

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

RECEIVED  
SEP 07 2016  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SHANNON HENDERSON

APPELLANT

APPELLATE CASE NO 2016-001222

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

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF CONTENTS .....i

TABLE OF AUTHORITIES .....ii

STATEMENT OF ISSUE ON APPEAL..... 1

STATEMENT OF THE CASE.....2

ARGUMENT .....3

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) ..... 4

Bearden v. Georgia, 466 U.S. 660, 103 S. Ct. 2064 (1983) ..... 4

Douglas v. Burden, 412 U.S. 430, 93 S. Ct. 2199 (1973) ..... 4

Gagnon v. Scarpelli, 411, U.S. 778, 93 S. Ct. 1756 (1973)..... 4

Goldberg v. Kelly, 397 U.S., at 267-271, 90 S. Ct. at 1020-1022, 25 L.Ed2d 287 ..... 3

Hyser v. Reed, 115 U.S. App. D.C. 254, 318 F.2d 225 (1963) ..... 3

Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593 ..... 3,4

**STATEMENT OF ISSUE ON APPEAL**

Whether appellant's failure to pay her monetary obligations should have been considered in revoking part of her probation?

## STATEMENT OF THE CASE

On January 27, 2016, appellant pled guilty to felony DUI, Great Bodily Injury. She was sentenced to ten (10) years suspended upon service of ninety (90) days with probation for thirty-six (36) months thereafter. On April 12, 2016, she was served with a probation violation arrest warrant. A probation hearing was held on May 27, 2016, before the Honorable Daniel Hall. Walter Dusky, Esquire represented appellant. David Porter, Esquire was the assistant solicitor. Judge Hall ordered that appellant's suspended sentence be revoked and that she be ordered to serve six (6) years of her original sentence.

This appeal follows.

## ARGUMENT

Appellant's failure to pay her monetary obligations should not have been considered in revoking part of her probation.

In 1972 the United States Supreme Court handed down the opinion of Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593 setting forth minimal due process requirements for the revocation of parole. The Court noted that "revocation deprives an individual... of the conditional liberty properly dependent on observance of special parole restrictions." 408 U.S. at 480, 92 S. Ct. at 2600. The Court went on to write that there must be an orderly process before a liberty protection is terminated. 408 U.S. at 482, 92 S. Ct. at 2601. First, the Court dealt with the parolee's arrest and the need for a preliminary hearing. The Court stated:

Due process would seem to require that some minimal inquiry be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available. Cf. Hyser v. Reed, 115 U.S. App. D.C. 254, 318 F.2d 225 (1963). Such an inquiry should be seen as in the nature of a 'preliminary hearing' to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions. Cf. Goldberg v. Kelly, 397 U.S., at 267-271, 90 S. Ct. at 1020-1022, 25 L.Ed2d 287.

408 U.S. at 484, 92 S. Ct. at 2602

With respect to the preliminary hearing before this officer, the parolee should be given notice that the hearing will take place and that its purpose is to determine whether there is probable cause to believe he has committed a parole violation. The notice should state what parole violations have been alleged. At the hearing the parolee may appear and speak in his own behalf; he may bring letters, documents, or individuals who can give relevant information to the hearing officer.

408 U.S. at 486-487, 92 S. Ct. at 2603.

With respect to the revocation hearing the Court wrote:

We cannot write a code of procedure; that is the responsibility of each State. Most States have done so by legislation, others by judicial decision usually on due process grounds. Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.

408 U.S. at 488 – 489, 92 S.C. at 2604.

In Gagnon v. Scarpelli, 411, U.S. 778, 93 S. Ct. 1756 (1973) the Court made the same procedures set out in Morrissey applicable to probation revocations. A short time later the Court held that due process is violated when the state revokes probation with no evidence that probation was violated. Douglas v. Burden, 412 U.S. 430, 93 S. Ct. 2199 (1973). Then in Bearden v. Georgia, 466 U.S. 660, 103 S. Ct. 2064 (1983) the Court held that the State cannot revoke a defendant's probation because he is too poor to pay a fine. A probation violation has to be willful. The South Carolina Supreme Court a short time later also held the probation could not be revoked "solely" on the ground that one on probation failed to pay fines or to make restitution (emphasis in original). Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986). The judge has to make a finding "on the record that the probationer failed to make a bona fide effort to pay." Id.

In this case the probation agent listed among appellant's violations her failure to pay her monetary obligations. (R p. 5, ll. 1-3). There was no finding whether appellant's failure to pay was willful or not. Without a finding that it was willful, her failure to pay should not have been considered as one of the reasons to revoke part of her probation and it should not have been considered in determining how much probation to revoke.

CONCLUSION

Appellant's case should be remanded for a finding of whether her failure to pay her financial obligations were willful. If the failure not to pay was not willful the extent of her probation revocation should be reconsidered.

Robert M. Pachak  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of September, 2016.

**RECEIVED**  
SEP 07 2016  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

SEP 07 2016

SC Court of Appeals

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHANNON HENDERSON

APPELLANT

APPELLATE CASE NO. 2016-001222

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shannon Henderson states:

1. HE is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. HE has reviewed the record of appellant's trial before Judge Daniel D. Hall, which was held on May 27, 2016 (Probation Hearing), and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. HE 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, HE asks the Court to relieve him as counsel for Shannon Henderson.

Respectfully Submitted,

*Robert M. Pachak*

Robert M. Pachak  
Appellate Defender

This 7nd day of September, 2016.

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

SFP 07 2016

SC Court of Appeals

Appeal from York County  
Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHANNON HENDERSON

APPELLANT

APPELLATE CASE NO. 2016-001222

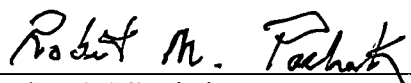
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) Probation Hearing Transcript Dated May 27, 2016:
- (2) Indictment
- (3) Sentencing Sheet
- (4) Probation Violation Arrest Warrant

I certify that this designation contains no matter which is irrelevant to this appeal.

September 07, 2016



Robert M. Pachak  
Appellate Defender

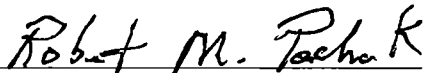
South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

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."

September 07, 2016.

  
Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**RECEIVED**

SFP 07 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

RECEIVED

SFP 07 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

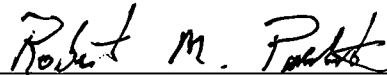
SHANNON HENDERSON

APPELLANT

APPELLATE CASE NO. 2016-001222

CERTIFICATE OF SERVICE

The undersigned 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 C Buchanan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Shannon Henderson, 368459, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 2nd day of September, 2016.



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 7th day of September, 2016.

 (L.S)

Notary Public for South Carolina  
My Commission Expires: March 1, 2026