STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of General Sessions

The Honorable Kristi L. Harrington, Circuit Court Judge

Appellate Case No. 2014-002776

THE STATE,

Respondent,

v.

LOUSHONDA MYERS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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Appellant's allegations concerning "extrinsic and intrinsic fraud" are not preserved for appellate review. Even if Appellant's argument was preserved, there is no evidence whatsoever of fraud by any of the involved parties.

STATEMENT OF THE CASE

On August 28, 2014, Appellant was ordered by The Honorable Kristi L. Harrington not to file any documents on behalf of Dameon Myers with the Clerk of Court in Georgetown County. On September 17, 2016, Appellant was served with a Rule to Show Cause dated September 16, 2015 ordering her to appear before the Georgetown County Circuit Court on September 26, 2014. At the hearing on September 26, 2014, Judge Harrington found Appellant in direct criminal contempt of court. Judge Harrington sentenced Appellant to six months imprisonment, suspended on condition that Appellant not violate any further order of the Court. Appellant timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

On August 28, 2014, a hearing on an application for post-conviction relief (PCR) made was held in Georgetown, South Carolina before The Honorable Kristi L. Harrington. The applicant in the PCR action was Dameon Myers. At the PCR hearing, Appellant sought to appear as Mr. Myers's "attorney in fact." Aug. 2014 Tr. p. 4. When asked whether she was licensed to practice law in South Carolina, Appellant replied, "I'm not aware of South Carolina having a license." Aug. 2014 Tr. p. 4. After conceding that she was not a licensed attorney, Judge Harrington informed Appellant that she would not be permitted to sit at the table with Mr. Myers. Aug. 2014 Tr. p. 5. After Appellant objected, Judge Harrington stated, "I have made a ruling. You are not a licensed attorney and, as such, you may not be of legal assistance. I am not going to allow you, in my presence, to commit a felony." Aug. 2014 Tr. p. 5. Later in the proceeding, Mr. Myers stated he did not have an attorney, "Because I have members of my society that's' going to help me, assist me, on this - - on these proceedings today. Aug. 2014 Tr. p. 14. Judge Harrington replied:

> Well, they're not allowed to practice law. And, as a matter of fact, I'm going to instruct the sheriff of Georgetown County to investigate the unauthorized practice of law by anyone who has filed any papers on your behalf that does not have a bar license. And that will be accomplished today. And I'm also going to instruct the clerk of court not to accept any papers on your behalf by anyone who is not a licensed attorney.

Aug. 2014 Tr. p. 14.

During the hearing, Counsel for the State brought it to the Court's attention that Appellant previously signed a request for PCR discovery and a notice of special appearance on behalf of Mr. Myers. Aug, 2014 Tr. p. 18. The documents were signed by Appellant as "private attorney in fact." Aug. 2014 Tr. p. 19. Judge Harrington then read South Carolina Code Section

40-5-310 and explained the unauthorized practice of law and resulting penalties. Aug. 2014 Tr. pp. 19-20. Judge Harrington found:

> As such, I will also be referring this matter to the Office of Disciplinary Counsel and to the Supreme Court of the State of South Carolina. But while the matter is pending, I will strike any - - all actions that have been signed or filed by anyone - - not Mr. Myers, who is representing himself, or anyone that has indicated to the Court that they are a member of the South Carolina bar. I cannot find any number or any pro hac vice application or anything giving Ms. Myers the authorization by the Supreme Court of South Carolina to practice law and, as such, I will strike and order, until otherwise noticed by the Supreme Court, that there is to be no other filings accepted by the clerk here in Georgetown County.

Aug. 2014 Tr. p. 20.

Following Judge Harrington's Order, Appellant filed two documents with the Georgetown Clerk of Court on September 9, 2014. R. p. * (Notices of Appeal dated September 9, 2014). The documents filed by Appellant were titled "Notice of Appeal" and were signed by Appellant as "Attorney-In-Fact/Private Attorney General on behalf of Dameon Myers." R. p. * (Notices of Appeal dated September 9, 2014).

On September 16, 2015, following Appellant's violation of the Order, Judge Harrington issued a Rule to Show Cause informing Appellant that it appeared she had violated court orders and that she should appear before the Georgetown County Circuit Court on September 16, 2014 and be prepared to show cause as to why she should not be held in contempt of court for disobedience. R. p. * (Rule to Show Cause). On September 17, 2014, a copy of the Rule to Show Cause, a Memorandum in Support of Motion for Rule to Show Cause and a Finding by the Circuit Court that Defendant is Guilty of Contempt and an explanatory cover letter were served on Appellant by a Georgetown County Sherriff's Deputy. R. p. * (Affidavit of Service, Memorandum in Support of Motion for Rule to Show Cause).

On September 25, 2014, a hearing on the Rule to Show Cause was held before Judge Harrington in Georgetown, South Carolina. At the hearing, Judge Harrington asked Appellant whether she recalled her reading the statute that applied to the unauthorized practice of law to her and ordering that she could not file any documents on anyone else's behalf. Sep. 2014 Tr. pp. 5-6. Appellant responded, "I did not hear anyone else's behalf. And that's the point that I'm trying to make here today is that I did not intentionally, willingly, or knowingly disobey a direct order." Sep. 2014 Tr. p. 8. Judge Harrington later asked Appellant whether she filed a notice of appeal in a case involving Dameon Myers on September 9, 2014. Appellant replied, To that question I am going to invoke my Fifth and Eleventh Amendment rights." Sep. 2014 Tr. p. 10.

