

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
IN THE MATTER OF THE CARE)
AND TREATMENT OF)
)
JAMES WHALEY,)
RESPONDENT)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO: 2022-CP-02-01640

ORDER OF CONTINUANCE

RECEIVED

NOV 14 2022

SC Court of Appeals

This matter comes before the Court upon a Request for Extension pursuant to S.C.

Code §44-48-80(D) (as amended May 12, 2010).

I hereby find and conclude that the qualified expert, Christopher Gillen, Ph.D., appointed by this Court at the Probable Cause Hearing, has shown good cause for a continuance and that a continuance should be granted.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED THAT:

This case shall be continued for good cause pursuant to S.C. Code §44-48-80(D) (as amended May 12, 2010) for an additional period of no more than 60 days after the Court's pending decision and until such time as the Court is asked to set a trial date, or soon thereafter as the case may be scheduled at the convenience of the Court and the parties.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN IS SO ORDERED:
I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

SEP 09 2022

Robert J. Harte
C.C.P. & G.S., Aiken County, S.C.
Charla Gifford Plouffe
Deputy Clerk

Sept 6, 2022
File, South Carolina

CSP
The Honorable Courtney Clyburn-Pope
Chief Administrative Judge for the
Second Judicial Circuit

FILED September 9, 2022
Robert J. Harte
C.C.P. & G.S.
Charla Gifford Plouffe
Deputy Clerk

RELEVANT FACTS

In this case, Dr. Gillen's affidavit stated he was assigned to complete a court ordered evaluation to provide an opinion on whether Respondent meets the statutory criteria as a sexually violent predator. To offer an opinion on these matters, Dr. Gillen stated he conducts a thorough review of records regarding Respondent, including psychological and criminal offense history records, and that these practices are generally accepted within the field of forensic psychology and are a part of his standard practices when conducting SVP evaluations. Dr. Gillen stated in his review of the file provided he found Respondent had a history of expunged offenses and previously completed an evaluation pursuant to the South Carolina Sexually Violent Predator Act authored by Dr. Tross. Specifically, this information was listed in the Order for New Evaluation.

Dr. Gillen stated that evidence of prior charges and convictions can determine the applicability and relevance of disorders commonly evaluated in sexually violent predator proceedings, including paraphilic and personality disorders. Particularly important are the underlying details and offense dynamics involved in each specific offense. Such information is typically included in incident reports and victim, witness, and suspect statements. Further, Dr. Gillen stated that opinions in Sexually Violent Predator evaluations go beyond diagnostic classification. In these types of evaluations, Dr. Gillen is asked to opine on whether a particular mental disorder, if it applies, is a predisposing mental condition that affects the Respondent's emotional and volitional capacity to commit sexually violent offenses. Therefore, the underlying dynamics of the expunged offenses are essential in rendering an opinion in this matter.

Regarding risk measurement tools, Dr. Gillen stated risk assessment for sexual recidivism entails evaluation of static and dynamic risk factors using structured, actuarial measures. Accurate and reliable scoring of these measures requires the use of expunged offense records. Not only are expunged offenses explicitly intended to be used when scoring these measures, the tools were standardized using data that included such offenses (i.e., such information was not excluded when these tools were developed). Dr. Gillen also noted the actuarial tools he uses are generally accepted and regularly used in risk assessment for Sexually Violent Predator evaluations and that the measurement tools have strong empirical support.

CONCLUSION OF LAW

The purpose of the SVPA, as intended by the legislature, is to protect the public from the dangers presented by sexually violent predators, and to ensure that involuntary commitment procedures under the Act are used to control a subclass of dangerous persons who have 1) committed a sexually violent offense; and 2) suffer from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long term control, care, and treatment. *See* S.C. Code Ann. Sections 44-48-20, 44-48-30. "The Act defines 'likely to engage in acts of sexual violence' to mean the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others . . . [t]herefore, a person's dangerous propensities are the focus of the SVP Act." *In Re: the Care and Treatment of John Phillips Corley*, 577 S.E.2d 451, 453-54 (2003).

To determine a person's dangerous propensities, the SVPA requires a mental evaluation after a finding of probable cause. See S.C. Code Ann. Section 44-48-90. The General Assembly has carefully written the SVPA to lay out exactly what is required to establish whether someone is a sexually violent predator. Particularly, the State must prove the individual has a present risk to reoffend sexually. See *In Re: the Care and Treatment of Christopher Taft*, 774 S.E.2d 462, 466 (2015). See also *State v. Gaster*, 564 S.E.2d 87, 90 (2002) (holding the SVPA permits involuntary confinement when it is determined the person currently suffers from a mental abnormality or personality disorder and is likely to engage in acts of sexual violence).


All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to **all** relevant medical, **psychological**, **criminal offense**, and disciplinary records and reports. See S.C. Code Ann. Section 44-48-90(C) (emphasis added). Further, the SVPA allows for offenses not resulting in convictions to be considered under the plain meaning of criminal offense. See *White v. State*, 649 S.E.2d 172, 176 (Ct. App. 2007) (holding that because the legislature was silent on the definition of offense; it is the intent of the legislature to include both convictions and offenses not resulting in convictions).

After thoroughly and carefully considering the argument of the parties during the August 25, 2022 hearing and the filings in the record, the Court finds that Dr. Gillen's access to the expunged criminal offense records and prior psychological reports is relevant and necessary for him to provide an accurate and reliable assessment of Respondent's mental health status and his risk to sexually reoffend, which is the cornerstone of the SVPA. Accordingly,

IT IS ORDERED that the Attorney General's office will provide the Respondent and DMH copies of all records in its possession related to the Order of Destruction filed December 19, 2017.

