

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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FEB 12 2013  
Division of Appeals

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Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

THOMAS JUSTIN WOOTEN,

APPELLANT

APPELLATE CASE NO. 2012-213519  
\_\_\_\_\_

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) 734-1343

ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether appellant's probation revocation hearing was too summary in nature for review?

### STATEMENT OF THE CASE

On February 13, 2012, appellant appeared before the Honorable R. Ferrell Cothran, Jr., in Sumter County and pled guilty to indecent exposure. He was sentenced to three (3) years suspended to two (2) years probation and a fine of \$500.00. Wade S. Kolb, Esquire, was plea counsel.

On October 15, 2012, appellant was served with a probation violation arrest warrant. A probation revocation hearing was held on November 16, 2012, before the Honorable William Jeffrey Young. Appellant was present and was represented by Tiffany Butler, Esquire. Judge Young revoked appellant's probation.

This appeal follows.

## ARGUMENT

Appellant's probation revocation hearing was too summary in nature for review.

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 dependant 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. Scapelli, 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 can not 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). The judge has to make a

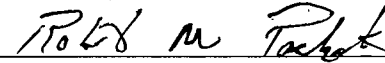
finding "on the record that the probation failed to make a bona fide effort to pay." Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986).

In appellant's case, there was no problem with his not paying fines or restitution. The problem was that his probation revocation hearing itself was so summary in nature that the record was insufficient for review. State v. Riddle, 277 S.C. 110, 282 S.E.2d 863 (1981). The transcript of the hearing is only two and one-fourth pages long.

CONCLUSION

Appellant's probation revocation should be reversed and his case should be remanded for a full hearing.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of February, 2013.

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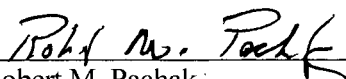
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Thomas Justin Wooten 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 William Jeffrey Young, which was held on November 16, 2012, 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 Thomas Justin Wooten.

Respectfully submitted,

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of February, 2013.

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

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

- (1) Probation Revocation Transcript (November 16, 2012);
- (2) Probation Violation Arrest Warrant

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

February 12th, 2013

*Robert M. Pachak*

Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
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Attorney for Appellant

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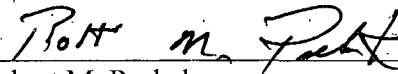
THOMAS JUSTIN WOOTEN,

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APPELLATE CASE NO. 2012-213519

CERTIFICATE OF SERVICE

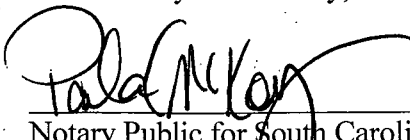
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Tommy Evans, Jr., Esquire, at P.O. Box 50666, Columbia, SC; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Thomas Justin Wooten, #353250 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 12th day of February, 2013.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 12th day of February, 2013.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: July 24, 2022.