Later in the hearing, the Clerk of Court left the courtroom to retrieve someone from the Public Defender's Office to advise Appellant. Sep. 2014 Tr. p. 13. Ronald Hazzard was subsequently appointed by the Court to advise Appellant. Sep. 2014 Tr. p. 17. The Court instructed Mr. Hazzard, "I would like for you to speak with Ms. Myers. She has indicated that she just is uniformed of what is happening here today. I don't know what else to tell her." Sep. 2014 Tr. pp. 18-19. Following conversations with Appellant and counsel for the State, Mr. Hazzard stated:

> At this point in speaking with Ms. Myers, I truly get the impression that she was not 100 percent clear regarding the distinction between her filing documents in the civil post conviction relief matter and with regard to another underlying general sessions matter. Be that as it may, I have no doubt that the Court made its position abundantly clear during the hearing on August 28th of 2015. After speaking with Ms. Myers, it is my understanding she is not here to quibble or mince words or make fine points about it. We are here to ask the Court for forgiveness in a heartfelt fashion. We are hopeful that the Court in its stricture will see fit to fashion a sanction that does not require immediate incarceration.

Sep. 2014 Tr. pp. 21-22. The Court then asked Appellant whether there was anything she wished to tell the Court before sentencing. Sep. 2014 Tr. p. 22. Appellant stated, "Just that I apologize and I did not fully understand, I apologize." Sep. 2014 Tr. pp. 22-23.

The trial judge ruled:

> Ms. Myers, I do find that you are in direct contempt of the Court's order, that said direct contempt simply involves conduct occurring in the presence of the Court. And while you did not directly file your documents in front of me, there is a very liberal construction of what in the Court's presence means. The clerk of court by its very nature is an arm of this Court, and in order for the process to begin, it is vital that they accept documents and filings. So I consider that the presence of the Court does extent to the clerk of court's office. . . .So your behavior in the clerk's office is what has found you here today, that your conduct is criminal. And why I find that it's to be criminal is it's necessary for me to preserve my authority as the Court and to punish for the disobedience of the orders that I have given. I'm taking into consideration the fact that I did not prepare a formal order and serve you, Your attorney has indicated to me that you were unclear as to what has now been marked as Court's-1 and 2 so that you should not have filed that. I find that hard to believe that you did not understand what I meant when I indicated to you, you could file nothing further on anyone's behalf. So it's the order of the Court. I do find that you are in direct contempt by your continued filing of legal documents on others' behalves. You have indicated today as well as August 28th that you do not have a license to practice law in this state or any state, and you have no order from the Supreme Court allowing you to practice law on anyone else's behalf. I find that she should be held in criminal contempt. It is the order of the Court that you be sentenced to six months in the Department of Corrections. I am going to suspend this sentence. How I am going to suspend this sentence is that this will not be imposed unless you violate any further order of this Court.

Sep. 2014 Tr. pp. 29-31.

ARGUMENT

I.

Appellant's arguments concerning alleged Due Process violations are not preserved for appellate review. Even if Appellant's arguments were preserved, Appellant was not denied her Due Process rights at any point in the proceeding.

Relevant Facts

At the hearing on September 26, 2015, Appellant stated, "I don't even understand the nature and the cause of this. I don't even know whether this is civil or criminal. . . . Is this matter civil or criminal?" Sep. 2014 Tr. p. 7. Judge Harrington informed Appellant that she had the right to have an attorney present and asked her whether she wanted to have an attorney present or whether she would like to proceed on her own. Sep. 2014 Tr. p. 7. Appellant simply responded, "I would like to be tried by a jury. Is this civil or criminal?" Appellant then stated, "I need - - I need some information so I can make a decision. I need to know whether this is a civil matter or a criminal matter. I don't have that information before me." Sep. 2014 Tr. pp. 7-8. Appellant continued, "I may need counsel depending whether it's a civil or criminal matter. I don't know. I don't know whether or not this is civil or criminal." Sep. 2014 Tr. p. 8. Judge Harrington replied that it was not the Court's role to give legal advice. Sep. 2014 Tr. p. 8.

Later in the proceeding, Appellant again stated, "I'm still trying to figure out whether or not - - I'm still trying to figure out whether or not this is a civil or criminal proceeding. I haven't had an answer to that yet." Sep. 2014 Tr. p. 14. Counsel for the State later noted, "And if I may also, your Honor, in order to reflect the State's position on the record, the State takes the position that this contempt is criminal in nature." Sep. 2014 Tr. pp. 15-16. Judge Harrington replied, "But do believe that this is a direct contempt and it is criminal in nature." Sep. 2014 Tr. p. 16. In her subsequent ruling, Judge Harrington highlighted the criminal nature of the contempt in stating,

"So your behavior in the clerk's office is what has found you here today, that your conduct is criminal. And why I find that it's to be criminal is it's necessary for me to preserve my authority as the Court and to punish for the disobedience of the orders that I have given." Sep. 2014 Tr. p. 30.

