

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Michael G. Nettles, Circuit Court Judge

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ORIGINAL

JAMIE A. MAKUPSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2018-001377

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PETITION FOR WRIT OF CERTIORARI

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## **ISSUE PRESENTED**

Did the PCR judge err in concluding Petitioner knowingly and voluntarily waived his state and federal constitutional right to counsel at his probation revocation hearing where the record did not reveal Petitioner knowingly and voluntarily waived counsel and it was undisputed the judge did not advise Petitioner of the dangers and disadvantages of proceeding without counsel?

## STATEMENT

On June 17, 2016, Petitioner appeared before the Honorable R. Keith Kelly regarding a request by the South Carolina Department of Probation, Parole, and Pardon Services to revoke his probation. App. 1. A probation agent was present at the hearing on behalf of the state. App. 3. When Judge Kelly asked if Petitioner had reviewed the report submitted by the probation agent, Petitioner indicated he had not. App. 3, ll. 8-12. The agent claimed Petitioner “was presented with a copy of the citation” and was “subsequently escorted out because” he was “belligerent” when she was trying to explain the citation. App. 3, ll. 17-21. She further claimed that Petitioner “[s]aid he didn’t get an attorney cause he didn’t feel like it and would be representing himself.” App. 3, ll. 23-25. Judge Kelly made no inquiry into Petitioner’s desire for counsel or any alleged waiver of counsel. Instead, Judge Kelly questioned Petitioner regarding the allegations against him. App. 4, l. 5 – App. 5, l. 12. Despite Petitioner’s denial of the allegations and the state’s failure to present any evidence to support the allegations, Judge Kelly revoked Petitioner’s probationary sentence in full. App. 5, ll. 13-25.

On May 22, 2017, Petitioner filed an application for post-conviction relief (PCR) and supporting memorandum of law. App. 7-25. Included in the application was Petitioner’s claim that he did not waive his right to counsel at the probation revocation hearing. App. 7-25. Thereafter, the state filed its return and motion to dismiss. App. 26-33. The state moved for summary dismissal of all allegations related to Petitioner’s “claim of denial of appointed representation.” App. 31. The state asserted the claims were “conclusively refuted by the record.” App. 31. The Honorable J. Derham Cole signed a conditional order of dismissal on January 9, 2017. App. 34-40. The conditional order was almost identical to the state’s return and motion to dismiss. Cf. App. 26-33 with App. 34-40. Through counsel, Petitioner responded

to the conditional order of dismissal. App. 41-43. Counsel explained the transcript showed “no inquiry into whether there was a knowing waiver of [Petitioner]’s right to counsel.” App. 41. Further, counsel noted that the probation revocation hearing judge made “no inquiry on the record to determine whether [Petitioner] was adequately informed of his right to counsel or the benefits of retaining counsel.” App. 41.

At the PCR hearing, the state “concede[d] there was no discussion during the probation revocation in the transcript regarding [Petitioner]’s right to an attorney or the dangers of proceeding pro se.” App. 51, ll. 18-23. However, the state argued Petitioner’s “extensive criminal history,” the “notice of the probation violation” and the “notice of rights” “informed him of his right to an attorney and the dangers of proceeding pro se.” App. 51, l. 23 – App. 52, l. 10. When Petitioner was allowed to testify, he explained that he would have liked to have had a lawyer. App. 56, ll. 19-21. He explained that he never had a chance to get a lawyer because he did not know he was going to court. App. 57, ll. 5-6. Although Petitioner had a GED, his formal education in school concluded when he was in the sixth grade. App. 57, ll. 18-20. The probation agent claimed that she served Petitioner with two documents – notice of probation violation and notice of rights – on April 13, 2016. App. 71, l. 20 – App. 72, l. 8; App.80-81. She further claimed that when Petitioner arrived at her office on June 14, 2016, for his regularly scheduled day to report, she told him that he was required to report to court on Friday of that week. App. 72, ll. 14-22. According to the agent, she asked Petitioner “if he had gotten an attorney and he just shrugged his shoulders.” App. 72, ll. 22-23. She followed up by asking why he had not gotten a lawyer, and Petitioner “shrugged his shoulders again.” App. 72, ll. 24-25. Finally, she claimed that she asked if he were going to represent himself,” to which Petitioner responded affirmatively. App. 73, ll. 1-2.

