

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from Lexington County
Edward B. Cottingham, Circuit Court Judge

JAN 19 2016
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

O'NEAL BERNARD BYRDIC, JR.,

APPELLANT

APPELLATE CASE NO. 2014-001675

MOTION TO ARGUE AGAINST PRECEDENT

Pursuant to Rule 217, SCACR, Appellant moves this Court to permit argument against precedent. This case is scheduled for oral argument on February 2, 2016 at 10:00 a.m. before this Court.

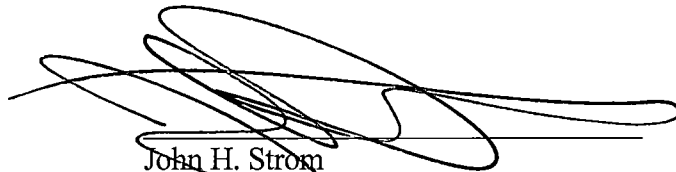
1. There are two issues in this case; however, both concern whether due process requires Appellant, a probationer, to have the opportunity to present evidence, to call witnesses, and, most importantly, to cross-examine adverse witnesses during a probation revocation hearing.

2. In *State v. Pauling*, 371 S.C. 435, 639 S.E.2d 680 (Ct. App. 2006), this Court declined to extend the protections of the Sixth Amendment's Confrontation Clause, as set forth in *Crawford v. Washington*, 541 U.S. 36, 42 (2004), to a probationer.

3. Counsel for Appellant submits that the issue presented to this Court in *Pauling* is distinguishable from the ones presented in this particular case.

4. Alternatively, Appellant respectfully moves to argue against precedent to the extent that *Pauling* maybe understood as holding that probationers have no right to confront and cross-examine adverse witnesses under the Sixth Amendment to the United States Constitution and under Article One, Section Fourteen of the South Carolina Constitution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John H. Strom", is written over a horizontal line. The signature is stylized with several loops and a long horizontal stroke extending to the right.

John H. Strom
Appellate Defender

Attorney for Appellant

This 19th day of January, 2016

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion to Argue Against Precedent 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 January, 2016.



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of January, 2016.

U. W. (L.S.)

Notary Public for South Carolina

My Commission Expires: May 12, 2025