Discussion

Appellant alleges multiple Due Process violations stemming from the September 26th contempt hearing. Specifically Appellant contends she had no knowledge as to whether the conspiracy charge was criminal or civil which denied her procedural Due Process. Appellant also contends she was denied her procedural Due Process rights when she was, "denied access to the court on and/or around September 19, 2014 by the clerks in the Clerk of Court's Office while attempting to submit documents on my behalf in regards to the September 26, 2014 hearing." Br. of App. p. 6. Appellant also avers her substantive Due Process rights have been violated because she has, "the fundamental and substantive Right to be made aware of the nature and cause of the allegations against me." Br. of App. p. 6. Finally, Appellant asserts a substantive Due Process violation because "Judge Harrington introduced evidence against me from the bench from outside sources of which I did not know nor had the opportunity to question and/or rebut." Br. of App. p. 6. These arguments lack merit. Appellant conflates substantive Due Process with procedural Due Process, as all of the substantive Due Process violations she alleges are actually procedural in nature. Appellant's procedural Due Process rights were not affected whatsoever where she had notice of the charge, an opportunity to be heard, and judicial review.

As a threshold matter, this argument is not preserved for appellate review. Appellant did not raise an objection as to Due Process violations or make any of the argument in her brief at the trial court. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (ruling the

argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review). An argument not raised to and ruled on by the trial court is not preserved for appeal. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) (objection must be entered on a specific ground at trial to preserve an appeal); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). "The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge." Id. "The appellants have the responsibility to identify errors on appeal, not the Court." Kennedy v. South Carolina Ret. Sys., 349 S.C. 531, 532-33, 564 S.E.2d 322, 322-23 (2001). "An issue that was not preserved for review should not be addressed by the Court of Appeals. . ." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (citing Hendrix v. E. Distrib., Inc., 320 S.C. 218, 219, 464 S.E.2d 112, 113 (1995)). This Court should therefore disregard Appellant's argument as it is not preserved for review.

Even if Appellant's argument was preserved, the argument lacks merit. The State would first note that Appellant's complaints concerning substantive Due Process violations are actually procedural in nature. The "fundamental rights" Appellant alleges were violated were the "fundamental and substantive right to be made aware of the nature and cause of the allegations" and Judge Harrington's introduction of "evidence against me from the bench from outside sources of which I did not know nor had the opportunity to question and/or rebut." These alleged constitutional violations are procedural, rather than substantive in nature, therefore the State will treat all allegations as alleged procedural Due Process violations. Compare County of Sacremento v. Lewis, 523 U.S. 833, 845-46 (1998) (procedural Due Process protects against "a denial of fundamental procedural fairness[.]"); with Washington v. Gluckenberg, 521 U.S. 702, 720-721 (1997) (recognizing that substantive Due Process protects against the infringement of

fundamental rights and liberties deeply rooted in the United States' history and tradition regardless of what process is provided unless the infringement is narrowly tailored to serve a compelling government interest).

Procedural Due Process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth and Fourteenth Amendment of the United States Constitution. Matthews v. Eldridge, 424 U.S. 319 (1976). "The Fundamental requirements of Due Process include notice, an opportunity to be heard in a meaningful way, and judicial review." Kurschner v. City of Camden Planning Com'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008).

Firstly, as to Appellant's allegations that she was denied the opportunity to know the nature and cause of the allegations against her, Appellant had notice of the allegations against her; and any failure on her part to secure witnesses, submit documents, or know the nature of the allegations against her is not the result of a procedural Due Process violation on the part of the State. Appellant was also given the opportunity to be heard in a meaningful way and judicial review. Therefore Appellant was given everything that procedural Due Process requires. As to notice, Appellant was served with the Rule to Show Cause nine days prior to the September 26, 2014 hearing. The Rule informed her that it appeared she had not obeyed certain court orders and to be prepared to show cause as to why she should not be held in contempt of court. Appellant was also served with the State's Memorandum in Support of Motion for Rule to Show Cause, which detailed Appellant's contemptuous conduct that she was being summoned to court to answer for. These documents provided Appellant with adequate notice of the proceedings against her. While the Rule to Show Cause did not state whether the contempt was civil or criminal, Appellant was free to hire counsel to explain the contempt allegations against her. As was

apparent at the September 26th hearing, the presence of her own counsel would have cured much of Appellant's confusion on the matter. As to the right to be heard in a meaningful way, Appellant was given an opportunity to be heard in a meaningful way at the September 26, 2014 hearing before Judge Harrington. At the hearing, Appellant, both through counsel and personally, acknowledged she did not comply with the Court's order and apologized for her conduct. Appellant thus had the opportunity to be heard in a meaningful way. Finally, Appellant makes no allegation that she has been denied judicial review at any juncture. Appellant therefore was not denied her procedural Due Process rights.

Secondly, as to Appellant's argument that she was, "denied access to the court on and/or around September 19, 2014 by the clerks in the Clerk of Court's Office while attempting to submit documents on my behalf in regards to the September 26, 2014 hearing," the record is devoid of any support for this allegation whatsoever. At the September 26th hearing, Appellant stated:

> If I was able to file my papers when I went to the clerk of court's office on the 19th on my behalf, you would have had a record there in front of you, to show that, from my understanding, and not only mine by also the witnesses that were present in the Court that day that could not be here because of such short notice, from my understanding and from what I heard on the bench, I was told not to file anything else in a matter relating to his PCR case.

