

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

2022 AUG 11 AM 9:15
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M BOND

IN THE COURT OF COMMON PLEAS

Larry Edward Hendricks,

Petitioner,

v.

John H. Magill, Director, South Carolina
Department of Mental Health; Holly Scaturo,
Director, Sexually Violent Predator Treatment
Program, DMH; S.C. Department of Mental
Health,

Respondents.

Civil Action No. 2016CP2000410

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SC Court of Appeals

**ORDER DENYING PETITIONER'S
MOTION TO CHANGE VENUE**

This matter came before me on December 2, 2021 for a hearing on the Petitioner's Motion to Change Venue (the "Motion"), which was filed with the court on June 3, 2019. Appearing at the hearing, which was held via WebEx Virtual Courtroom, were Ola A. Johnson, Esquire on behalf of the Petitioner and Matthew G. Gerrald, Esquire on behalf of the Respondents. After carefully reviewing the Motion and the briefs submitted by the parties, and after considering the arguments of counsel and the governing law, I hereby DENY the motion.

*WJH
#1*

INTRODUCTION

The Petitioner is a resident of the South Carolina Sexually Violent Predator Treatment Program (the "SVPTP"), which was established in 1998 pursuant to the Sexually Violent Predator Act, S.C. Code Ann. §§ 44-48-10 et seq. (the "SVP Act"). The SVPTP is administered by Wellpath Recovery Solutions pursuant to a contract with the South Carolina Department of Mental Health ("SCDMH") and is located at a purpose-built facility on Broad River Road in Columbia. The Petitioner was involuntarily committed to the SVPTP on January 30, 2014 pursuant to an Order of Commitment entered by The Honorable R. Knox McMahon after a multi-day jury trial

in Fairfield County that commenced on January 27, 2014. The jury found there was no reasonable doubt that the Petitioner is a sexually violent predator as that term is defined by S.C. Code Ann. § 44-48-30. Accordingly, the Petitioner was committed to SCDMH for his long-term control, care, and treatment as provided in the SVP Act.

In his Amended Complaint and Petition for Writ of Habeas Corpus Pursuant to In Re Chapman, 419 S.C. 172 (2017) (the “Amended Petition”), the Petitioner alleges he is entitled to issuance of a writ of habeas corpus compelling his release from the SVPTP or, in the alternative, a new commitment trial. As his grounds for seeking habeas relief, the Petitioner asserts he was denied the effective assistance of counsel during his commitment trial and that, as a result, he was deprived of statutory, common law, and due process rights and is now unlawfully confined and improperly in custody. The Respondents deny the material allegations of the Amended Petition and deny that that the Petitioner is entitled to habeas relief.

In the Motion, the Petitioner seeks to change the venue of this action from Fairfield County to Richland County.

ANALYSIS

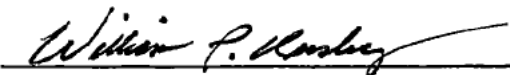
The right of SVPTP residents to file habeas corpus actions is not conferred by the SVP Act, but rather was recognized by the Supreme Court in the case of In re Chapman, 419 S.C. 172, 796 S.E.2d 843 (2017). Because the SVP Act does not address habeas relief, it naturally does not address where such actions should be filed. However, the habeas corpus statutes applicable to convicted criminals, specifically S.C. Code Ann. § 17-17-100, provide that a petition for a writ of habeas corpus must be heard in the county where the petitioner was convicted. Though these statutes apply only to convicted criminals in the custody of the South Carolina Department of Corrections, they represent a public policy that habeas petitions should be heard in the county where confinement was ordered, which in this case is Fairfield County.

Furthermore, the SVP Act provides for an annual review and trial process to determine whether persons committed to the SVPTP are safe to be released. See S.C. Code Ann. § 44-48-110. These proceedings are to take place before “the court which committed the person[.]” Id. In this case, the Petitioner’s commitment trial took place in Fairfield County, and the order committing him to the SVPTP was issued in Fairfield County. This further weighs in favor of resolving this habeas action in Fairfield County.

Finally, habeas corpus petitions filed by residents of the SVPTP are analogous to post-conviction relief applications filed by incarcerated criminals. PCR applications are heard in the county where the conviction took place regardless of where the inmate is confined. See S.C. Code Ann. § 17-27-80. Handling habeas corpus petitions filed by SVPTP residents similarly to PCR applications would mean that such petitions should be heard in the same county as the commitment trial. In this case, that would once again be Fairfield County.

IT IS, THEREFORE, ORDERED that the Petitioner’s Motion to Change Venue is **DENIED.**

AND IT IS SO ORDERED.



William P. Keesley, Presiding Judge

August 8, 2022