Judge Nettles dismissed Petitioner's PCR application with prejudice. App. 111-123. Judge Nettles determined Petitioner had "failed to prove by a preponderance of the evidence" "that he did not knowingly and voluntarily waive his right to probation revocation counsel." App. 117. Thereafter, Judge Nettles found Petitioner "knowingly and voluntarily waived his right to counsel at his probation revocation hearing." App. 118. Relying upon *State v. Bryant*, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (2009), Judge Nettles found the "Notice of Probation Violation Hearing and Acknowledgment of Rights" and "Notice of Rights" satisfied the constitutional requirements. App. 118-119. Additionally, Judge Nettles found the record demonstrated Petitioner's "extensive familiarity with the criminal justice system, including extensive experience with probation." App. 119. Judge Nettles concluded that Petitioner "was apprised of his right to an attorney and the dangers of proceeding pro se by his probation agent through the signed Notices." App. 120. Finally, Judge Nettles conducted a "prejudice" or "harmless error" analysis related to the allegation of a structural error when he indicated that Petitioner's probation revocation "was proper" and he "fail[ed] to see how an attorney could have assisted [Petitioner] in receiving a different outcome from the probation revocation hearing." App. 122.

Petitioner filed a motion to alter or amend judgment on April 4, 2018. App. 124-127. By an order dated July 3, 2018, Judge Nettles denied the motion. App. 133. On July 19, 2018, Petitioner served his notice of appeal. This petition for writ of certiorari follows.

## ARGUMENT

The PCR judge erred in concluding Petitioner knowingly and voluntarily waived his state and federal constitutional right to counsel at his probation revocation hearing where it was undisputed the judge did not obtain a waiver from Petitioner on the record, advise Petitioner of his right to counsel, or advise Petitioner of the dangers and disadvantages of proceeding without counsel, and the record as a whole could not support a conclusion that Petitioner knowingly and voluntarily waived counsel.

“The right to counsel attaches in probation revocation hearings.” State v. Bryant, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (Ct. App. 2009) (quoting Salley v. State, 306 S.C. 213, 215, 410 S.E.2d 921, 922 (1991)); see also State v. Brannon, 407 S.C. 293, 296, 755 S.E.2d 117, 118 (Ct. App. 2014) (citing Rule 602, SCACR, that “every person charged with the violation of a probationary sentence” to be informed about the right to counsel); Turner v. State, 384 S.C. 451, 454, 682 S.E.2d 792, 793 (2009) (explaining that individuals charged with violations of probation have the right to counsel in South Carolina). Yet, a criminal defendant “has the constitutional right to represent himself under both the federal and state constitutions.” State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) (citing State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010)). “The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense.” Faretta v. California, 422 U.S. 806, 819 (1975). “When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel.” Id. at 835. Thus, the decision to proceed *pro se* must be made knowingly, intelligently, and voluntarily. Id. In fact, “[t]he courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and do

not presume acquiescence in the loss of fundamental rights.” State v. Thompson, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003).

“Under Faretta, the trial judge has the responsibility to make sure that the defendant is informed of the dangers and disadvantages of self-representation, and that he makes a knowing and intelligent waiver of his right to counsel.” Barnes, 407 S.C. at 36, 753 S.E.2d at 550; see also State v. Dixon, 269 S.C. 107, 236 S.E.2d 419 (1977) (explaining “it is the responsibility of the trial judge to determine whether there is or is not an intelligent and competent waiver”); Bryant, 383 S.C. at 414, 680 S.E.2d at 13 (explaining “[i]t is the trial court’s responsibility to determine whether there was a knowing and intelligent waiver”). “Faretta requires that a defendant ‘be made aware of the dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with eyes open.’” Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990) (quoting Faretta, 422 U.S. at 835). “To establish a valid waiver of counsel, Faretta requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation.” Prince v. State, 301 S.C. 422, 423-424, 392 S.E.2d 462, 463 (1990); see also Bryant, 383 S.C. at 414, 680 S.E.2d at 13.