Sep. 2014 Tr. p. 5. Appellant later stated, "That's why I was trying to get the papers filed and the clerk of office on the 19th of September, so I can have an understanding of how I best need to protect myself." Sep. 2014 Tr. p. 7. Aside from these vague comments, Appellant offered no explanation or testimony concerning her purported denial of access to the Clerk's office. Appellant's argument, therefore, is conclusory and lacks any basis or support in the record. Appellate courts will not consider arguments or issues raised on appeal in a conclusory or unsupported manner. Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 252, n. 3, 734 S.E.2d 161,

164 (2012). See also State v. Garner, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct. App. 2010) (holding a conclusory, unsupported argument was abandoned on appeal). This Court should, therefore, disregard Appellant's argument concerning alleged attempts to file documents on September 19, 2014.

Thirdly, as to Appellant's argument that Judge Harrington introduced evidence from the bench from outside sources that she did not have the opportunity to question, this argument is also without merit. Appellant cites to three instances of "evidence" introduced by Judge Harrington. In the first instance, she asked Appellant whether Dameon Myers was related to her and stated, "I received information that he's your brother, he's your husband, he's your brother-in-law." Sep. 2014 Tr. p. 14. After being informed Dameon Myers was Appellant's brother-in-law, Judge Harrington stated, "All right. I just wanted the record to be clear so that I refer to him in the appropriate relationship." Sep. 2014 Tr. p. 14. In the second instance of "evidence" introduced by Judge Harrington, Judge Harrington noted Appellant's actions with respect to the unauthorized practice of law, "has been an ongoing issue prior to me being here in Georgetown County on the 28th and 29th of August." Sep. 2014 Tr. p. 19. In the third instance of "evidence" introduced by Judge Harrington, she told Defense Counsel, "I have all the filings, and it's my understanding that, Mr. Hazzard, Judge Hyman for this very same issue held her in contempt and incarcerated her for, I believe, 24 to 48 hours." Sep. 2014 Tr. p. 20. All the above statements by Judge Harrington are not "evidence" as interpreted by Appellant. Judge Harrington entered the case with background information concerning Appellant and prior instances of her misconduct and was not required to obtain written statements by the sources in order to reference the information she knew. Appellant's procedural Due Process rights, thus were not violated by

Judge Harrington's references to Appellant's familial relationship with Dameon Myers and Appellant's prior instances of unauthorized practice of law.

In conclusion, none of the behavior cited by Appellant was violative of her Due Process rights. Appellant received notice, an opportunity to be heard in a meaningful way, and judicial review. At the hearing, Appellant was treated fairly and no evidence was introduced that violated her Due Process rights. Appellant's conviction and sentence should be affirmed.

II.

Appellant's arguments concerning Judge Harrington's alleged conflicts of interest are not preserved for appellate review. Even if Appellant's argument was preserved, Judge Harrington and Allen Myrick were not required to recuse themselves where the record contains no evidence of judicial or prosecutorial prejudice.

Relevant Facts

At the contempt hearing, Appellant told Judge Harrington, "I also want to bring it to your knowledge that on September 20th I did file a complaint regarding this matter to the Commission on Lawyer Conduct." Sep. 2014 Tr. p. 8. Judge Harrington replied, "All right." Sep. 2014 Tr. p. 8. Appellant later reiterated, "And as I stated before, Ms. Harrington, I have filed a complaint with the Commission on Judicial Conduct as well as other departments and agencies regarding you and Mr. Allen Myrick." Sep. 2014 Tr. pp. 10-11. Judge Harrington responded, "All right, Ms. Myers, Ms. Myers, I appreciate you and thank you for telling me that. However. . ." Sep. 2014 Tr. p. 11. Appellant interrupted Judge Harrington and stated, "Are we supposed to be proceeding, because I'm not really understanding if we are proceeding in this matter or not." Sep. 2014 Tr. p. 11.

Discussion

Appellant contends Judge Harrington should have recused herself for a wide variety of reasons. Appellant asserts Judge Harrington should have recused herself because information

from "unknown sources" was given to Judge Harrington and used "against her in the proceedings." Appellant also avers Judge Harrington should have recused herself because Appellant filed ethics complaints against her. Appellant further contends Allen Myrick, the attorney for the State, should have recused himself for this same reason. Appellant also argues Judge Harrington should have recused herself because, "she is the one that allegedly gave the colorable order from the bench; she initiated an investigation; she is the one accusing me of an alleged crime; she is the one that witnessed against me from the bench; she sat on the bench in front of me; she deprived me of my Constitutional Rights; she receives payment from the state who is named as a party in this matter." Br. of App. p. 9.

Initially, Appellant's argument is not preserved for appellate review. While Appellant mentioned to Judge Harrington that she had filed a complaint with the Commission on Judicial Conduct, Appellant never objected to Judge Harrington presiding over the case or made a motion for Judge Harrington to disqualify herself. As noted in Respondent's Issue I, an argument cannot be raised for the first time on appeal. This Court should therefore not consider the merits of Appellant's argument.