FURTHER IT IS ORDERED that the Attorney General's office will provide the Respondent and DMH a copy of Dr. Rozanna Tross' report dated December 22, 2020.

AND IT IS SO ORDERED.



COURTNEY CLYBURN POPE
Chief Administrative Judge
Second Judicial Circuit
Court of Common Pleas

September 20, 2022
Aiken, South Carolina

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NOV 14 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA)
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IN THE MATTER OF THE)
CARE AND TREATMENT OF)
JAMES CARL WHALEY,)
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RESPONDENT.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL DISTRICT

CASE NO # 2020-CP-02-01640

**ORDER DENYING MOTION FOR
SUMMARY JUDGMENT PURSUANT TO
RULE 56, SCRCP**

THIS MATTER came before the Court on the motion of the Respondent, James Carl Whaley for an order entering summary judgment pursuant to Rule 56, SCRCP and dismissing this Sexually Violent Predator action. The Court held an in-person hearing on August 25, 2022. Respondent was present and represented himself, *pro se*. The State of South Carolina was represented by Assistant Attorney General Christopher Runyan. The Court makes the following findings of fact and conclusions of law:

RELEVANT FACTS AND PROCEDURAL HISTORY

The State commenced this action under the Sexually Violent Predator Act "SVPA", S.C. Code Ann. Sections 44-48-10, et seq. by filing of a Petition on or about August 28, 2020.

By order filed on October 27, 2020, the Court found probable cause exists that Respondent is a sexually violent predator and ordered an evaluation pursuant to S.C. Ann. Section 44-48-80. The Department of Mental Health "DMH" assigned Dr. Rozanna Tross, Psy.D. to perform the evaluation, and on or about December 22, 2020, Dr. Tross issued her report opining Respondent meets the criteria to be committed under the SVPA.

In February 2022, after Dr. Tross' report was completed, the issue of the use of expunged records was raised for the first time by the Respondent. The Respondent alleged the State improperly relied on charges that were expunged by Order of Destruction filed December 19, 2017. Subsequently, the State brought this issue to the Court's attention and requested a hearing on the matter to seek the Court's guidance.

On June 20, 2022, a status hearing was held at which the State requested permission from the Court to substitute the original petition with a new petition which removes the expunged records. Further, the State requested that, in fairness to Respondent, he be afforded a new evaluation which would not include a review of the expunged record unless such a review was ordered by the Court.

On July 14, 2022, the Court filed an Order for New Evaluation, and pursuant to the order, the State filed a Substitute Petition on July 14, 2022. On or about July 26, 2022, Respondent filed an Answer to the State's Substitute Petition and moved for summary judgment.

On August 25, 2022, a hearing was held to address Respondent's motion for summary judgment. At the hearing, Respondent asserted he is entitled to summary judgment based on: 1) fraud in the State's petitions, 2) false imprisonment because the SVPA is unlawful and unenforceable, 3) the State is in violation of the U.S. Const. Art. VI, Section 2, and 4) his 2013 sexually violent convictions will be reversed.

LEGAL STANDARD

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 79, 735 S.Ed. 650, 658 (2012), *reh'g den.* Dec. 12, 2012. "In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

In general, if the pleadings and evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented." *Baird v. Charleston County*, 511 S.E.2d 69 (1999). Since it is a drastic remedy, summary judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Id.*

CONCLUSIONS OF LAW

"Sexually violent predator" means a person who: 1) has been convicted of a sexually violent offense, and 2) suffers from a mental abnormality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care and treatment." S.C. Code Ann. Section 44-48-30. If the Circuit Court determines there is probable cause for the person to be taken into custody, the Court must refer the person to DMH "for an evaluation as to whether the person is a sexually violent predator." S.C. Code Ann. Section 44-48-80.

Respondent has failed to present any evidence he is entitled to summary judgment. The Court finds: 1) there was no fraud committed by the State in this SVPA action, 2) Respondent is lawfully detained pursuant to the SVPA, and 3) the Privilege and Immunities Clause of the U.S. Const. does not vest Respondent with immunity from South Carolina's laws.

Further, the Court finds Respondent stands convicted of his 2013 convictions for Lewd Act on a Minor, Disseminating Harmful Materials to a Minor, and Indecent Exposure because his appeals were rejected at both the State and Federal levels. Therefore, Respondent has been convicted of Lewd Act on a Minor and Disseminating Harmful Materials to a Minor, which are qualifying sexually violent offenses, and he is not entitled to summary judgment as a matter of law.

Moreover, Respondent failed to produce any evidence he does not suffer from a mental abnormality or a personality disorder that makes him likely to engage in acts of sexual violence if not confined to a secure facility for long term control, care and treatment. The State alleges a mental evaluation is necessary to make that determination. Thus, there clearly issues of material fact is in dispute regarding Respondent's mental status.


A party is entitled to summary judgment when “there is no genuine issue as to any material fact” and the “moving party is entitled to a judgment as a matter of law.” Rule 56, SCRPC. The Court has thoughtfully, carefully, and thoroughly considered the parties’ arguments, all the filings in the record, and the evidence submitted. Respondent’s status as a sexually violent predator is clearly in dispute, and the Court denies summary judgment.

Accordingly,

IT IS ORDERED that Respondent’s motion for summary judgment is DENIED.

FURTHER IT IS ORDERED that Respondent continues under the jurisdiction of this Court.

AND IT IS SO ORDERED.



COURTNEY CLYBURN POPE
Chief Administrative Judge
Second Judicial Circuit
Court of Common Pleas

September 14, 2022
Aiken, South Carolina