

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**  
**Aug 21 2020**  
**SC Court of Appeals**

\_\_\_\_\_  
Appeal from Greenville County

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

THE STATE,

RESPONDENT,

V.

ROBERT LOUIS GARRETT, JR.

APPELLANT

APPELLATE CASE NO 2018-000552  
\_\_\_\_\_

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

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Appellate Defender

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ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... i

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW .....3

ARGUMENT

The circuit court judge erred in finding Appellant in contempt of court for interrupting the judge and demonstrating the act of a guard which prompted Appellant to file a police report, where Appellant had been relieved of his attorney and was facing trial, where Appellant did not have his file and was unprepared to represent himself, where Appellant moved for a continuance and standby counsel but both requests were denied, and where the state dismissed the underlying charge. ....4

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL .....9

**TABLE OF AUTHORITIES**

Cases

Burns v. Universal Health Servs. Inc., 340 S.C. 509, 532 S.E.2d 6 (Ct. App. 2000)..... 6

Checker Yellow Cab Co., Inc. v. Checker Cab & Parcel Service, Inc. ..... 5

Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (1982)..... 6

Dep’t of Social Services v. Padgett, 296 S.C. 79, 370 S.E.2d 872 (1988) ..... 6

Durlach v. Durlach, 359 S.C. 64, 596 S.E.2d 908 (2004)..... 3

Dyer v. Dyer, 213 N.C. 634, 197 S.E. 157 (1938)..... 6

Henderson v. Henderson, 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989)..... 3

Jackson v. Jackson, 241 S.C. 1, 126 S.E.2d 855 (1962)..... 6

State v. Bowers, 270 S.C. 124, 241 S.E.2d 409 (1978)..... 6

State v. Goff, 228 S.C. 17, 88 S.E.2d 788 (1955)..... 6

State v. Harper, 297 S.C. 257, 375 S.E.2d 272 (1989) ..... 5, 6

State v. Passmore, 363 S.C. 568, 611 S.E.2d 273 (Ct. App. 2005) ..... 5

Stone v. Reddix–Smalls, 295 S.C. 514, 369 S.E.2d 840 (1988)..... 3

Toyota of Florence v. Lunch, 314 S.C. 257 442 S.E.2d 611 (1994) ..... 6

Whetstone v. Whetstone, 309 S.C. 227, 420 S.E.2d 877 (Ct. App. 1992) ..... 6

## **STATEMENT OF ISSUE ON APPEAL**

Whether the circuit court judge erred in finding Appellant in contempt of court for interrupting the judge and demonstrating the act of a guard which prompted Appellant to file a police report, where Appellant had been relieved of his attorney and was facing trial, where Appellant did not have his file and was unprepared to represent himself, where Appellant moved for a continuance and standby counsel but both requests were denied, and where the state dismissed the underlying charge?

## STATEMENT OF THE CASE

In response to a motion to be relieved filed by his counsel, C. Carlyle Steele, Appellant appeared before the Honorable Edward W. Miller on October 3, 2017. R. 1. Appellant had previously filed a similar motion as well. R. 3, ll. 4 – 11. Judge Miller granted the motion to relieve. R. 5, ll. 6 – 9.

Appellant was scheduled to go to trial on a filing a false police report of a felony. R. 8, ll. 17 – 18. According to the state, Appellant reported that he had been sexually assaulted by a guard while incarcerated. R. 8, l. 20 – R. 9, l. 17. The assistant solicitor, Leigh B. Paoletti, contended that there was no video evidence of a sexual assault by the guard. *Id.* While in the courtroom, Appellant allegedly laid on the ground and demonstrated what the guard did to him. R. 11, ll. 16 – 25.

Judge Miller warned Appellant about interrupting him and indicated that if Appellant interrupted him again, he would hold Appellant in contempt. R. 15, ll. 20 – 21. After Appellant attempted to explain how he was not ready to represent himself at trial, the judge held him in contempt. R. 15, l. 22 – R. 16, l. 19; R. 17, ll. 7 – 12. Judge Miller sentenced Appellant to ninety days consecutive on the contempt charge. R. 16, ll. 18 – 19.