Even if Appellant's argument was preserved, it lacks merit. The South Carolina Code of Judicial Conduct provides:

> (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
>
> > (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;
> >
> > (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

> c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;
>
> (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
>
> (i) is a party to the proceeding, or an officer, director or trustee of a party;
>
> (ii) is acting as a lawyer in the proceeding;
>
> (iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;
>
> (iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Rule 501, SCACR, Code of Judicial Conduct, Canon 3(E). Absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. Christensen v. Mikell, 324 S.C. 70, 74, 476 S.E.2d 692, 694 (1996). It is not enough for a party seeking disqualification to simply allege bias. The party must show some evidence of bias. Id. Furthermore, the alleged bias must be personal, as distinguished from judicial, in nature. Id. The record is completely devoid of any evidence of any evidence of judicial prejudice towards Appellant. Judge Harrington had no obligation whatsoever under the judicial canons to recuse herself. If a judge had to automatically recuse themselves from a case after a complaint had been filed against them, all a criminal defendant would have to do would be to file a complaint against every judge appointed to his case. Due to the lack of any evidence of any judicial prejudice, Appellant's arguments concerning Judge Harrington completely lack merit.

Appellant's argument that Allen Myrick should have recused himself similarly lacks merit. There is absolutely no evidence of prosecutorial misconduct or vindictiveness towards Appellant following the filing of the complaint against Mr. Myrick. The State's position (that

Appellant should be held in contempt of court and that the contempt was criminal) remained the same throughout trial. Similar to the argument above, if the filing of an ethics complaint against a prosecutor warranted immediate disqualification; a criminal defendant could simply file complaints against every prosecutor and never be tried. Appellant's conviction and sentence should be affirmed.

III.

Appellant's argument concerning an attorney being "forced" upon her in violation of her Sixth Amendment and Due Process rights is not preserved for appellate review. Even if Appellant's argument was preserved, an attorney was not "forced" on Appellant because Appellant never unequivocally stated she wished to proceed *pro se* or that she wished to hire alternative counsel. Instead, Appellant readily accepted the services of Defense Counsel appointed by the Court and lauded the benefits of his counsel prior to sentencing.

Relevant Facts

At the contempt hearing, Appellant was asked whether she wished to have an attorney represent her or whether she wished to proceed on her own. Sep. 2014 Tr. p. 7. Appellant replied, "I would like to be tried by a jury. Is this civil or criminal?" Judge Harrington reiterated her question was whether Appellant wished to have an attorney present with her for the hearing. Sep. 2014 Tr. p. 7. Appellant then stated, "I need - - I need some information so I can make a decision. I need to know whether this is a civil matter or a criminal matter. I don't have that information before me." Sep. 2014 Tr. pp. 7-8. Appellant continued, "I may need counsel depending whether it's a civil or criminal matter. I don't know. I don't know whether or not this is civil or criminal." Sep. 2014 Tr. p. 8.

Later in the proceeding, the Clerk of Court told Judge Harrington, "I'll go downstairs. You want somebody from the public defender's office?" Sep. 2014 Tr. p. 13. Judge Harrington

replied, "Immediately, yes." Sep. 2014 Tr. p. 13. Ronald Hazzard subsequently was appointed to advise Appellant. Sep. 2014 Tr. p. 17. Judge Harrington explained the nature and cause of the allegations against Appellant and asked Mr. Hazzard to speak with her. Sep. 2014 Tr. pp. 17-19. The trial judge then told Appellant:

> I have appointed Mr. Hazzard to represent you. I think it is in your best interest at this point to speak with Mr. Hazzard. If you do not wish to avail yourself of his services after you meet with him and you wish to continue to represent yourself, you have the constitutional right to do that. However, I am, again, attempting to benefit you and offer you some services in order to protect you and offer you some services in order to protect the record and to give you legal counsel and legal advice through the service of Mr. Hazzard. I have offered you that benefit. We'll be in recess. Thank you, Mr. Hazzard, let me know.

Sep. 2014 Tr. pp. 19-20. After Appellant's conference with Mr. Hazzard, both Appellant and Mr. Hazzard expressed Appellant's remorse for not complying with the Court order and asserted Appellant's noncompliance was due to her lack of understanding of the Court's order. Judge Harrington then stated:

> All right. Ms. Myers, it is a practice of law, it is a profession. I am not saying that you are not smart enough to practice law, but there are fine points of practicing law and rules and statutes that you must follow. And when you violate a Court's order and when you continue to practice law - - and that is what you were doing, you were attempting to give legal advice to individuals who are in desperate need of legal advice. Even today, did you find Mr. Hazzard of benefit to you?

Sep. 2014 Tr. p. 23. Appellant responded, "Yes, ma'am." Sep. 2014 Tr. p. 23. Judge Harrington then asked, "Were you thankful that he was here to answer questions about the law for you?" Sep. 2014 Tr. p. 24. Appellant replied, "Yes, ma'am." Sep. 2014 Tr. p. 24. Judge Harrington then inquired, "And so do you understand the benefit of having an attorney, someone who is educated in the law." Sep. 2014 Tr. p. 24. Appellant responded, "Yes, I do." Sep. 2014 Tr. p. 24. Appellant later noted, "After consulting with Mr. Hazzard, now I understand." Sep. 2014 Tr. p. 25.

