

ORIGINAL

STATE OF SOUTH CAROLINA

RECEIVED

IN THE COURT OF APPEALS

MAY 02 2016

\_\_\_\_\_  
Appeal from Colleton County

SC Court of Appeals

Carmen T. Mullen, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

LARRY COUNCIL,

APPELLANT

APPELLATE CASE NO.2016-002622  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... 1

TABLE OF AUTHORITIES ..... 2

STATEMENT OF ISSUE ON APPEAL ..... 3

STATEMENT OF THE CASE ..... 4

ARGUMENT ..... 5

CONCLUSION ..... 6

PETITION TO BE RELIEVED AS COUNSEL ..... 7

**TABLE OF AUTHORITIES**

**Cases**

Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986) ..... 6

State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (2004)..... 5

Turner v. State, 384 S.C. 451, 662 S.E.2E 792 (2009)..... 6

United States v. Workman, 585 F.2d 1205 (1978) ..... 5

**Statutes**

S.C. Code Ann. § 15-27-15..... 5

STATEMENT OF ISSUE ON APPEAL

The probation revocation judge erred in revoking appellant's probation without appointing an interpreter for appellant, who was apparently hearing impaired, to assist throughout the duration of the probation revocation hearing.

## STATEMENT OF THE CASE

Appellant Larry Council was convicted of third degree criminal sexual conduct during the November 2015 term of the Colleton County General Sessions Court before Judge Perry M. Buckner and sentenced to imprisonment for a period of ten years, suspended on time served and five years probation. On December 11, 2015, a probation revocation hearing was held during the December 2015 term of the Colleton County General Sessions Court before Judge Carmen T. Mullen. David S. Matthews represented appellant at the probation revocation hearing and Probation Agents Anthony Tomlinson and Lisa Bolton appeared on behalf of the state. Judge Mullen revoked two years of appellant's sentence.

Appellant appealed. This brief follows.

## ARGUMENT

The probation revocation judge erred in revoking appellant's probation without appointing an interpreter for appellant, who was apparently hearing impaired, to assist throughout the duration of the probation revocation hearing.

At the beginning of the probation revocation hearing, the following references were made regarding appellant's inability to hear properly:

Agent: Your Honor, [appellant] is very hard of hearing....

Court: Thank you. Alright. Tr. 4, lines 14-16.

At the close of the probation revocation hearing, the following colloquy occurred regarding appellant's hearing issues:

Court: .....you cannot see your children unless supervised.

Appellant: I can't hear you.

Agent: Your Honor, he says he can't hear....if I need to get a sign...I don't know if he does sign language. I don't know what it is. He says he can't hear I don't know how to do a hearing if he can't hear. I don't know what to do about it.

Court: Okay, well, I'm revoking his two years...he knows better than this. Tr. 7, l. 11 – 25.

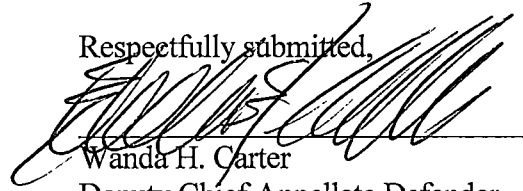
Whenever a deaf person appears as a party in any legal proceeding, the court must appoint as many qualified interpreters or deaf interpreters as needed. S.C. Code Ann. § 15-27-15. (Supp. 2003). See State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (2004). A probation revocation hearing is a criminal proceeding where a loss of liberty could result. United States v. Workman, 585 F.2d 1205 (1978). Therefore, the probation revocation judge should have supplied appellant with an interpreter to assist with his hearing issues during the hearing. Also, trial counsel erred in failing to request an interpreter for appellant

prior to and/or during the hearing. Due process (not the Sixth Amendment) allows for a probationer's right to counsel (and effective counsel also) at probation hearings. See Turner v. State, 384 S.C. 451, 662 S.E.2E 792 (2009) and Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986). The probation revocation judge erred in holding a probation revocation hearing for appellant, who was hearing impaired, sans an interpreter. Trial counsel erred in failing to request an interpreter to assist appellant during the probation revocation hearing. Thus, due process was violated during appellant's probation revocation hearing.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court vacate appellant's probation revocation sentence and remand for a new hearing.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of April, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Colleton County

MAY 02 2016

Carmen T. Mullen, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LARRY COUNCIL,

APPELLANT

APPELLATE CASE NO.2016-002622

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Larry Council states:

1. She is Deputy Chief 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 trial before Judge Carmen T. Mullen, which was held on December 11, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Larry Council.

Respectfully submitted,

  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of April, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Colleton County

Carmen T. Mullen, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

MAY 02 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LARRY COUNCIL,

APPELLANT

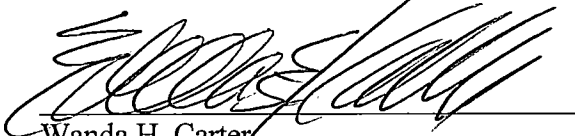
APPELLATE CASE NO.2016-002622  
\_\_\_\_\_

**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

Appellant proposes the following be included in the Record on Appeal:

- (1) CSC indictment and Sentencing Sheet;
- (2) Probation Revocation Order
- (3) Probation Revocation Arrest Warrant
- (4) Entire Probation Revocation Transcript

I certify that this designation contains no matter which is irrelevant to this appeal.  
April 29th, 2016



Wanda H. Carter  
Deputy Chief Appellate Defender

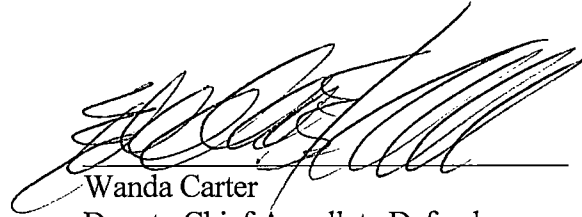
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

Attorney for Appellant

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."

April 29, 2016



Wanda Carter  
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

**RECEIVED**

MAY 02 2016

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Colleton County

MAY 02 2016

Carmen T. Mullen, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

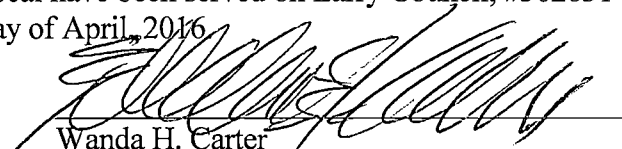
LARRY COUNCIL,

APPELLANT

APPELLATE CASE NO.2016-002622

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Matthew Buchanan, at 2221 Devine St # 500, Columbia, SC 29205 and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Larry Council, #362831 at Broad River Correctional Institution, this 29th day of April, 2016.

  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 29th day of April, 2016.

  
(L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.