According to this Court, “a specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred.” Prince, 301 S.C. at 423-424, 392 S.E.2d at 463; see also Bryant, 383 S.C. at 415, 680 S.E.2d at 13.<sup>1</sup> “A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and may be accomplished by a colloquy between the court and defendant, between the court and defendant’s counsel, or both.” Moore v. State, 399 S.C. 641, 641, 732 S.E.2d 871, 873 (2012).

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<sup>1</sup> The trial judge must “make a meaningful inquiry into [a defendant’s] background to determine whether [the defendant] had sufficient experience or knowledge to waive counsel.” Watts v. State, 347 S.C. 399, 403, 556 S.E.2d 368, 371 (2001).

However, “[t]he ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is the defendant’s understanding.” State v. Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). Therefore, “[i]n the absence of a specific inquiry by the trial judge addressing the disadvantages of a *pro se* defense as required by the second Faretta prong, [the reviewing court] will look to the record to determine whether [the defendant] had sufficient background or was apprised of his rights by some other source.” Prince, 301 S.C. at 424, 392 S.E.2d at 463. In other words, “[i]f the record demonstrates the defendant’s decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied.” Wroten, 301 S.C. at 294, 391 S.E.2d at 576.

According to the Court of Appeals, a variety of factors may be considered by a reviewing court when determining if an accused has sufficient background to comprehend the dangers of self-representation, including:

- (1) the accused’s age, educational background, and physical and mental health;
- (2) whether the accused was previously involved in criminal trials;
- (3) whether the accused knew the nature of the charge(s) and of the possible penalties;
- (4) whether the accused was represented by counsel before trial and whether that attorney explained to him the dangers of self-representation;
- (5) whether the accused was attempting to delay or manipulate the proceedings;
- (6) whether the court appointed stand-by counsel;
- (7) whether the accused knew he would be required to comply with the rules of procedure at trial;
- (8) whether the accused knew the legal challenges he could raise in defense to the charge(s) against him;
- (9) whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and
- (10) whether the accused’s waiver resulted from either coercion or mistreatment.

In re Christopher H., 359 S.C. 161, 167-168, 596 S.E.2d 500, 504 (Ct. App. 2004); see also State v. Bryant, 383 S.C. 410, 415, 680 S.E.2d 11, 13-14 (Ct. App. 2009).

This Court held the record did not demonstrate Wroten was sufficiently aware of the dangers of self-representation to make an informed decision to proceed without counsel. Wroten, 301 S.C. at 294-295, 391 S.E.2d at 576-577. Notably, the trial judge made no specific inquiry to

determine whether Wroten made his choice to represent himself voluntarily and knowing. Id. at 294, 391 S.E.2d at 576. Wroten was forty-five years old at the time of his guilty plea and had only a fifth-grade education. Id. at 295, 391 S.E.2d at 576. Wroten had spoken to a public defender only once. Id. at 295, 391 S.E.2d at 576-577. When the plea judge asked if he wanted an attorney, Wroten responded that he did not know what to do. Id. at 295, 391 S.E.2d at 577. Wroten had one prior conviction on his record – a guilty plea in 1979. Id. Not only did the trial judge fail to provide proper Faretta warnings, the record failed to disclose that Wroten had sufficient background to make a voluntary waiver or that Wroten was advised of the dangers of self-representation from some other source.