Immediately after Appellant was held in contempt, the state dismissed the pending charge. R. 16, ll. 21 – 23. Curiously, the reasoning behind the dismissal was that the state had already gotten what it came for:

And, Your Honor, if I can say, for the record, it's not based on any of the - - the facts of the case or any other reason that the - - the reason for prosecuting this case has been accomplished. We're not going to waste any more time.

R. 16, l. 24 – R. 17, l. 3. Judge Miller signed a contempt order on October 6, 2017. R. 20.

This appeal follows.

## **STANDARD OF REVIEW**

An appellate court should reverse a decision regarding contempt “only if it is without evidentiary support or the trial judge has abused his discretion.” Durlach v. Durlach, 359 S.C. 64, 70, 596 S.E.2d 908, 912 (2004) (quoting Stone v. Reddix–Smalls, 295 S.C. 514, 516, 369 S.E.2d 840 (1988)); see also Henderson v. Henderson, 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989) (“A finding of contempt rests within the sound discretion of the trial judge.”).

## ARGUMENT

**The circuit court judge erred in finding Appellant in contempt of court for interrupting the judge and demonstrating the act of a guard which prompted Appellant to file a police report, where Appellant had been relieved of his attorney and was facing trial, where Appellant did not have his file and was unprepared to represent himself, where Appellant moved for a continuance and standby counsel but both requests were denied, and where the state dismissed the underlying charge.**

### Relevant facts

The order finding Appellant in contempt indicated that he “was argumentative with the Court and would not indicate which of the three proceedings he was electing to go forward on.” R. 20. The judge had given Appellant three options to proceed with his case: a jury trial, bench trial, or pleading guilty. R. 10, ll. 2 – 25.

However, Appellant was not prepared to go to trial; he had not brought his file with him. R. 7, ll. 3 – 7. Appellant was a mental health patient assigned to a behavioral management unit. R. 8, ll. 11 – 14. He did not know how to represent himself. Id. Appellant requested that another attorney be appointed to his case. R. 11, ll. 1 – 2. In trying to explain the factual scenario behind his disclosure of sexual assault, Appellant attempted to act out what exactly transpired. R. 11, ll. 16 – 24.

When the judge again asked him if he wanted a jury trial, bench trial, or to plead guilty, Appellant requested a continuance in order to prepare to represent himself. R. 12, ll. 12 – 17; R. 14, ll. 24. That request was denied by the judge. R. 14, l. 25 – R. 15, l. 2. Appellant then reiterated that he did not have his file. R. 15, ll. 3 – 6. In order to protect his interests at trial,

Appellant requested standby counsel. R. 15, ll. 7 – 9. The judge denied that request as well. R. 15, ll. 10 – 16.

Following these denials came the warning about interrupting the judge. R. 15, ll. 20 – 21. Immediately thereafter Appellant was held in contempt. R. 15, l. 25 – R. 16, l. 1. The order finding Appellant in contempt concluded:

Based on the defendant's disruptive conduct and refusal to comply with instructions not to interrupt the Court, I find that the defendant was in contempt of court and sentence him to 90 days to be served consecutively to the sentences he is not serving with the South Carolina Department of Corrections.

R. 20

### Discussion

Contempt is an extreme measure and the power to adjudge a person in contempt is not to be lightly asserted. State v. Harper, 297 S.C. 257, 258, 375 S.E.2d 272 (1989). The power to punish for contempt is inherent in all courts. State v. Passmore, 363 S.C. 568, 571, 611 S.E.2d 273, 275 (Ct. App. 2005). Although the contempt power is inherent and essential to the preservation of orderly proceedings, it is not unbounded; the power of contempt is checked by the sacrosanct right to be tried by a jury of one's peers. Id. at 572, 611 S.E.2d at 275.

Article III, Section 2, of the United States Constitution provides: "The trial of all Crimes, except in Cases of Impeachment, shall be tries by Jury..." The right to a jury trial is amplified in the Sixth Amendment, which reads, in part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed..."

When the primary purpose of the proceeding is to preserve the court's authority and to punish for disobedience of its orders, the contempt is generally considered criminal. Checker Yellow Cab Co., Inc. v. Checker Cab & Parcel Service, Inc., 287 S.C. 608, 340 S.E.2d 549 (Ct.