Discussion

Appellant avers Ronald Hazzard's legal services were "forced" upon her in violation of her Sixth Amendment and Due Process rights. Specifically, Appellant notes, "I have a substantive Right to counsel, and that counsel needs to be someone that has my best interests in mind and not that of the court, judge, and/or prosecutors." Br. of App. p. 9. Appellant argues, "Judge Harrington chose an attorney for me, in violation of the Sixth amendment and in violation of her Judicial Cannons (sic). I have the Right to choose my own counsel, if that is what I choose to do." Br. of App. pp. 9-10. This argument lacks merit, as Appellant never indicated she was waiving her right to counsel or that she wished to retain alternative counsel. Appellant equivocated on whether she wished to proceed *pro se* and repeatedly indicated she was confused during the proceedings. In response to Appellant's confusion about the course of the proceeding, Judge Harrington appointed Mr. Hazzard to aid Appellant. Appellant offered no objection to Mr. Hazzard's appointment and later lauded the benefits of having his assistance during the proceeding.

As an initial matter, this argument is not preserved for appellate review. Appellant never objected to Mr. Hazzard's appointment as her counsel nor did she request alternative counsel or unequivocally request to proceed pro se. This Court, therefore, should disregard Appellant's argument.

Preservation concerns aside, Appellant's argument lacks merit where Appellant accepted Mr. Hazard's assistance without any objection whatsoever. Following Mr. Hazard's appointment, Appellant never sought to proceed *pro se*. The Sixth Amendment to the Constitution requires that in all criminal prosecutions, the accused shall have the right to the assistance of counsel. U.S. Const. amend. VI. Courts have recognized three ways in which a

defendant may relinquish his right to counsel: (1) waiver by an affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture. State v. Roberson, 382 S.C. 185, 187, 675 S.E.2d 732, 733 (2009). Appellant never waived her right to counsel through any of these methods. Appellant was asked multiple times whether she would like counsel, to which she never gave a definitive answer. To the contrary, Appellant accepted Mr. Hazzard's assistance and later noted his helpfulness in resolving the matter.

Similarly, Appellant never expressed dissatisfaction with Mr. Hazzard as her attorney and requested that she instead be allowed to obtain the counsel of her choosing. Judge Harrington told Appellant she was not obligated to accept Mr. Hazzard's assistance, however Appellant spoke with Mr. Hazzard and opted to let him speak on her behalf where he explained that Appellant was merely confused by the Court's previous order and conveyed Appellant's sorrow for not complying with the order. While Appellant is certainly entitled to the counsel of her choosing, Appellant thought Mr. Hazzard was helpful at trial and never expressed any sort of discontent with his representation. Mr. Hazzard, therefore, was not "forced" upon Appellant in violation of her Sixth Amendment and Due Process rights. Appellant's conviction and sentence should be affirmed.

IV.

Appellant did not have a right to a jury trial where Judge Harrington clearly indicated she was not going to sentence Appellant to more than six months imprisonment and Appellant subsequently received a sentence of six months imprisonment.

Relevant Facts

At the contempt hearing, Appellant indicated she would like to be tried by a jury. Sep. 2014 Tr. p. 7. Judge Harrington later told counsel for the State:

> Mr. Myrick, I'm always hesitant to give advice when I don't know that it is the appropriate advice due. But do believe that this is a direct contempt and it is criminal in nature. I also have the belief that I can sentence Ms. Myers up to six months in the Department of Corrections without a jury trial if I find beyond a reasonable doubt she has directly violated the order of this Court. Or if I intend to sentence her more than six months up to one year, then she does become entitled to a jury trial. Is that your understanding, Mr. Myrick?

Sep. 2014 Tr. p. 16. Judge Harrington then asked Appellant if she had any questions and Appellant responded, "Yes. I would like to have my lawful right to a jury trial." Sep. 2014 Tr. p. 16. Judge Harrington replied, "All right. You are not entitled to a jury trial unless I believe that I'm going to sentence you more than six months. The law does not allow for one." Later, when Ronald Hazzard's was appointed as counsel for Appellant, Judge Harrington stated. "Mr. Hazzard, just at this point I am not inclined to sentence her more than six months, which would negate the need for a jury trial." Sep. 2014 Tr. p. 19.

Discussion

Appellant asserts she was denied the right to a jury trial in violation of her constitutional rights. Appellant argues that Judge Harrington, "alleges that it was by colorable law, however, the Supreme Laws of the land states differently and the Constitution for the State of South Carolina states otherwise as well. Judge Harrington never stated the colorable law that she alleges overrules the United States Constitution and common law." This argument lacks merit, as Judge Harrington correctly found Appellant was not entitled to a jury trial where she was not going to be sentenced to imprisonment for a term in excess of six months.