Likewise, this Court held the record failed to reveal that Watts made an intelligent waiver of counsel. Watts v. State, 347 S.C. 399, 403-404, 556 S.E.2d 368, 371 (2001). First, the plea judge failed to make a meaningful inquiry into Watts's background to determine whether he had sufficient experience or knowledge to waive counsel. Id. at 403, 556 S.E.2d at 371. The judge elicited from Watts that he was forty-one years old and had graduated from high school. Id. at 404, 556 S.E.2d at 371. When the judge asked about his prior criminal history, the solicitor, not Watts, answered that he had been convicted of simple possession of marijuana and strong arm robbery "some time ago." Id. The judge made no further inquiry into the prior conviction. Id. According to the Court, the record failed to demonstrate Watts was warned adequately of the dangers of self-representation when he relieved his appointed counsel, and affirmatively demonstrated that he was not warned by the plea judge as required by Faretta. Id. Additionally, the record failed to demonstrate that Watts had sufficient background to make an intelligent waiver of counsel absent the proper Faretta warnings. Id.

This Court held Prince was not sufficiently aware of the dangers of self-representation to make an informed decision to proceed *pro se* based on the record before it. Prince, 301 S.C. at 424, 392 S.E.2d at 463. Prince was twenty-two years old at the time of his guilty plea, had completed high school, and had some college education. Id. Additionally, Prince had previously pleaded guilty to armed robbery. Id. However, the record indicated Prince “was mentally disturbed at the time of his plea.” Id. When he was incarcerated, Prince began receiving psychiatric treatment and was still undergoing treatment three years later at the time of his PCR hearing. Id. During the PCR hearing, Prince “exhibited little understanding of criminal proceedings” and “testified he relied upon the solicitor’s advice at the plea hearing.” Id.

As admitted by the state, the probation revocation judge failed to advise Petitioner of his right to counsel, failed to obtain a waiver of Petitioner’s right to counsel, and failed to engage in a colloquy to warn Petitioner of the dangers and disadvantages of self-representation. Cf. Reed, 332 S.C. at 41-42, 503 S.E.2d at 749-750 (explaining the “trial judge questioned [Reed] in camera about his knowledge of the proceedings and what it would mean to represent himself rather than have representation by two capital trial qualified attorneys,” “warned [Reed] of the dangers and disadvantages of self-representation,” and “held several hearings to determine whether [Reed] understood what it meant to represent himself and to waive the appointment of experienced counsel”); Starnes, 388 S.C. at 601, 698 S.E.2d at 610 (holding a capital defendant’s waiver of counsel was valid where the waiver was addressed several times prior to trial, and during the hearing on the motion to proceed *pro se*, the trial court “methodically and carefully explained the dangers of self-representation and ensured [Starnes] understood the various issues at trial” and the trial judge inquired into Starnes’s mental state, his knowledge of the numerous aspects of a trial, his knowledge of the elements of the charges against him, and his knowledge of available defenses).

Thus, the PCR judge, in accordance with the state's argument, found Petitioner "was apprised of his right to an attorney and the dangers of proceeding pro se by his probation agent through the signed Notices." App. 121. Additionally, the PCR court found Petitioner "made a knowing and voluntary waiver of his right to probation counsel based upon "[Petitioner]'s extensive criminal history and experience with probation," coupled with Petitioner's "sufficient education." App. 121. However, neither the case law nor the record supports the PCR judge's findings.

The PCR judge relied upon State v. Bryant, 383 S.C. 410, 680 S.E.2d 11 (Ct. App. 2009) to arrive at its conclusion. App. 118-119.<sup>2</sup> In fact, the PCR judge declared Petitioner's case was "identical to Bryant." App. 119. A review of Bryant and the record in Petitioner's case does not support the PCR judge's conclusion. The probation revocation judge advised Bryant that she had the right to have a lawyer represent her in connection with the charges. Bryant, 383 S.C. at 416, 680 S.E.2d at 14. The judge offered to inquire into Bryant's ability to afford counsel, but Bryant refused the offer. Id. Next, the judge advised Bryant of the benefits of having a lawyer represent her, and Bryant indicated she understood. Id. The judge specifically asked Bryant if she wished to waive counsel, and Bryant indicated she did. Id. Finally, the judge advised Bryant that if she wanted to talk to counsel at any time prior to the judge making a determination in the counsel, the judge would give her the opportunity to do so. Id. Based upon this colloquy, the Court of Appeals concluded the probation revocation judge "adequately informed Bryant of her right to counsel," "informed Bryant of the benefits of retaining counsel, "and indicated Bryant could invoke her Sixth Amendment right

