

STATE OF SOUTH CAROLINA  
In the Supreme Court

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S.C. SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY  
R. Keith Kelly, Probation Judge  
Michael G. Nettles, Post-Conviction Relief Judge

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Appellate Case No. 2018-001377

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JAMIE A. MAKUPSON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ALAN WILSON  
Attorney General

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ATTORNEYS FOR RESPONDENT

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## RESPONDENT'S STATEMENT OF ISSUE

### I.

**Did the post-conviction relief court properly deny relief for the allegation that Petitioner was denied his right to counsel when Petitioner knowingly and voluntarily waived his right to counsel at his probation revocation hearing after having been informed of his rights through his probation revocation notice?**

## STATEMENT OF THE CASE

Petitioner Jamie Makupson is currently under the supervision of the South Carolina Department of Probation, Parole, and Pardon Services following his guilty plea in Spartanburg County.

During its May 2013 term, the Spartanburg County Grand Jury indicted Petitioner for assault and battery first degree (2013-GS-42-2321). Petitioner was subsequently indicted by the Spartanburg County Grand Jury during its June 2013 term for assault and battery second degree (2013-GS-42-2919), and threatening the life of a public official (2013-GS-42-2920). Petitioner was represented on these charges by Robert B. Hall, Esquire. Assistant Solicitor Alexandria Denise Lyles of the Seventh Circuit Solicitor's Office prosecuted the case.

On June 28, 2013, Petitioner appeared in the Spartanburg County Court of General Sessions before the Honorable J. Mark Hayes, II, and pled guilty to all charges. Pursuant to a negotiated sentence, Petitioner was sentenced to ten years provided upon the service of five years active time with the remaining balance suspended to five years' probation for assault and battery first degree. Petitioner was sentenced to five years' imprisonment for threatening the life of a public official and three years' imprisonment for assault and battery second degree. Each sentence ran concurrently with the others. Petitioner did not appeal his conviction or sentence.

On April 13, 2016, a citation was issued to Petitioner for violations of his probation. The citation listed the following violations:

1. Failure to report as instructed having missed an office visit;
2. Failure to refrain from changing residence without prior consent of the Agent;
3. Failure to refrain from the use of controlled substances having tested positive for THC, cocaine, and opiates on 3/8/16 and 3/15/16;
4. Failure to work diligently at a lawful occupation, having never provided the Agent with proof of employment, or proof of any effort to obtain employment;
5. Failure to pay supervision fee being \$600 in arrears and having never made a payment on this account since beginning probation;

6. Failure to pay court fine being \$180 in arrears and having never made a payment on this account since beginning probation;
7. Failure to pay one time \$20 drug test fee;
8. Failure to follow the advice and instructions of the supervising Agent;
9. Failure to comply with special condition of anger management counseling.

(App. 79). On June 17, 2016, Petitioner appeared for a probation violation hearing before the Honorable R. Keith Kelly. Judge Kelly revoked Petitioner's probation in full which required Petitioner to serve the remaining five years of his sentence.

On May 22, 2017 Petitioner filed a pro se application for post-conviction relief (2017-CP-42-1808), alleging two grounds for relief. Petitioner alleged the following grounds:

“Issue A: Did the Court of General Sessions have subject matter jurisdiction to revoke Applicant's probation?”

“Issue B: “Did Applicant waive his right to counsel at the probation revocation hearing?”

The State filed a return on December 7, 2017. A conditional order of dismissal was filed by the Honorable J. Derham Cole on January 9, 2018. Petitioner, through Susannah Ross, Esq. as counsel, filed a motion requesting an evidentiary hearing on January 10, 2018. An evidentiary hearing was held on February 22, 2018 before the Honorable Michael G. Nettles. Petitioner was represented by Susannah C. Ross, Esq. and the State was represented by Assistant Attorney General Valerie Giovanoli. Petitioner testified on his own behalf and Agent Hanna Price testified on behalf of the State. Judge Nettles took the matter under advisement at the end of the hearing. Judge Nettles dismissed Petitioner's post-conviction relief application via an order dated March 20, 2018. Petitioner filed his notice of appeal to this Court on July 25, 2018. On appeal, Petitioner challenges only the second claimed raised in his post-conviction relief application: whether Petitioner waived his right to counsel at the probation revocation hearing.

## STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## ARGUMENT

### I.

**The post-conviction relief court properly denied relief for the allegation that Petitioner was denied his right to counsel when Petitioner knowingly and voluntarily waived his right to counsel at his probation revocation hearing after having been informed of his rights through his probation revocation notice.**

Petitioner claims the post-conviction relief court erred in determining that Petitioner knowingly and voluntarily waived his right to counsel at his probation revocation hearing. Petitioner specifically takes issue with the probation revocation judge's failure to conduct a Faretta colloquy with him and thereby adequately advise him of his right to counsel at the probation revocation hearing. The post-conviction relief court properly rejected this argument. While the probation revocation judge did not conduct a Faretta colloquy with Petitioner, Petitioner was nonetheless advised of his right to counsel through a written notice of his probation violation hearing. (App. 134). Furthermore, Petitioner acknowledged in his testimony at the post-conviction relief hearing that he was previously on probation five times. (App. 57). Agent Price testified Petitioner was revoked in full each of the five previous times Petitioner was on probation. (App. 73). Petitioner was well aware of his right to counsel at the probation revocation hearing. Furthermore, Petitioner indicated his desire to waive his right to counsel when he told Agent Price prior to his violation hearing that he didn't feel like getting an attorney and he would represent himself. (App. 3). This Court should deny certiorari.

