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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

August 17, 2023

Via ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
POS Box 11629
Columbia, SC 29211-1169

Re: In the Matter of Ronald Garrard
Appellate Case No. 2019-001817

Dear Ms. Kitchings:

This letter is in response to the Court's letter of August 16, 2023, instructing the parties to advise the Court how In the Matter of Frances A. Oxner, ___ S.C. ___, 889 S.E.2d 586 (2023), affects the above referenced matter. While this case does not directly involve mental incompetence to stand trial, the State's position is that Oxner resolves the issue in this matter.

In Oxner, the Supreme Court found "the State has a significant interest in protecting the public from sexually violent people who threaten the health and welfare of the public," and without the ability to proceed against an incompetent person, "the State is unable to protect the public from dangerous sexually violent persons." *Id.* At 590. The Court also found that "[u]nder the very specific procedures outlined in [the Sexually Violent Predator Act], the risk of an *erroneous* deprivation of Oxner's - **any incompetent person's** - liberty interest by involuntary civil commitment is significantly reduced if not completely eliminated." *Id.* (italics in original) (emphasis added).

In its due process analysis, the Court expressly referenced procedural safeguards afforded by sections in the Act outside the scope of the §44-48-100(B) hearing at issue in Oxner, such as the right to a jury trial, additional expert witnesses paid for by the State, and the right to petition for release from commitment at any time. *Id.* at n. 6. Thus, the Court's analysis is not limited to a 100(B) hearing for a person found to be incompetent to stand trial in a criminal court, but applies to any person subject to the Act who is found to be incompetent during the sexual predator civil commitment process.

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In this matter, Appellant claimed he was unable to assist his attorney at trial due to medical issues related to a stroke he suffered while incarcerated after his qualifying conviction. He was never found to be incompetent to stand trial; rather, the primary issue at the sexual predator trial was his inability to speak.

As the Supreme Court found in Oxner, the trial judge in this case found there is no mechanism in the statute or case law that allowed for Appellant's release prior to trial, and doing so would undermine the statute's purpose. Further, as discussed above, the Act affords procedural safeguards to any person subject to the Act, including a person who is unable to speak but otherwise competent.

Finally, Appellant discussed Oxner in his Brief and essentially conceded the Supreme Court's decision in Oxner would directly impact this case. He stated "[s]hould the Supreme Court reverse Oxner and/or Griffin, appellant will also be entitled to reversal of his commitment." (Brief of Appellant, p. 7). The reverse analysis is true. The Supreme Court affirmed the circuit court's ruling in Oxner, and Appellant's concession regarding the effect of the Oxner decision entitles the State to affirmance of Appellant's commitment in this case.

Sincerely,



Deborah R.J. Shupe

Senior Assistant Deputy Attorney General

cc: David Alexander, Assistant Appellate Defender (via email – dalexander@sccid.sc.gov)