

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

 ORIGINAL

\_\_\_\_\_  
Appeal from Union County

Honorable John C. Hayes, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

JUL 28 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CRYSTAL ANNE GARNER,

APPELLANT.

APPELLATE CASE NO. 2016-002389  
\_\_\_\_\_

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

ROBERT M. DUDEK  
Chief 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

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**STATEMENT OF ISSUE ON APPEAL**

Whether the court erred by revoking appellant's probation because Faith Homes, an inpatient drug facility, would not accept a court-ordered referral of appellant from the judge, where the record showed appellant was seeking treatment for her drug problem in good faith, the arbitrary rule of Faith Homes on court ordered referrals was not an acceptable reason to revoke appellant's probation?

## STATEMENT OF THE CASE

Appellant was indicted at the January 28, 2016, term of the Union County Grand Jury for illegal possession of prescription drugs, narcotics, and controlled substances. R. 22 – 23; R. 27 – 28; R. 31 – 32. On February 4, 2016, appellant pled guilty to the drug offenses before the Honorable Daniel Hall. Appellant was sentenced to two years' imprisonment suspended upon the service of ninety days and two years' probation. R. 22.

On November 14-15, 2016, appellant appeared before the Honorable John C. Hayes, III, for a probation revocation hearing. Jennifer Nichols Williams represented appellant. Probation agents Gina Floyd and Andy Fowler appeared on behalf of the state. R. 1.

At the conclusion of the probation revocation hearing on November 15, 2016, Judge Hayes revoked appellant's probation in full. R. 18, ll. 5-22.

This appeal follows.

## ARGUMENT

The court erred by revoking appellant's probation because Faith Homes, an inpatient drug facility, would not accept a court-ordered referral of appellant from the judge, where the record showed appellant was seeking treatment for her drug problem in good faith, and the arbitrary rule of Faith Homes on court ordered referrals was not an acceptable reason to revoke appellant's probation. Further, the judge committed an error of law by ruling he did not have the discretion to continue appellant on probation so she could be admitted to Faith Homes without a court order.

### **Relevant Facts**

A probation arrest warrant was issued on October 19, 2016. This warrant alleged, inter alia, that appellant had failed to “follow through with inpatient substance abuse treatment as instructed.” R. 18 – 19. During the probation revocation hearing, the judge, appellant, defense counsel, and the probation agents discussed appellant's psychiatric problems and her drug addiction. R. 5, l. 7 – 9, l. 15.

Defense counsel Williams told the judge that appellant “had some mental issues that were exaggerated by meth use. That is not something she is hiding from or not admitting to. She was admitted for about a week to a psychiatric hospital.” R. 7, ll. 20-23.

After appellant was released from the hospital, “she tells me she was hallucinating.” Appellant thought people were “out to kill her, out to get her, all while under the influence of meth too, Your Honor. I think it worsened her psychiatric issues.” R. 8, ll. 4-12.

Counsel Williams told the judge that appellant badly wanted to go into “drug rehab.” Appellant had been calling Faith Homes every day to see when a bed would be available.

Appellant's mother was still working with Faith Homes on appellant's behalf. R. 8, l. 13 – 10, l. 21.

Appellant also told the judge she had been trying to admitted at Faith Homes, and she thought she would be able to get admitted. The probation agent offered that Faith Homes, she thought, was “a sixty day program . . . no different than Morris Village or Homes View or anything like that.” R. 12, ll. 3-10.

Defense counsel responded that she had heard the program was as long as ninety days, and as short as thirty days. Williams told the judge, “Honestly, Your Honor, it depends on the client.” R. 12, ll. 12-16. The judge recessed the revocation hearing until more information on Faith Homes could be obtained. R. 12, l. 17 – 13, l. 15.

The following day, the judge said he learned Faith Homes was an eight week program. However, the judge said he also learned that Faith Homes would not take a court ordered referral “so I cannot order her into Faith [Homes] . . . and they indicated they are not holding a bed for her.” Defense counsel acknowledged that she also learned during the break that Faith Homes did not take court ordered appointments “so the likelihood of Ms. Garner going there is slim now. However, counsel noted that the judge could continue appellant on probation and *let her “go to Faith Homes on her own. You know she’s telling me she’s committed to that.”* R. 14, l. 12 – 15, l. 21. (emphasis added).

Probation agent Fowler then claimed he learned that Faith Homes was not holding a bed for appellant “because she had stopped calling . . . and we don’t consider her a good candidate for probation anymore.” R. 15, l. 23 – 16, l. 8.

Appellant, on her own behalf, offered that she understood Faith Homes would not take a court ordered referral, but that she was committed to getting into Faith Homes on her own. R.