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<sup>2</sup> The PCR judge concluded that State v. Bryant, 383 S.C. 410, 680 S.E.2d 11 (Ct. App. 2009) carried "more authoritative weight" than a case cited by Petitioner because it was "from the Supreme Court." App. 120. It must be noted that Bryant was decided by the Court of Appeals; therefore, the PCR judge's conclusion that it somehow carried more authoritative weight because it was a Supreme Court decision is an incorrect premise.

at any point prior to a final ruling.” Id. The only deficiency in the court’s colloquy with Bryant was a failure to “expressly address the dangers and disadvantages of appearing *pro se.*” Id.

The Court of Appeals looked to the record to determine if Bryant understood the dangers and disadvantages despite the judge’s inadequate warning. The Court examined the “Probation Notice” signed by Bryant. Id. at 417, 680 S.E.2d at 14. Importantly, the notice advised Bryant of the dangers and disadvantages of self-representation. Id. In reaching its conclusion that “Bryant had both a sufficient background and was apprised of her rights by some other source,” the Court relied upon “Bryant’s previous experience in the criminal justice system, her previous representation by counsel, the signed Probation Notice, and the probation court’s colloquy with her.” Id. at 417, 680 S.E.2d at 15.

Petitioner *never* indicated he wanted to waive counsel. While the PCR judge relied heavily upon the “Notice of Probation/CSP violation hearing and Acknowledgment of Notice,” a review of the document reveals that Petitioner never waived his right to counsel. See App. 80-81. The Notice in Petitioner’s case looked very similar to the quoted portions of the Notice at issue in Bryant. Cf. App. 80-81. However, an important distinguishing feature, which the PCR judge ignored, was that the Notice in Petitioner’s case contained a section for Petitioner to waive counsel, which was not completed. See App. 81. The Notice has a portion for an individual to waive the right to appointed counsel or the services of a public defender. App. 81. While the Notice contained Petitioner’s signature on the portions regarding the advisement of his right to counsel, the Notice did *not* contain Petitioner’s signature regarding the waiver. App. 80-81. Quite clearly, Petitioner was not interested in waiving his right to counsel.

The PCR judge also relied on Petitioner’s “extensive familiarity with the criminal justice system, including extensive experience with probation” to determine Petitioner knowingly and

voluntarily waived his right to counsel.<sup>3</sup> It was undisputed that Petitioner had a prior criminal record and had prior experience with the probation system. However, it was also undisputed that the judge never advised Petitioner of his right to counsel and the dangers of self-representation or obtained a knowing and voluntary waiver of counsel from Petitioner. While the record may be used to support that Petitioner was advised of his right to counsel and the dangers and disadvantages of waiving counsel, the record *should not* be used to support a conclusion that a waiver was executed in a knowing and voluntary fashion. The state and the PCR judge did not point to any case where the record was used to support a conclusion that a person waived counsel; instead, all cases where the appellate courts have turned to the record have involved resolution of the question of whether the defendant was aware of the right to counsel and the dangers and disadvantages of self-representation. Here, the probation revocation judge *never* engaged in any colloquy with Petitioner on his desire for counsel or self-representation.

