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**Feb 16 2021**  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

YASHAWNUS PATTERSON,

APPELLANT

APPELLATE CASE NO 2020-000979

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ANDERS BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the circuit court erred in revoking Appellant's community supervision for one year, where Appellant had just been released from prison and was unable to meet the demands of the program, where the alleged violations were not willful based on Appellant's inability to acquire and maintain reliable employment, transportation, and mental health assistance?

## **STATEMENT OF THE CASE**

On February 11, 2009, a Richland County grand jury indicted Appellant on two counts of criminal sexual conduct with a minor in the second degree. R. 27 – 30. Represented by Christopher Whitehead, Appellant appeared remotely on May 29, 2020 before the Honorable Jocelyn Newman for a community supervision revocation hearing. Agent Evers appeared on behalf of the South Carolina Department of Probation, Parole, and Pardon Services. R. 1.

Judge Newman found that Appellant willfully violated the terms and conditions of his community supervision. R. 18, ll. 5 – 18. His supervision was revoked for a year. R. 18, l. 20 – 19, l. 7. This appeal follows.

## STANDARD OF REVIEW

The decision to revoke probation is addressed to the discretion of the circuit judge. State v. White, 218 S.C. 130, 135–6, 61 S.E.2d 754, 756 (1950); Sanders v. MacDougall, 244 S.C. 160, 164, 135 S.E.2d 836, 837 (1964); State v. Miller, 122 S.C. 468, 475, 115 S.E. 742, 745 (1923). This court's authority to review such a decision is confined to correcting errors of law unless the lack of a legal or evidentiary basis indicates the circuit judge's decision was arbitrary and capricious. White at 135–6, 61 S.E.2d at 756; State v. Archie, 322 S.C. 135, 137–8, 470 S.E.2d 380, 381 (Ct.App.1996)

## ARGUMENT

**The circuit court erred in revoking Appellant's community supervision for one year, where Appellant had just been released from prison and was unable to meet the demands of the program, where the alleged violations were not willful based on Appellant's inability to acquire and maintain reliable employment, transportation, and mental health assistance.**

### Relevant facts

Appellant began community supervision on December 21, 2019 after serving approximately nine years at the South Carolina Department of Corrections on the criminal sexual conduct with a minor charges. R. 3, ll. 15 – 22. Terms of the community supervision included GPS monitoring, no contact with the victim or victim family, and sex offender counseling. Id.

According to the probation officer, Appellant was arrested in February 2020 for staying overnight at a hotel earlier that month. R. 3, ll. 23 – 25. Additionally, the officer alleged Appellant failed to follow up on a mental health referral, failed to report to the South Carolina Department of Mental Health, tested positive for cocaine, failed to pay fees, and failed to provide a urine sample. R. 4, ll. 1 – 22. According to the state, Appellant also had explicit images on his cell phone. R. 4, l. 19 – 5, l. 15.

Appellant admitted to drug use. R. 6, ll. 4 – 22. Regarding the other alleged violations, Appellant explained the multiple difficulties which prevented him from complying with the terms and conditions of his community supervision. R. 6, l. 21 – 7, l. 15. He denied having conduct with any minors or prohibited persons. R. 7, l. 15 – 8, l. 1. He also advised the court that he suffers from mental health problems. R. 8, ll. 2 – 4.

Counsel for Appellant reiterated that Appellant has been unable to get mental health assistance and that employment and transportation have presented obvious difficulties for Appellant, recently released from prison. R. 13, ll. 18 – 24. Counsel agreed that Appellant required mental health treatment. R. 17, ll. 5 – 12.

Judge Newman found that Appellant willfully violated the terms and conditions of his community supervision. R. 18, ll. 5 – 7. She revoked the community supervision. R. 18, ll. 17 – 18. The revocation order memorialized those findings on both offenses. R. 22 – 23.

Counsel for Appellant filed a motion to reconsider on or about June 2, 2020. R. 24. An Order Denying the Motion to Reconsider was filed on July 23, 2010. R. 25 – 26.

### Discussion

Probation is a matter of grace; revocation is the means to enforce the conditions of probation. State v. McCray, 222 S.C. 391, 396, 73 S.E.2d 1, 3 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950). However, the authority of the revoking court should always be predicated upon an evidentiary showing of fact tending to establish a violation of the conditions. White, at 135, 61 S.E.2d at 756; State v. Miller, 122 S.C. 468, 475, 115 S.E. 742, 745 (1923). Thus, before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions.

