

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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NOV 19 2014  
**SC Court of Appeals**

Appeal from Laurens County

Eugene C. Griffith, Jr., Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

LARRY G. PARRIS,

APPELLANT

APPELLATE CASE NO. 2013-002732

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FINAL BRIEF OF APPELLANT

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Appellate Defender

South Carolina Commission on Indigent Defense  
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the probation revocation court erred in allowing appellant to proceed pro se when it did not advise him of his right to counsel and the dangers and disadvantages of self-representation?

STATEMENT OF THE CASE

Appellant pled guilty to six (6) counts of forgery in Laurens County. On October 11, 2007, the Honorable Brooks P. Goldsmith sentenced him to five (5) years suspended to time served with two (2) years' probation thereafter.

On December 16, 2013, appellant appeared before the Honorable Eugene C. Griffith, Jr., for a probation revocation hearing. Appellant appeared pro se and Kate Kendall, Esquire, was present standing with him. Judge Griffith revoked eighteen (18) months of appellant's probation.

This appeal follows.

## ARGUMENT

The probation revocation court erred in allowing appellant to proceed pro se when it did not advise him of his right to counsel and the dangers and disadvantages of self-representation.

At the beginning of appellant's probation revocation hearing, the probation agent advised the court of the following:

Your Honor, if I may, Mr. Parris has filed on behalf of himself a motion to represent himself, pro se, in this hearing. I was informed right after lunch that Kate Kendall of the Laurens County Public Defender's office of the South Carolina Bar would be standing with him. I just want to put on the record, Your Honor, that the State has no objection to her standing by in an advisory capacity. (R. p. 3, lines 7 – 14).

At no time was appellant advised of his right to counsel. In Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975), the Supreme Court of the United States noted that the Sixth Amendment to the United States Constitution grants to an accused in all criminal prosecutions, the right to the assistance of counsel. For there to be a valid waiver of the right to counsel, the accused must be aware that he has the right to counsel and that he understands the dangers and disadvantages of self-representation.

In Salley v. State, 306 S.C. 213, 410 S.E.2d 921 (1991), the court wrote:

The right to counsel attaches in probation revocation hearings. *Barlet v. State*, 288 S.C. 481, 343 S.E.2d 620 (1986). The requirements for waiving right to counsel in a probation revocation hearing are the same requirements as apply when a defendant desires to waive right to counsel in a trial. *Huckaby v State*, 408 S.E.2d 242 (S.C. 1991). The trial judge has the duty to ensure that the defendant makes an intelligent and competent waiver of counsel. *State v Bateman*, 296 S.C. 367, 373 S.E.2d 470 (1988). The trial judge should advise the defendant of his right to counsel, and adequately

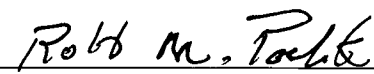
warn the defendant of the dangers of self-representation. *Prince v State*, 301 S.C. 422, 392 S.E.2d 462 (1990). However, in the absence of a specific inquiry by the trial judge to determine whether the defendant has made his decision to proceed *pro se* "with eyes open," *Faretta v California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), 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. *Wroten v State*, 301 S.C. 293, 391 S.E.2d 575 (1990).

The record in appellant's case like the one in Salley indicates appellant was not informed of his right to counsel and was not warned of the dangers of self-representation.

CONCLUSION

Appellant should be granted a new probation revocation hearing.

Respectfully submitted,

  
\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of November, 2014.

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."

November 19, 2014

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\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Matthew Buchanan, Esquire, at South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250, this 19th day of November, 2014.

*Robert M. Pachak*

\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 19th day of November, 2014.

*Palacino* (L.S.)  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.