“The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment.” State v. Thompson, 355 S.C. 255, 261, 584 S.E.2d 131, 134 (Ct. App. 2003). (citing Faretta v. California, 422 U.S. 806, 807

(1975)). “The right to counsel attaches in probation revocation hearings.” Salley v. State, 306 S.C. 213, 215, 410 S.E.2d 921, 922 (1991). “One can waive [their] right to counsel. It is the trial court’s responsibility to determine whether there was a knowing and intelligent waiver by the accused.” State v. Bryant, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (Ct. App. 2009). “To effectuate a valid waiver, the accused must (1) be advised of the right to counsel and (2) be adequately warned of the dangers of self-representation. Id. “A specific inquiry by the trial court expressly addressing the disadvantages of appearing pro se is preferred. However, when the trial court fails to expressly make this inquiry, this court will examine the record to determine whether the accused had sufficient background or was apprised of [their] rights by some other source.” Bryant 383 S.C. at 415, 680 S.E.2d at 13.

Petitioner asserts the post-conviction relief judge erred in denying Petitioner relief, because Petitioner did not knowingly and voluntarily waive his right to counsel at his probation revocation hearing. Petitioner further asserts the probation revocation judge did not adequately advise Petitioner of his right to counsel nor did he warn Petitioner about the dangers of proceeding pro se. Petitioner’s argument is without merit. As an initial matter, Petitioner was notified of his right to counsel before the probation violation hearing through the written notice of his hearing. The document that Petitioner received and signed advised Petitioner of the following rights:

You may have an attorney at your expense represent you at this hearing. If you cannot afford an attorney and you desire the representation of the Spartanburg County Public Defender, you must apply for an appointed attorney with that office. If you choose to appear at the hearing without an attorney, you may be required to represent yourself. You are hereby advised there are dangers and disadvantages to self-representation. An attorney may better understand courtroom procedure and may be better able to think of and present defenses to your violations. By appearing without an attorney, you are acknowledging these dangers but are knowingly and voluntarily choosing to proceed without counsel.

(App. 134). The document also contained the following underlined text: “This directive has been read to me and I have been provided with a copy. I was also given an opportunity to ask questions about this directive before it was signed.” (App. 134). Petitioner signed this document on April 13, 2016.

Petitioner also admitted during his testimony at the post-conviction relief hearing that he was previously on probation on five separate occasions. (App. 57). Agent Price testified that Petitioner had his probation revoked in full on each of his five previous probationary sentences. (App. 73). Therefore, it is likely Petitioner was well aware of his right to have counsel present at his probation revocation hearing based on his previous experience with such hearings. Even if Petitioner was not properly advised of his right to counsel, Petitioner waived his right to counsel at the hearing when he told Agent Price that he didn’t feel like hiring an attorney and would represent himself. (App. 3). Here, the totality of the record demonstrates that Petitioner was adequately advised of his right to counsel and Petitioner chose to waive that right. This Court should deny certiorari.

**CONCLUSION**

Because the post-conviction relief court properly determined Petitioner was properly advised of his right to counsel and subsequently waived that right, this Court should deny certiorari. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully submitted,

ALAN WILSON  
Attorney General

SCOTT MATTHEWS  
Assistant Attorney General  
S.C. Bar No. 101464

By:   
ATTORNEYS FOR RESPONDENT

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May 15, 2019

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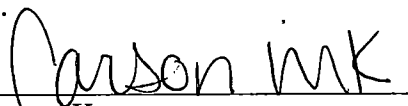
**PROOF OF SERVICE**

I, Carson Kirk, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the mail to be delivered to Petitioner at the address below:

Susan B. Hackett  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
P.O. Box 11589  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 15 day of may, 2019.

  
CARSON KIRK  
Legal Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737



ALAN WILSON  
ATTORNEY GENERAL

May 15, 2019

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S.C. SUPREME COURT

The Honorable Daniel E. Shearouse  
Clerk of Court — SC Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: Jamie A. Makupson v. State of South Carolina**  
**Appellate Case No.: 2018-001377**  
**Lower Court Case: 2017-CP-42-1808**

Dear Mr. Shearouse:

Enclosed for filing please find an original and six copies of the **Return to Petition for Writ of Certiorari** in the above-captioned case.

Sincerely,

*Scott Matthews*

Scott Matthews  
Assistant Attorney General  
SC Bar #101464

SM/ck  
Enclosures

cc: Susan B. Hackett, Esquire  
Trisha Allen, Director - Victim Advocacy Division