16, l. 25 – 17, l. 13. The judge told appellant, “*I have no choice at this point but to revoke your probation and have you serve your time* and then when you get out you can start looking into Faith Homes if you’re sincere and conscientious and really mean what you say you can get your help when you get out of jail.” R. 18, ll. 5-10. (emphasis added). The full revocation was one year and nine months. R. 29.

### **Discussion**

In State v. Knapp, 338 S.C. 541, 526 S.E.2d 741 (Ct.App. 2000), this Court refused to find an abuse of discretion where the administrative hearing officer of the South Carolina Department of Probation, Parole, and Pardon Services -- who conducted a preliminary hearing -- recommended that Knapp be incarcerated until admitted into an inpatient treatment program for drug abuse. Knapp did not contest that she had violated her probation by failing to notify her supervising agent that she had moved, that she had failed to comply with her substance abuse counseling, that she had used illegal drugs, and that she failed to notify her probation agent of her arrest for criminal domestic violence. In addition, she failed to report for an administrative hearing.

Given all of these violations, this Court found the revocation of her probation to be within the sound discretion of the circuit court judge despite the recommendation of the hearing officer. This Court in Knapp found there was not an error of law involved, there was evidentiary support for the decision, and that it did not constitute an abuse of discretion. See State v. Archie, 322 S.C. 135, 470 S.E.2d 380 (Ct.App. 1996).

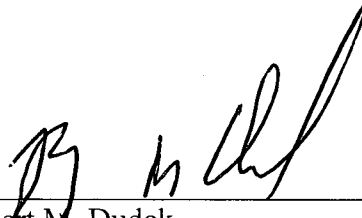
The same is not true in this case. The revocation here was based solely on appellant’s inability to be admitted to Faith Homes on a court ordered referral. The judge therefore reasoned he had to revoke appellant’s probation -- indicating he did not think he had the discretionary

authority to do otherwise -- where he learned that Faith Homes did not accept court ordered referrals. The failure to exercise discretionary authority where it exists is an error of law. State v. Alexander, 309 S.C. 495, 499-500, 424 S.E.2d 526, 529 (1992). However, both defense counsel and appellant herself told the judge that if he would continue her on probation, she would voluntarily enter Faith Homes without the court ordered mandate the facility refused to accept. It would seem intuitive that Faith Homes thought probationers who were mandated by court order to receive drug treatment there would only do so to avoid incarceration, and that they would not be committed to curing their substance abuse problems.

Under the very unusual facts of this case, the judge abused his discretion in revoking appellant's probation since the fact Faith Homes would not accept appellant as a court ordered referral, where it would accept her if appellant voluntarily sought inpatient treatment from that facility did not leave the judge without any other choice -- without discretion. The judge's decision to revoke appellant's probation under these circumstances was arbitrary, and arbitrary rulings deny due process. See State v. Allen, 370 S.C. 88, 634 S.E.2d 653 (2006); Morrissey v. Brewer, 408 U.S. 471, 480-490 (1972); Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973). The revocation of appellant's probation should be vacated because it was based on an error of law, it was arbitrary, and it was without evidentiary support as to appellant's ability to be admitted to Faith Homes.

**CONCLUSION**

By reason of the foregoing arguments, the revocation of appellant's probation should be vacated.



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Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of July, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Union County

Honorable John C. Hayes, Circuit Court Judge

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THE STATE,

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PETITION TO BE RELIEVED AS COUNSEL

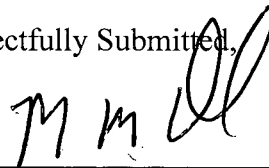
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Counsel for Crystal Anne Garner states:

1. He is Chief 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 probation revocation hearing before Judge John C. Hayes, which was held on November 14 - 15, 2016, 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 Crystal Anne Garner.

Respectfully Submitted,



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Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR APPELLANT

This 26th day of July, 2017.

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

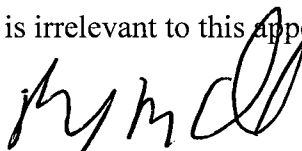
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Sentencing sheet;
- (3) Probation revocation sentencing sheet;
- (4) Probation arrest warrant.

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

July 26, 2017



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Robert M. Dudek  
Chief Appellate Defender

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JUL 26 2017

**SC Court of Appeals**

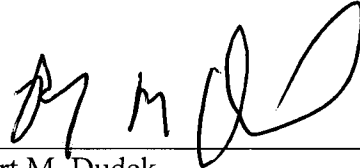
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ATTORNEY FOR APPELLANT

**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."

July 26, 2017.



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