"Regardless of whether a six-month imprisonment sentence is imposed for civil or criminal contempt, a contemnor has no right to a jury trial for an imprisonment sentence of six months or less." Ex parte Cannon, 385 S.C. 643, 666, 685 S.E.2d 814, 827 (Ct. App. 2009). In cases of civil contempt, a conditional sentence of one year without the right to a jury trial is

appropriate. Curlee v. Howle, 277 S.C. 377, 385, 287 S.E. 2d 915, 919 (1982). In cases of criminal contempt, a defendant has the constitutional right to a jury trial before a sentence of more than six months could be imposed. Id. See also Codispoti v. Pennsylvania, 418 U.S. 506 (1974) (holding a contemnor had no right to a jury trial where the sentence imposed is confinement for six months or less); State v. Passmore, 363 S.C. 568, 572, 611 S.E.2d 273, 275 (Ct. App. 2005) ("Currently, these provisions require a contemnor to be allowed a jury trial when facing a serious sentence-i.e., one of greater than six months in prison."). In Appellant's case, Judge Harrington made it clear that she was not going to sentence Appellant to more than six months in prison. Judge Harrington further acknowledged that if she decided to sentence Appellant to more than six months imprisonment, Appellant would first have to be tried by a jury. Since Appellant was sentencesd to six months imprisonment (a sentence that Judge Harrington suspended), Appellant had no right to a jury trial. Appellant's conviction and sentence should be affirmed.

V.

The Georgetown County Court of Common Pleas had proper jurisdiction over Appellant.

Appellant asserts the Georgetown County Circuit Court did not have proper jurisdiction. Specifically, Appellant argues, "IT is an administrative court; and as such does not have jurisdiction over me or the alleged subject matter." Br. of App. p. 11. Appellant further contends, "Its authority can only govern those that give consent or contract with it. I have not knowingly and/or willingly given consent to be under the jurisdiction of this administrative court." Br. of App. p. 11. These arguments lack merit, as the Georgetown County Circuit Court had proper jurisdiction over Appellant.

As a threshold matter, the portion of Appellant's argument concerning personal jurisdiction is not preserved for appellate review, while subject matte jurisdiction can be raised for the first time on appeal, personal jurisdiction can be waived. "A defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case." State v. Dudley, 354 S.C. 514, 542, 581 S.E.2d 171, 186 (Ct. App. 2003). Appellant did not object to the Court's personal jurisdiction at any time. As such, Appellant cannot raise this matter for the first time on appeal.

As to Appellant's argument concerning subject matter jurisdiction, S.C. Code Ann. § 14-5-320 provides, "The circuit court may punish by fine or imprisonment, at the discretion of the court, all contempts of authority in any cause or hearing before the same." The Georgetown Circuit Court had express statutory authority over Appellant's contempt hearing. Judge Harrington issued the order directing Appellant not to file any documents on anyone else's behalf and subsequently issued the Rule to Show Cause as to why Appellant chose not to comply with that order. Judge Harrington, thus, had subject matter jurisdiction to hear Appellant's contempt case.

As to the Circuit Court's personal jurisdiction, generally, jurisdiction of the subject matter is satisfied when appropriate charges are filed in a competent court, while jurisdiction of the person is acquired when the party charged is arrested or voluntarily appears in court and submits himself to its jurisdiction. State v. Douglas, 245 S.C. 83, 87, 138 S.E.2d 845 (1964). Appellant fails to establish a lack of jurisdiction, either personal or subject matter. Appellant's conviction and sentence should be affirmed.

VI.

Judge Harrington properly ordered Appellant not to engage in the unauthorized practice of law and was justified in finding her in contempt of court when Appellant failed to comply with Judge Harrington's order. (Appellant's Issues 6, 7, and 8)

In three separate issues in her Brief of Petitioner, Appellant alleges Judge Harrington's original order was unconstitutional because she had the right to file documents on behalf of Dameon Myers. Appellant's arguments are difficult to understand and misapply a wide range of federal authority. Firstly, Appellant's argument is not preserved for appellate review. Appellant did not raise any of these arguments at the contempt hearing and cannot raise them for the first time on appeal. Secondly, the trial judge properly denied Ms. Myers the right to file documents on others' behalves, as allowing her to do so would violate South Carolina law. S.C. Code Ann. § 40-5-310 provides that "No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina." "The generally understood definition of the practice of law 'embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts.'" State v. Despain, 319 S.C. 317, 319, 460 S.E.2d 576, 577 (1995) (quoting In re Duncan, 83 S.C. 186, 189, 65 S.E. 210, 211 (1909)). Ms. Myers' conduct was consistent with one who is engaging in the unauthorized practice of law. Ms. Myers filed multiple documents on behalf of Appellant and previously attempted to argue on his behalf in court. Judge Harrington was correct in rebuffing Appellant's attempts to practice law, as she was seeking to practice law without becoming a member of the South Carolina Bar. The trial judge

properly ordered Appellant not to file documents on anyone else's behalf and was justified in later holding Appellant in direct contempt of court for violating that order.

VII.

Appellant's right to be fully heard in court was never violated and Appellant enjoyed the full procedural guarantees of Due Process and did not suffer any infringement of her constitutional rights.

