

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to the Court of Appeals  
Appeal from Lexington County  
Edgar W. Dickson, Circuit Court Judge

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**RECEIVED**

**May 22 2023**

**S.C. SUPREME COURT**

IN THE MATTER OF THE CARE AND  
TREATMENT OF JOHN SHELBY WELLS,

APPELLANT.

Opinion No. 2023-UP-138 (S.C. Ct. App. Filed April 5, 2023)

APPELLATE CASE NO. 2021-000679

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APPENDIX

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ATTORNEYS FOR RESPONDENT

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

In the Matter of the Care and Treatment of John Shelby  
Wells, Appellant.

Appellate Case No. 2021-000679

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Appeal From Lexington County  
Edgar W. Dickson, Circuit Court Judge

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Unpublished Opinion No. 2023-UP-138  
Submitted March 1, 2023 – Filed April 5, 2023

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**AFFIRMED**

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Appellate Defender David Alexander, of Columbia, for  
Appellant.

Attorney General Alan McCrory Wilson and Senior  
Assistant Deputy Attorney General Deborah R.J. Shupe,  
both of Columbia, for Respondent.

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**PER CURIAM:** John Shelby Wells appeals his commitment to the Department of Mental Health pursuant to the Sexually Violent Predator (SVP) Act (the Act).<sup>1</sup> On appeal Wells argues the circuit court erred by conducting an SVP commitment hearing while he was incompetent. We affirm pursuant to Rule 220(b), SCACR.

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<sup>1</sup> S.C. Code Ann. §§ 44-48-10 to -170 (2018).

We hold the circuit court did not err in proceeding with the commitment hearing notwithstanding Wells's argument that he was incompetent. *See In the Matter of Griffin*, 434 S.C. 338, 341, 863 S.E.2d 346, 348 (Ct. App. 2021) (holding "a prisoner is not entitled to be competent to stand trial under the Act"), *petition for cert. filed* (S.C. Sup. Ct. Oct. 27, 2021); *id.* ("In construing the Act in its entirety, we can find no statutory requirement of competence for proceedings arising under the Act. Rather, it appears the General Assembly contemplated the likelihood of a potential SVP to be incompetent to adequately assist in his or her own defense.").

**AFFIRMED.**<sup>2</sup>

**THOMAS, MCDONALD, and HEWITT, JJ., concur.**

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<sup>2</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Lexington County

Honorable Edgar W. Dickson, Circuit Court Judge

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Opinion No. 2023-UP-138

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IN THE MATTER OF THE CARE AND TREATMENT OF JOHN  
SHELBY WELLS,

APPELLANT.

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APPELLATE CASE NO. 2018-000358

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PETITION FOR REHEARING

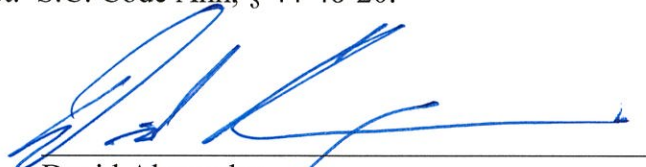
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Appellant John Shelby Wells petitions for rehearing before this Court. This Court cited In the Matter of Griffin, 434 S.C. 338, 863 S.E.2d 346 (Ct. App. 2021) as controlling precedent in appellant's case. Appellant contends that Griffin was wrongly decided. The petition for certiorari in Griffin remains pending before the Supreme Court. Also pending before the Supreme Court is, In the Matter of Oxner, Appellate Case No. 2020-001278, which was argued on March 15, 2022.

If the Supreme Court reverses Griffin and holds that an SVP defendant cannot be tried while incompetent, then appellant will likewise be entitled to reversal of his commitment. The Supreme Court's pending decision in Oxner also bears on appellant's appeal. The due process right to counsel has little meaning if an SVP defendant cannot provide any help to his attorney. In

all SVP trials, the Attorney General will present an expert who says the defendant meets the definition for commitment. While not the only defense, counsel's ability to present a counter-expert is the best defense to create a battle of the experts.

Wells could not participate in an evaluation nor help his attorney. Nor could Wells provide any mitigation, which is another potential defense. Finally, Wells could not give his attorney any help to convince the court a plan existed for Wells' release that would prevent him from reoffending. The Attorney General's interest in having an incompetent person confined in the SVP facility is low, especially under the facts of this case. Wells is nearly deaf, is over seventy years old, has organic brain damage, and is in a wheelchair. Appellant is not a member of the limited class of the "extremely dangerous group of sexually violent predators" envisioned for indefinite incarceration under the SVP Act. S.C. Code Ann. § 44-48-20.



David Alexander  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
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ATTORNEY FOR APPELLANT

This 14th day of April, 2023.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Edgar W. Dickson, Circuit Court Judge

IN THE MATTER OF THE CARE AND  
TREATMENT OF JOHN SHELBY WELLS,

APPELLANT.

APPELLATE CASE NO. 2021-000679

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Deborah R.J. Shupe, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 14th day of April, 2023.



David Alexander  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
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ATTORNEY FOR APPELLANT

# The South Carolina Court of Appeals

In the Matter of the Care and Treatment of John Shelby  
Wells, Appellant.

Appellate Case No. 2021-000679

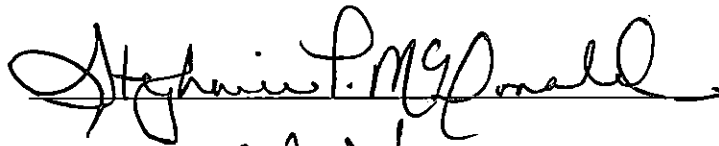
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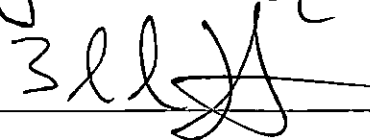
## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

Columbia, South Carolina

cc:

Deborah R.J. Shupe, Esquire  
Alan McCrory Wilson, Esquire  
David Alexander, Esquire  
The Honorable Edgar W. Dickson

**FILED**  
**Apr 20 2023**

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