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August 18, 2023

RECEIVED

Aug 18 2023

SC Court of Appeals

The Hon. Jenny Abbot Kitchings
Clerk, S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

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

Dear Ms. Kitchings:

Please allow this letter to serve as appellant's response to the Court's letter of August 16, 2023, regarding the impact of In the Matter of Oxner, ___ S.C. ___, 889 S.E.2d 586 (2023), and to Ms. Shupe's letter dated yesterday.


Appellant largely agrees with Ms. Shupe's analysis of Oxner's impact on the first issue on appeal in this case. While technically still alive after Oxner because the Supreme Court has not yet decided whether to grant certiorari in In the Matter of Griffin, 434 S.C. 338, 863 S.E.2d 346 (Ct. App. 2021), it is hard to envision Griffin being reversed after the reasoning of the Supreme Court's unanimous Oxner decision. The best argument that can be made to distinguish Oxner is that the Legislature specifically provided a means to try a person who was incompetent to stand trial on the qualifying offense, but did not do so in regard to the SVP commitment trial. Appellant candidly acknowledges that the reasoning in Oxner makes this a difficult argument.

Appellant would like to remind the Court that this case has two issues on appeal and the second issue is unaffected by Oxner. In lieu of sending a separate letter of supplemental authority pursuant to Rule 208(b)(7), SCACR, appellant would direct the Court's attention to the recent amendment of the SVP Act, specifically section 44-48-30(9) which clarifies the definition of "likely to engage in acts of sexual violence" and bears on the second issue. The amendment, which became effective May 16, 2023, defines this term as "a person is predisposed to engage in acts of sexual violence and more probably than not will engage in acts of sexual violence to such a degree

as to pose a menace to the health and safety of others.”

If the Court requires any further information or has any questions, please do not hesitate to contact me.

Sincerely,



David Alexander
Appellate Defender

c. Deborah R. J. Shupe, Esq.
Client