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Apr 14 2023

SC Court of Appeals

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

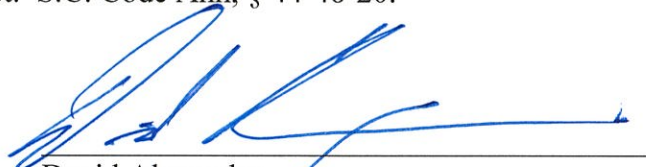
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Appellant John Shelby Wells petitions for rehearing before this Court. This Court cited In the Matter of Griffin, 434 S.C. 338, 863 S.E.2d 346 (Ct. App. 2021) as controlling precedent in appellant's case. Appellant contends that Griffin was wrongly 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  
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ATTORNEY FOR APPELLANT

This 14th day of April, 2023.

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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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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

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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

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ATTORNEY FOR APPELLANT

**From:** [Pollard, Shelby](#)  
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**Cc:** [Alexander, David](#)  
**Subject:** 2021-000679 John Wells Petition for Rehearing  
**Date:** Friday, April 14, 2023 4:12:00 PM  
**Attachments:** [2021-000679 John Wells Petition for Rehearing.pdf](#)

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Good Afternoon,

Please find attached for service in the above referenced case the Petition for Rehearing and Certificate of Service which will be filed today, April 14, 2023, with the Court of Appeals via email filing.

Thank you,  
Shelby

**Shelby Pollard**

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