

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Newberry County

Edward W. Miller, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

MAR 06 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KURT KALANI SPARKS,

APPELLANT

APPELLATE CASE NO. 2012-211956  
\_\_\_\_\_

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

DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

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## TABLE OF AUTHORITIES

### **Cases**

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in revoking appellant's probation when he had been hospitalized for a psychiatric condition?

### STATEMENT OF THE CASE

On September 9, 2010, appellant pled guilty before the Honorable Eugene Griffith, Jr. in Newberry County to obtaining drugs by fraud. R. 11. Judge Griffith sentenced appellant to five years' imprisonment suspended upon the service of one year's imprisonment and three years' probation. R. 11. On February 14, 2012, the South Carolina Department of Probation Parole and Pardon Services issued a violation report alleging that appellant failed to report after being released from the Department of Corrections on September 14, 2010. R. 14-15.

On February 17, 2012, a hearing was held before the Honorable Edward W. Miller. R. 1. Miranda Ware was the probation agent. R. 1. Susannah Ross represented appellant. R. 1. Judge Miller revoked appellant's probation. R. 9. On February 17, 2012, appellant filed a motion to reconsider. R. 17. On April 19, 2012, Judge Miller denied the motion to reconsider. R. 18. This appeal follows.

## ARGUMENT

The trial court erred in revoking appellant's probation when he had been hospitalized for a psychiatric condition.

A court may revoke probation only “upon an evidentiary showing of fact tending to establish a violation of the conditions.” State v. Hamilton, 333 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999). In other words, “before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions.” Id. at 648-649, 511 S.E.2d at 97.

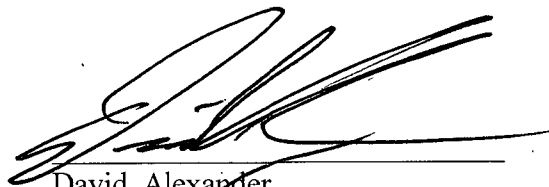
“The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court.” State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006). “While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice.” Id. at 94, 634 S.E.2d at 655 – 56. Rulings that are “deemed arbitrary and capricious” constitute abuses of discretion. Id.

In this case, the trial judge capriciously revoked appellant's probation. He refused to read appellant's fifteen page statement. R. 6, ll. 2 – 5. Upon appellant's release from the penitentiary, he went to the hospital for an esophageal tear. R. 5, ll. 6 – 13. While being treated at the hospital in Greenville, the doctor transferred him to another hospital for psychiatric assessment and treatment because of post-traumatic stress disorder. R. 5, ll. 14 – 19. Upon being released from the psychiatric hospital, he was refused accommodations by the Salvation Army and had to sleep under an overpass. R. 6, ll. 12 – 24. The trial judge's revocation of appellant's probation under these circumstances constitutes a capricious and arbitrary act and should be reversed as an abuse of discretion.

CONCLUSION

For the above-stated reasons, the decision of the trial court should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of March, 2013.

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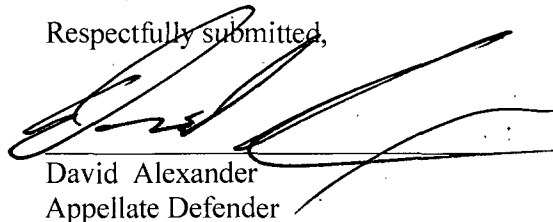
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kurt Kalani Sparks 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 Edward W. Miller, which was held on February 17, 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 Kurt Kalani Sparks.

Respectfully submitted,



David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of March, 2013.

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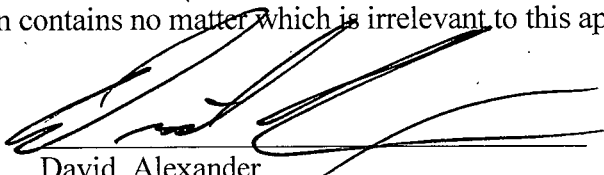
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Transcript of Revocation Hearing;
- (3) Sentencing Sheet;
- (4) SCDPPPS Violation Report;
- (5) Order dated February 17, 2012
- (6) Motion to Reconsider
- (7) Order Denying Motion to Reconsider

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

March 6th, 2013



David Alexander  
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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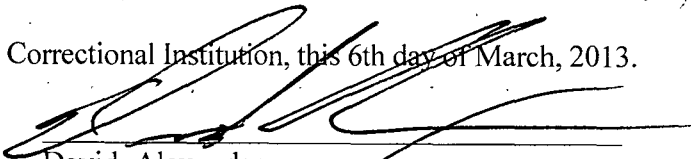
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APPELLANT

APPELLATE CASE NO. 2012-211956

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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 the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Kurt Kalani Sparks, # 298410 at Kershaw Correctional Institution, this 6th day of March, 2013.

  
David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 6th day of March, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.