. R. 21, ll. 21-24. As a result of this conviction, Probation cited Appellant for a violation of his probation. R. 17-18. Agent Washburn recommended the probation court impose "some time" for the violation, since the new conviction was "for the same exact thing he's on probation for now...." R. 21, ll. 12-14.

In mitigation, defense counsel informed the probation court that Appellant was sixty-two (62) years old, was a high school and college graduate, and was a recipient of Social Security. R. 22, ll. 23-25. Counsel also asserted that Appellant had passed every drug test that had been given to him as a condition of probation. R. 23, l. 1. At this statement, Judge McIntosh interrupted counsel and interjected, "That just means he's selling, which is worse." R. 23, ll. 2-3. Judge McIntosh then proceeded to revoke Appellant's probation in full, "back date[d]" to January 21, 2025, the start date of the two-year sentence for possession. R. 23, ll. 4-6.

STANDARD OF REVIEW

This Court reviews the trial court's decision whether to revoke probation for abuse of discretion. *State v. Miller*, 122 S.C. 468, 474-75, 115 S.E. 742, 745 (1923). "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). "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 (*quoting State v. White*, 218 S.C. 130, 136, 61 S.E.2d 754, 756 (1950)).

ARGUMENT

The probation court's decision to revoke Appellant's probation was an abuse of discretion where the decision was based, at least in substantial part, on the probation court's unsupported assertion that Appellant was "selling" drugs.

The probation court relied, in substantial part, on its assumption that Appellant was selling drugs. Its assumption was based on one sole fact that Appellant had not tested positive during any of the random drug tests performed by the probation office. Because there was no evidence to support the probation court's assumption that Appellant was a drug dealer, the probation court erred in relying upon it when deciding to sentence Appellant. Appellant's sentence should be vacated, and this case should be remanded for re-sentencing without consideration of Appellant's purported drug dealing.

A probationer may only be revoked if the revocation is "[predicated] [sic] upon an evidentiary showing of fact tending to establish violation of the conditions." *State v. White*, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950). A judicial determination that lacks evidentiary support is "arbitrary and capricious," and cannot be the basis for a probation revocation. *Id.*; *State v. Hamilton*, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999). When a probation court's ruling rests on factual conclusions, a ruling without evidentiary support constitutes an abuse of discretion. *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006).

Here, the probation court asserted that Appellant was selling drugs. The basis for this finding was: (1) Appellant's conviction for possession of methamphetamine, and (2) the fact that Appellant had not failed any drug tests. Neither of these propositions, either alone or considered together, provides any evidentiary support for the probation court's finding.

First, Appellant's conviction was for possession of methamphetamine. Possession of methamphetamine, by definition, means that Appellant was merely a "person possessing less than one gram of methamphetamine." S.C. Code Ann. § 44-53-375(A). Had there been any evidence that Appellant was selling methamphetamine, or any evidence that Appellant even *intended* to sell methamphetamine, he would have been guilty of PWID. *See id.* § 375(B) (defining PWID methamphetamine). Thus, the fact that Appellant was convicted of possessing methamphetamine provides no evidentiary support for the probation court's conclusion that Appellant was "selling" methamphetamine.

Second, the fact that Appellant had not failed a probation-ordered drug test simply means that, at the time he took the drug test, he had not ingested methamphetamine in the preceding seventy-two (72) hours. *See* Sarah Hardey, *How Long Does Meth Stay in Your System*, American Addiction Centers (Mar. 30, 2026), <https://americanaddictioncenters.org/stimulants/meth/how-long-in-system> (last accessed June 11, 2026). Nothing about the fact that Appellant had never failed a drug test suggests that Appellant was selling drugs.¹

Even when considered together, the two circumstances relied upon by the probation court do not provide evidentiary support for the proposition that Appellant was dealing drugs. The fact that Appellant had drugs in his possession and, on different occasions, did not test positive for drugs, does not provide even slight evidence that Appellant was a drug dealer. Those two facts alone do not create "a chain of facts and circumstances indicating the existence of a fact." *Cf.*, e.g., *State v. Logan*, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013) (defining circumstantial evidence); *overruled in part on other grounds by Heatley v. State*, App. Case No. 2023-001526

¹ Further, passing the drug tests was a condition of Appellant's probation. Holding Appellant's *compliance* with a term of his probation against him is questionable at best.

(Howard Adv. Sht. No. 27, at 38) (S.C. July 22, 2026). To find that those two facts alone are indicative of drug dealing is simply too far of an evidentiary leap.

Because there is no evidentiary support for the probation court's finding that Appellant was selling drugs, that finding was an abuse of discretion. Further, because the probation court appeared to rely, at least in part, on that finding when revoking Appellant's probation in full, the revocation itself was an abuse of discretion. Accordingly, Appellant's probation revocation should be reversed, and the case remanded for a new violation hearing.

CONCLUSION

For the foregoing reasons, the probation court's order revoking Appellant's probation should be reversed, and this case should be remanded for a new revocation hearing.



W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of September, 2026.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Bobby Yarbrough states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge , which was held on , and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Bobby Yarbrough.

Respectfully Submitted,



W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

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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) True-billed indictment: 2025-GS-01-0416;
- (2) Plea Hearing Transcript July 18, 2024;
- (3) Sentencing Sheet;
- (4) Signed Standard Conditions of Probation;
- (5) Probation Arrest Warrant;
- (6) Probation Citation;
- (7) Revocation Hearing Transcript September 12, 2025;
- (8) Revocation Order.

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



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This 21st day of September, 2026.

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 the primary e-mail address listed in the Attorney Information System (AIS); and on Bobby Yarbrough, #228592, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 21st day of September, 2026.



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