The revocation of probation or parole is not a stage of criminal prosecution. However, a probationer or parolee has a constitutionally protected liberty interest and cannot be denied due process simply because probation has been described as an act of grace. Morrissey v. Brewer, 408 U.S. 471, 480–90, 92 S.Ct. 2593, 2600–05, 33 L.Ed.2d 484 (1972) (holding that minimum requirements of due process in parole revocation proceeding 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”); Gagnon v. Scarpelli, 411 U.S. 778, 782, 93 S.Ct. 1756, 1760, 36 L.Ed.2d 656 (1973) (holding that “a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in Morrissey”); State v. Riddle, 277 S.C. 110, 282 S.E.2d 863 (1981) (reversing probation revocation and remanding for hearing consistent with guidelines set forth in Morrissey and Gagnon). “It is an essential component of due process that individuals be given fair warning of those acts which may lead to a loss of liberty. This is no less true whether the loss of liberty arises from a criminal conviction or the revocation of probation.... [W]here the proscribed acts are not criminal, due process mandates that [a probationer or parolee] cannot be subjected to forfeiture of his liberty for those acts unless he is given prior fair warning.” U.S. v. Dane, 570 F.2d 840, 843–44 (9th Cir.1977) (citing Tiitsman v. Black, 536 F.2d 678 (6th Cir.1976)).

S.C. Code Ann. § 24-21-560 contains detailed guidance on the community supervision program. Section C sets forth the revocation procedure:

If the department determines that a prisoner has violated a term of the community supervision program and the community supervision should be revoked, a probation agent must initiate a proceeding in General Sessions Court. The proceeding must be initiated pursuant to a warrant or a citation issued by a probation agent setting forth the violations of the community supervision program. The court shall determine whether:

- (1) the terms of the community supervision program are fair and reasonable;

- (2) the prisoner has complied with the terms of the community supervision program;
- (3) the prisoner should continue in the community supervision program under the current terms;
- (4) the prisoner should continue in the community supervision program under other terms and conditions as the court considers appropriate;
- (5) the prisoner has wilfully violated a term of the community supervision program.

If the court determines that a prisoner has wilfully violated a term or condition of the community supervision program, the court may impose any other terms or conditions considered appropriate and may continue the prisoner on community supervision, or the court may revoke the prisoner's community supervision and impose a sentence of up to one year for violation of the community supervision program. A prisoner who is incarcerated for revocation of the community supervision program is not eligible to earn any type of credits which would reduce the sentence for violation of the community supervision program.

S.C. Code Ann. § 24-21-560(C). In State v. Garrard, this Court held that a willful failure is one that is a voluntary, conscious, and intentional failure. 390 S.C. 146, 700 S.E.2d 269 (Ct. App. 2010).

The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court. State v. Miller, 122 S.C. 468, 474-75, 115 S.E. 742, 745 (1923); State v. Proctor, 345 S.C. 299, 301, 546 S.E.2d 673, 674 (Ct.App.2001); S.C. Code Ann. § 24-21-460 (1989). The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation. State v. King, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); State v Hamilton, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct. App. 1999). “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.” White, 218 S.C. at 136, 61 S.E.2d at 756. “This court's authority to review such a decision is confined to correcting errors of law unless the lack of a

legal or evidentiary basis indicates the circuit judge's decision was arbitrary and capricious.” Hamilton, 333 S.C. at 647, 511 S.E.2d at 96.

An appellate court will not reverse the trial court's decision unless that court abused its discretion. White, 218 S.C. at 135, 61 S.E.2d at 756; Hamilton, 333 S.C. at 647, 511 S.E.2d at 96. An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. Fontaine v. Peitz, 291 S.C. 536, 539, 354 S.E.2d 565, 566 (1987).

Appellant explained in detail the difficulties he faced regarding employment, transportation, and his mental health matters. After being released from prison, he struggled to regain normalcy. He was surrounded by insurmountable challenges and unable to adjust to life post-incarceration. The revocation court failed to take into consideration the unrealistic conditions the community supervision agent imposed on Appellant. Unable to acquire reliable employment, he could not pay his fees. Without consistent transportation, he could not attend appointments. Released into an unforgiving world, Appellant understandably struggled. Not all of his alleged violations were willful. The circuit court erred in revoking his community supervision.

**CONCLUSION**

Based on the foregoing, Appellant respectfully requests that this Court reverse the lower court's decision to revoke community supervision.

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

ATTORNEY FOR APPELLANT

This 16th day of February, 2021.

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Yashawnus Patterson 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 Jocelyn J. Newman, which was held on May 29, 2020, 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 Yashawnus Patterson.

Respectfully Submitted,

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

This 16th day of February, 2021.

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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 held May 29, 2020;
- (3) Revocation order;
- (4) Motion to reconsider; and
- (5) Order denying motion to reconsider.

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

February 16, 2021

s/Taylor D. Gilliam

Taylor D Gilliam

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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.”

February 16, 2021.

s/Taylor D. Gilliam  
Taylor D Gilliam  
Appellate Defender

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CERTIFICATE OF SERVICE

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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 16th day of February, 2021 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 Yashawnus Patterson, at 136 Twister Hill Rd Irmo, SC 29063.

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