App. 1986). “[C]riminal contempt is a form applies where the judgment is in punishment of an act, already accomplished, tending to interfere with the administration of justice.” Dyer v. Dyer, 213 N.C. 634, 635, 197 S.E. 157, 158 (1938).

Constructive contempt is contempt that occurs “outside the presence of the court.” Toyota of Florence v. Lunch, 314 S.C. 257, 267, 442 S.E.2d 611, 617 (1994). Direct contempt involves contemptuous conduct occurring in the presence of the court. State v. Goff, 228 S.C. 17, 88 S.E.2d 788 (1955). “Contemptuous behavior” is conduct which tends to bring the authority and the administration of the law into disrespect. Burns v. Universal Health Servs. Inc., 340 S.C. 509, 515, 532 S.E.2d 6, 10 (Ct. App. 2000).

A determination of contempt ordinarily resides in the sound discretion of the trial judge. Whetstone v. Whetstone, 309 S.C. 227, 420 S.E.2d 877 (Ct. App. 1992). It is well settled that contempt results from willful disobedience of a court order; and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based. Harper, 376 S.E.2d at 274; Spartanburg County Dep’t of Social Services v. Padgett, 296 S.C. 79, 370 S.E.2d 872 (1988); Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (1982). A willful act is defined as one “done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law.” Padgett, 370 S.E.2d at 874. Intent for purposes of criminal contempt is subjective, not objective, and must necessarily be ascertained from all of the acts, words, and circumstances surrounding the occurrence. State v. Bowers, 270 S.C. 124, 241 S.E.2d 409 (1978); Jackson v. Jackson, 241 S.C. 1, 126 S.E.2d 855 (1962).

Appellant was faced with an untenable position. He was ready to be heard on the motion to have his counsel relieved, but he was unprepared to represent himself. When put on the spot, he was unable to answer the judge's question regarding his plan moving forward. As a mental health patient, it is possible that he was struggling with the prospect of representing himself at either a jury or bench trial. Coupled with the fact that he did not have his file materials with him, Appellant was unable to make an informed and reasonable decision. None of the options presented to him appeared to be feasible. Appellant attempted to explain this to the judge, but he was repeatedly rebuffed. Appellant even remarked to the court that it was not his intent to be disrespectful. R. 17, ll. 19 – 25.

Inexplicably, the state dismissed the charge following the finding of contempt, seemingly suggesting that its original intent was vindictive. Nonetheless, had Appellant been appointed standby counsel or given a continuance, the state may have dismissed the charge. Only after Appellant was sentenced to ninety days consecutive to his outstanding sentence did the state evidence its willingness to drop the pending charge. Previously described as “a matter of principle with the Department of Corrections,” which asked the state to go forward with the case, the filing of a false police report of a felony offense disappeared when Appellant was sentenced on the contempt charge.

Appellant was understandably frustrated with the situation. He did not appear to be intentionally rude to the judge; the two were having a conversation. The trial judge erred in finding Appellant in contempt and sentencing him to ninety days' incarceration consecutive to his other sentence.

**CONCLUSION**

Based on the foregoing, Appellant respectfully requests that this Court reverse his conviction.

s/Taylor D. Gilliam \_\_\_\_\_  
Taylor D Gilliam  
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of August, 2020.

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PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Robert Louis Garrett 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 October 3, 2017, 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 Robert Louis Garrett.

Respectfully Submitted,

s/Taylor D. Gilliam  
Taylor D Gilliam  
Appellate Defender  
ATTORNEY FOR APPELLANT

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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) True-billed indictment(s):
- (2) Transcript of Guilty Plea Hearing dated October 3, 2017
- (3) General Sessions Tracking Sheet
- (4) Order Finding Defendant in Contempt of Court

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

August 21, 2020

s/Taylor D. Gilliam  
Taylor D Gilliam  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
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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.”

August 21, 2020.

s/Taylor D. Gilliam  
Taylor D Gilliam  
Appellate Defender

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\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter has been served upon opposing counsel this 21st day of August, 2020 by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS): and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Robert Louis Garrett, 291096, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162.

s/Taylor D. Gilliam \_\_\_\_\_  
Taylor D. Gilliam  
Appellate Defender  
ATTORNEY FOR APPELLANT