

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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OCT 25 2014

Appeal from Laurens County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Case No. 2013-002732

SC Court of Appeals

THE STATE, RESPONDENT

v.

LARRY G. PARRIS, APPELLANT

BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1343**

ATTORNEY FOR THE RESPONDENT

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TABLE OF AUTHORITIES

CASES

Faretta v. California, 422 U.S. 806, 95 S.Ct 2525 (1975).6

Fitzpatrick v. Wainwright, 800 F.2d 1057 (11th Cir.1986). 6

Salley v State, 306 S.C. 213, 410 S.E.2d 921 (1991) 6

State v. Fuller, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999).7

Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990) 6

STATEMENT OF ISSUE ON APPEAL

The probation revocation court did not err in allowing appellant to proceed pro se and there is enough evidence in the record to believe appellant was aware of his right to counsel and the dangers of self-representation.

STATEMENT OF THE CASE

On October 11, 2007, Appellant was sentenced to five years incarceration suspended to two years probation after pleading guilty to six counts of forgery in Laurens County before the Honorable Brooks P. Goldsmith. At the hearing, he informed the court that he had previous charges against him in Michigan. Appellant was subsequently extradited to Michigan and returned to South Carolina after his release on January 19, 2011. He faced a violation of supervision for not reporting upon his release from Michigan and his probation was extended to the full five years in an order signed by the Honorable Eugene C. Griffith on September 14, 2011.

On September 30, 2013, probation agents issued an arrest warrant against Appellant for absconding supervision, failure to report, leaving the state without permission, and numerous financial arrearages. The warrant was served on October 14, 2013. The Appellant then filed a Notice of Motion and Motion to proceed without an attorney, which was filed October 29, 2013.

The Appellant appeared before Judge Griffith on December 16, 2013 for the probation hearing. Although Appellant appeared pro se, he had Assistant Public Defender Kate Kendall standing with him. Judge Griffith revoked eighteen months of his probation after the hearing.

The Appellant now brings this appeal before this court, filing an appeal asserting that he was not represented by counsel at the hearing.

ARGUMENT

The probation revocation court did not err in allowing appellant to proceed pro se and there is enough evidence in the record to believe appellant was aware of his right to counsel and the dangers of self-representation.

Faretta v California, 422 U.S. 806, 95 S.Ct. 2525 (1975) establishes that criminal defendants have a Sixth Amendment right to proceed without the representation of an attorney. That same decision also requires that for a defendant to proceed *pro se*, he or she must be aware that self-representation carries with it certain dangers and disadvantages. The court is generally expected to inquire with the defendant to make sure he or she is aware not only of the right to counsel, but also the risks associated with proceeding without counsel.

However, “the ultimate test is not the trial judge’s advice but rather the defendant’s understanding.” *Wroten v State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990), *citing Fitzpatrick v. Wainwright*, 800 F.2d 1057 (11th Cir.1986).

“In the absence of a specific inquiry by the trial judge to determine whether the defendant has made his decision to proceed *pro se* ‘with eyes open,’ this Court will look to the record to discern whether there are facts to show the defendant had sufficient background or was apprised of his rights by some other source so as to constitute a knowing and intelligent waiver of the right to counsel.” *Salley v State*, 306 S.C. 213, 410 S.E.2d 921 (1991) (citations omitted).

It is clear that the court in the instant case did not make a specific inquiry of the defendant’s awareness of the right to counsel and a warning of the dangers of self-representation. So therefore, this Court must determine if evidence exists that points to the Appellant’s awareness of the *Faretta* factors. The Appellant filed a notice of his intent to proceed *pro se* prior to the hearing. In his motion, he moves to be allowed to represent himself, and even notes

correctly that it is his “statutory and Constitutionally protected right to do so.” [Cite] Appellant’s request was also appropriately asserted before the hearing, in line with the requirement that the demand to proceed *pro se* take place prior to trial, as noted in *State v Fuller*, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999).

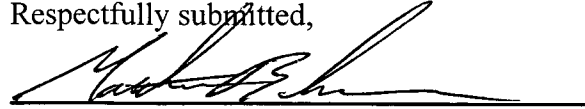
Furthermore, Appellant also had the opportunity to discuss his decision with an appointed counsel, both before the hearing and during the hearing. The record clearly shows that Ms. Kendall stood with him and met with him prior to the hearing.¹ Appellant was given ample opportunities to make up his mind about self-representation, and had the advantage of an attorney standing with him if he had any questions about the proceedings.

¹ Ms Kendall Well, I just want to let the Court know why I am standing up here I have stood beside Larry, Mr Parris, at the last hearing He wanted to represent himself, he did not totally agree on what the violations were But I met with him at the hail just to ensure that he wanted to represent himself and I told him I would stand next to him if there were any questions or I may could assist the Court or Mr Parris. Tr p 4, lines 20 – p 5, lines 2

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests that the decision of the lower court to revoke Appellant's probation be upheld.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

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Attorney for the Respondent

Columbia, South Carolina
October 13, 2014

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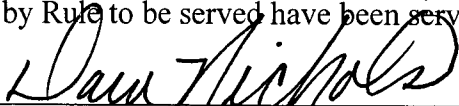
LARRY G. PARRIS, APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Initial Brief of Respondent and Designation of Matter* dated October 13, 2014, on Appellant this 13th day of October, 2014, by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Robert Pachak, Esquire
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.



Dawn K. Nichols
Executive Administrative Assistant

South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
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October 13, 2014

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street- 5th Floor
Columbia, South Carolina 29201

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RE: State v. Larry Parris

Dear Ms. Kitchings:

Enclosed please find the original of the Initial Brief of Respondent and Designation of Matter, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Buchanan".

Matthew Buchanan
General Counsel

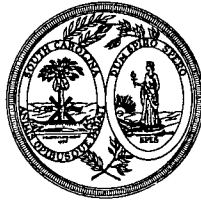
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Enclosures

cc: Robert Pachak, Appellate Defender

State of South Carolina
Department of Probation, Parole and Pardon Services

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Robert Pachak, Appellate Defender
S.C. Commission on Indigent Defense
Post Office Box 11589
Columbia, SC 29211-1589

RE: State v. Larry Parris

Dear Mr. Pachak:

Please find enclosed copies of the matter we designated for inclusion in the Record on Appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan".

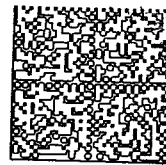
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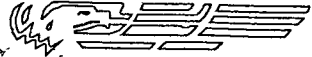
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cc: The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals

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