The PCR judge relied upon an alleged conversation between Petitioner and his probation agent that Petitioner waived his right to counsel. App. 119 (stating the “Agent testified credibly that they had a discussion about [Petitioner] getting an attorney to which [Petitioner] nonchalantly indicated he did not feel like getting an attorney and was going to represent himself”). The PCR judge’s reliance upon this alleged conversation is misplaced and “exhibits a fundamental misunderstanding of what this Court’s waiver jurisprudence commands.” See Moore v. State, 399 S.C. 641, 641, 732 S.E.2d 871, 874 (2012). As this Court explained, “[t]he validity of a defendant’s

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<sup>3</sup> The PCR judge also noted that Petitioner “testified he had a (or some) college education.” App. 119. Petitioner indicated he “went to the sixth grade,” got a GED, and “went to college when [he] got [his] GED.” App. 57, ll. 18-20. What Petitioner meant by “went to college” when he got his GED is unclear. At any rate, Petitioner’s sixth grade education coupled with a GED and “college” is a far cry from the three years of education completed by Graves at the John J.R. Law School of Criminal Justice found sufficient to show Graves was apprised of his rights by some other source. See Graves v. State, 309 S.C. 307, 310, 422 S.E.2d 125, 127 (1992).

waiver does not turn on his communication with counsel, but rather on the presence of a record supporting the validity of that waiver.” Id. Thus, any purported statements or gestures made by Petitioner to the probation agent cannot support a finding that Petitioner waived his right to counsel at his probation revocation hearing.

In State v. Dixon, 269 S.C. 107, 109, 236 S.E.2d 419, 420-421 (1977), this Court remanded the case “to the lower court for a determination of whether the waiver [of counsel] was intelligently made.” According to this Court, “[t]he justice of the case [did] not require a new trial.” Id. at 109, 269 S.E.2d at 420. However, the proper remedy for determining the validity of such waivers was called into question in State v. Coto, 296 S.C. 480, 374 S.E.2d 181 (1988) and State v. Bateman, 296 S.C. 367, 373 S.E.2d 470 (1988) when this Court ordered new trials. In State v. Cash, 304 S.C. 223, 225, 403 S.E.2d 632, 634 (1991), this Court attempted to clarify the proper remedy in such cases in light of the differing opinions. This Court held that “except in extraordinary cases where it is clear a hearing on remand would serve no useful purpose, the remedy when the record fails to show a knowing and intelligent waiver of the right to counsel will be a remand for a Dixon hearing.” Id.; see also In re Christopher H., 359 S.C. 161, 169, 596 S.E.2d 500, 505 (Ct. App. 2004) (finding a remand for a factual determination regarding whether the waiver was knowingly and intelligently made would serve no useful purpose where the record clearly reflected the judge failed to adequately advise Christopher of the right to counsel, failed to make a specific inquiry as to Christopher’s knowledge of the dangers of self-representation, and demonstrated that Christopher had insufficient background to comprehend the dangers of self-representation).

Here, the probation revocation judge failed to engage in a formal inquiry with Appellant to apprise him of the dangers and disadvantages of self-representation or obtain a knowing and

voluntary waiver of his right to counsel. Therefore, a remand on the issue of self-representation would serve no useful purpose and a reversal is necessary.

**CONCLUSION**

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order briefing on the issue presented. In the event this Court grants the petition and dispenses with further briefing, Petitioner respectfully requests this Court reverse the PCR court, vacate Petitioner's probation violation, and remand for a new hearing on the probation violation hearing matter.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of February, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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FEB 27 2019

S.C. SUPREME COURT

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Certiorari to Spartanburg County  
Michael G. Nettles, Circuit Court Judge  
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JAMIE A. MAKUPSON,

PETITIONER

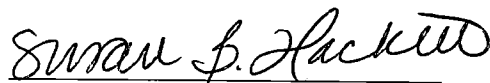
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STATE OF SOUTH CAROLINA,

RESPONDENT

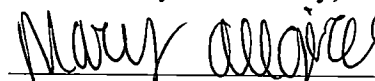
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CERTIFICATE OF SERVICE  
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The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Johnny Ellis James, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of February, 2019.



Susan B. Hackett  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 27th day of February, 2019.

 (L.S)

Notary Public for South Carolina  
My Commission Expires: May 12, 2027