

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Charleston County

Honorable R. Markley Dennis, Circuit Court Judge

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**ORIGINAL**

THE STATE,

RESPONDENT,

V.

CHARLES JOSEPH BUNTON,

APPELLANT.

APPELLATE CASE NO. 2019-000491

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ANDERS BRIEF OF APPELLANT

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LARA M. CAUDY  
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**

Did the probation revocation judge abuse his discretion by revoking Appellant's probation in full and reinstating an eight year prison sentence for the offense of shoplifting?

## STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant in February 2019 for a shoplifting enhancement. R. 25-26. Appellant pled guilty as indicted on March 1, 2019 before the Honorable R. Markley Dennis, Jr. R. 27. Assistant Solicitor Tyler Whitaker represented the state, and Robert Wehrman represented Appellant. R. 27. Appellant was sentenced to eight years' imprisonment suspended upon the service of five years' probation. R. 27. He was also ordered to complete the SC STRONG Program as a special condition of his probation. R. 27.

On March 5, 2019, Appellant was arrested for violating the terms and conditions of his probation. R. 22-23. A probation revocation hearing was held on March 5, 2019 before Judge Dennis. R. 1. Robert Wehrman represented Appellant and Agent Teela Fleming appeared on behalf of the Department of Probation, Parole, and Pardon Services. R. 1. Judge Dennis ultimately continued the hearing to allow Appellant adequate time to consult with his attorney. R. 3, l. 23 – 4, l. 18.

A second probation revocation hearing was held on March 15, 2019 before Judge Dennis. R. 6. Robert Wehrman represented Appellant and Agent C. Aulbach appeared on behalf of the Department. R. 6. Judge Dennis found Appellant violated the terms and conditions of his probation and revoked his probation in full. R. 17, l. 16 – 18, l. 12.

This appeal follows.

### **STANDARD OF REVIEW**

“The question of whether a defendant’s probation should be revoked in whole or in part is committed to the circuit court’s sound discretion.” State v. Knapp, 338 S.C. 541, 543, 526 S.E.2d 741, 742 (Ct. App. 2000) (citing S.C. Code. Ann. § 24-21-460 and State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)).

## ARGUMENT

The probation revocation judge abused his discretion by revoking Appellant's probation in full and reinstating an eight year prison sentence for the offense of shoplifting.

### **Relevant Facts**

During the March 5, 2019 probation revocation hearing, the probation agent alleged Appellant was admitted to the STRONG program on March 1, 2019, the same day he pled guilty and was sentenced to probation, and “walked away from the program” on March 3, 2019. R. 3, ll. 4-9. After his “unsuccessful discharge” from the program, Appellant failed to contact his probation agent. R. 3, ll. 9-12. He was ultimately arrested on March 5, 2019, the same day as the first probation revocation hearing. R. 3, ll. 13-14. Judge Dennis ultimately continued the hearing until March 15, 2019 to provide Appellant adequate time to consult with his attorney. R. 3, l. 23 – 4, l. 18.

During the second probation revocation hearing, Appellant admitted he left the STRONG program after he was told he would have to work seventeen hours a day. R. 9, l. 7 – 13, l. 1. He requested the trial judge allow him to withdraw his plea. R. 8, l. 25 – 9, l. 1. Judge Dennis indicated he would be “happy to let [Appellant] withdraw the plea” but he would ultimately sentence Appellant to eight years again. R. 17, ll. 14-21. The judge gave Appellant the option of withdrawing his plea or going forward with the revocation, both having the same outcome. R. 17, l. 16 – 18, l. 2. Appellant chose to go forward with the revocation. R. 18, ll. 5-6. Accordingly, Judge Dennis revoked Appellant's probation in full and reinstated his eight year sentence.

### **Discussion**

The trial judge abused his discretion by revoking Appellant's probation in full and reinstating his eight year sentence.

“The question of whether a defendant’s probation should be revoked in whole or in part is committed to the circuit court’s sound discretion.” State v. Knapp, 338 S.C. 541, 543, 526 S.E.2d 741, 742 (Ct. App. 2000) (citing S.C. Code. Ann. § 24-21-460 and State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)).

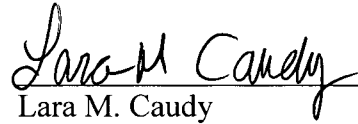
Appellant presented an adequate reason as to why he left the STRONG Program without consent. He explained that before he entered the program he was told he would have to work twelve hours a day. However, once he started the program, he was then informed he would have to sign a contract requiring him to work seventeen hours a day. Due to a medical condition, this was impossible for Appellant. Regardless, he tried for a few days. When he was unable to work seventeen hours a day, he left. R. 9, l. 7 – 10, l. 4; R. 14, ll. 7-13. Due to this compelling mitigation, the trial judge abused his discretion by revoking Appellant’s probation in full. The judge should have imposed a lesser sentence.

Consequently, this Court should hold the probation revocation judge abused his discretion by revoking Appellant’s probation in full and remand for a new probation revocation hearing.

**CONCLUSION**

Based on the foregoing argument, Appellant respectfully requests this Court hold the probation revocation judge abused his discretion and remand for a new revocation hearing.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lara M. Caudy". The signature is written in black ink and is positioned above a horizontal line.

Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of January, 2020.

STATE OF SOUTH CAROLINA  
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Appeal from Charleston County

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PETITION TO BE RELIEVED AS COUNSEL  
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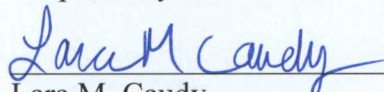
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Counsel for Charles Joseph Bunton states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial, which was held on March 15, 2019 before the Honorable R. Markley Dennis, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Charles Joseph Bunton.

Respectfully Submitted,

  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of January, 2020.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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THE STATE,

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

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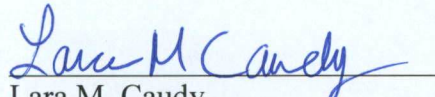
Appellant proposes the following be included in the Record on Appeal:

- (1) Complete Transcript Dated March 5, 2019;
- (2) Complete Transcript Dated March 15, 2019;
- (3) Probation Arrest Warrant;
- (4) Order Revoking Probation;
- (5) True-Billed Indictment;
- (6) Sentence Sheet.

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

January 8, 2020

  
Lara M. Caudy  
Appellate Defender

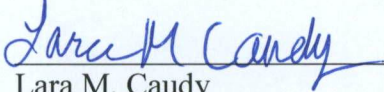
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ATTORNEY FOR APPELLANT

**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."

January 8, 2020.

  
Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent  
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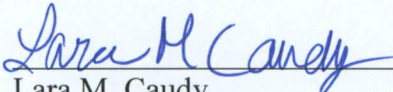
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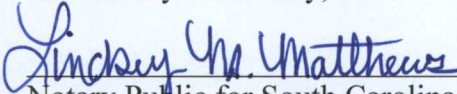
CERTIFICATE OF SERVICE

The undersigned 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 Matthew C. Buchanan, Esquire, at PO Box 207, Columbia, SC 29202; and a copy of the Anders Brief of Appellant and Designation of Matter has been served upon Charles Joseph Bunton, 330765, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 8th day of January, 2020.

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 8th day of January, 2020.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: October 22, 2024.

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