Appellant next argues, "I HAVE A RIGHT TO BE FULLY HEARD, AND MY RIGHTS WERE DEPRIVED AS SECURED BY THE FIRST, FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION." Br. of App. p. 17. In support of that argument, Appellant states, "As shown in the complaint against Judge Harrington on the record, as well as in the transcript of September 26, 2014. I was hindered and obstructed from portioning the court by the clerks of court in Georgetown County, South Carolina. I was not allowed to submit my documents in this matter prior to the court date by the clerks." Br. of App. p. 17. Appellant also asserts she was deprived of her right to be fully heard in court because, "Judge Harrington kept interrupting me and/or failing to properly inform me of what was occurring." Br. of App. p. 17. Appellant further asserts:

> My First Amendment and Sixth Amendment Rights were deprived. I was not allowed to present my evidence, including my Affidavit, on the record; I was deprived of the Right to a jury trial; I was deprived of the Right to be fully informed of the nature and cause of the allegations against me; I was deprived of the Right to a counsel of my choosing; I was deprived of the right to be free from false arrest; and I was deprived of the Right to petition the court for my own cause.

Br. of App. p. 17. These arguments all lack merit. Most of the complaints contained in this particular issue raised by Appellant were previously raised as individual issues elsewhere in the Brief of Appellant.

Firstly, aside from Appellant's request for a jury trial, none of these issues are preserved for appellate review. Appellant failed to adequately present these arguments to the trial court. She is therefore barred from raising these arguments for the first time on appeal.

Even if Appellant's argument was preserved, as was noted in Respondent's Issue I, the record is devoid of any support for Appellant's allegation that she was denied access to the court by the Clerks of Court when attempting to file any documents on her own behalf. Aside from some vague comments made by Appellant at the hearing, Appellant offered no explanation or testimony concerning her purported denial of access to the Clerk's office. Appellant's argument, therefore, is conclusory and lacks any basis or support in the record. Appellate courts will not consider arguments or issues raised on appeal in a conclusory or unsupported manner. Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 252, n. 3, 734 S.E.2d 161, 164 (2012). See also State v. Garner, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct. App. 2010) (holding a conclusory, unsupported argument was abandoned on appeal). This Court should, therefore, disregard Appellant's argument concerning alleged attempts to file documents on September 19, 2014.

As to the remaining allegations Appellant raises, the majority of these allegations have been addressed previously in the Brief of Respondent. As to Appellant's allegations that, "I was not allowed to present my evidence, including my Affidavit, on the record," Appellant undoubtedly would have been allowed to present her affidavit and whatever other evidence she wished at the contempt hearing. However, Appellant freely and voluntarily admitted her own guilt and threw herself on the mercy of the court. Simply put, Appellant did not present her affidavit or any other defense at the hearing because she **chose** not to. As to Appellants argument that she was deprived of the right to be free from false arrest, Appellant's contempt finding after she willfully failed to comply with a court order does not constitute a false arrest.

VIII.

Appellant's allegations concerning "extrinsic and intrinsic fraud" are not preserved for appellate review. Even if Appellant's argument was preserved, there is no evidence whatsoever of fraud by any of the involved parties.

Appellant next makes a series of vague and confusing allegations concerning purported "extrinsic and intrinsic fraud" by a number of court officials. There is no evidence in the record to support these very serious allegations by Appellant. Appellant makes a series of baseless, conclusory arguments that lack any support whatsoever. Furthermore, it seems Appellant bases her argument on the faulty premise that she was not engaging in the unauthorized practice of law when she was filing documents on others' behalves.

As a threshold matter, this argument, like the majority of Appellant's arguments on appeal, is not preserved for appellate review. Appellant did not voice her allegations concerning fraud and the alleged factual basis for it. As such, she cannot raise this issue for the first time on appeal.

While it is somewhat unclear what conspiracy Appellant is alleging occurred with respect to fraudulent conduct by Judge Harrington and multiple other state officials, all of Appellant's arguments are conclusory and lack any support. Appellate courts will not consider arguments or issues raised on appeal in a conclusory or unsupported manner. Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 252, n. 3, 734 S.E.2d 161, 164 (2012). See also State v. Garner, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct. App. 2010) (holding a conclusory, unsupported argument was abandoned on appeal). There is no record of any State conduct that could be found to be conspiratorial in nature. This Court, therefore, should disregard Appellant's argument. Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 25, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Georgetown County
The Honorable Kristi L. Harrington, Circuit Court Judge

Appellate Case No: 2014-002776

THE STATE,

Respondent,

v.

LOUSHONDA MYERS,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the Initial Brief and Designation of Matter on Appellant by depositing one copy of the same in the United States mail, postage prepaid, addressed to Ms. Loushonda Myers, 27 Wateree Trail, Georgetown, SC 29440.

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

This 25th day of July, 2016.

Anne Mueller

Anne A. Mueller
Legal Assistant
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ALAN WILSON
ATTORNEY GENERAL

July 25, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

Re: The State v. Loushonda Myers
Appellate Case No: 2014-002776

Dear Ms. Kitchings:

Enclosed please find an original and one copy of the Initial Brief of Respondent and Designation of Matter, including proof of service, in the above-referenced case.

Sincerely,

V. Henry Gunter, Jr.
Assistant Attorney General
S.C. Bar No: 102259

VHG/aam
Enclosures

cc: Loushonda Myers (with enclosure)
Ms. Trisha Allen