

SOUTH CAROLINA
COURT of APPEALS

RECEIVED
JAN 29 2025
SC Court of Appeals

Anthony - Shane : Martin

CASE NUMBER

2025-000014

v.

SOUTH CAROLINA
DEPARTMENT of MENATL
HEALTH and KELLY
GOTHARD FACILITY
ADMINISTRATOR Et. Al.
WELLPATH and RON
LAWRENZE FACILITY
ADMINISTRATOR Et. Al.
Dr. MICHELLE DUBIE
FACILITY PSYCHOLOGIST
Et. Al.

Plaintiff brings the following before the courts : PETITION to APPEAL RULING with MEMORANDUM : This submitted on the following grounds to include :

1) Did the Lower Court err applying the SOUTH CAROLINA sexual violent predator act (hence forth S.C. s.v.p.a.) to Plaintiff specifically 44-48-70, 44-48-80 Determining Probable Cause. Also 44-48-100(A) Standard for Determining Predator Status :

2) Did the Lower Court err in relying on defendants failure to speak on Amended Complaint as seen on page #2 / paragraph #3 "Plaintiff here asserts that he should be fully released from the SOUTH CAROLINA sexual violent predator treatment program (hence forth S.C. s.v.p.t.p.) based upon Procedural Time Limits

3) Did the Lower Courts err in relying on the defendants statements on page #2 / paragraph #3 "that the state does not have the burden of proving continued dangerousness yearly.

4) Did the Lower Court err in relying on the defendants statement of 'Mootness' as Plaintiff had recieved Annual Review :

5) Did the Lower Court err in failing to apply "Liberty Interest under the DUE Process Clause :

6) Did the Lower Court err in failing to apply Strict Scrunity Standard to Plaintiffs claims as a Fundamental Right to Live Free from Physical Restraint :

BACKGROUND :

Plaintiff filed the original Motion for Writ of Prempatory and Motion for Dismissal on all named / un - named defendants on or around 22, June 2023 in the Jurisdictional court of York County. Named / un - named defendants filed a timely Motion to Dismiss. This triggered the Plaintiff to file first (1st) Amended Complaint to sepearate the Motion for Prempatory and the Motion to Dismiss form the Complaint. Named / un - named defendants again filed a Motion to Dismiss (a re - interation of the first Motion to Dismiss). The Clerk of Court then submitted a Order for Transport to the Courts in York County on or around 5, Feb. 2024. On the 15, Feb. 2024 Judge Mckinnon dismissed the Plaintiffs Motion with leave to refile. Prior to the court date on the 15, Feb. 2024 the plaintiff had submitted the amended complaint though having yet to serve it on the named / un - named defendants Judge McKinnon dismissed the Amended Complaint as well with leave to refile.

On or around 8, March 2024 an amended complaint was submitted to the courts and served on the named / un - named defendants. to err on the side of caution the named / un - named defendants filed a Motion to Dismiss. Plaintiff resubmitted the Motion to amend complaint to the courts to err on the side of caution in this amended complaint the Plaintiff changed the remedies asked for to better support the Judicial Jursidiction to rule on the case. During this time the SOUTH CAROLINA Department of Mental Health conducted the annual review with hopes of Mooting the case filed. Subsequently the courts dismissed the Plaintiffs case with no explanation as to the grounds as was the paerwork submitted to this court for review. Also at this time the Plaintiffs Summary Judgement was dismissed. Triggering this submission to the courts for review of the ruling on the grounds submitted below.

1) Did the Lower Court err in applying the SOUTH CAROLINA sexual violent predator act (hence forth S.C. s.v.p.a.) to Plaintiff specically 44-48-70, 44-48-80, determining probabale cause, also 44-48-100(A) standard for determining predator status :

A) It is believed that a statue or regulation that involves a protected right such as 44-48-10 Seq. Al. creates a protected Liberty Interest, when an officials failure to adhere to the statue results in an Atypical Significant deprevation of real substance and not simply institution violation. It is further believed the courts must look for the "objective legal reasonableness" of the legal rule, policy staturtory law that is "clearly established" at the time. Under such cases as (Rochin v California 3542 U.S. 165, 172, 72 S. Ct. 205, 209 [96 L. Ed. 183] (1952)) Substantive Due Process "prevents the Goverment" from engaging in conduct that 'shocks the conscience' or interferences with rights 'implicit in the concept of ordee liberty. This violation by the S.C.D.M.H. and KELLY GOTHARD in failing to provide adequate training to their subordinates in regards to the annual review process and / or also failing to apply sanctions to their subordinates for failure to perform in regards to statutory law (44-48-10 seq. al.). Plaintiff further believes this Ministerial Duty was enacted by Legislative wording of "shall" and "must" wording that indicates an action is mandatory. As shown in case (Board of Supervisors v UNITED STATES Ex. Re State Bank 71 U.S. (4 Wall) 435, 446 - 447 18 L.Ed. 419 (1987)) were statues provide for performance of an act by public officials protecting right of the public in the public interest "they are mandatory". This rule has been enuciated by the UNITED STATES SUPREME COURT as follows "the conclusion to be declared from is that were power given to public officers... whenever... individual rights call for the exercise.. the langauge used... is preemptory. In 44-48-70 'must' request that the courts make a probable cause determination, 44-48-80 the hearing 'must' be held within seventy - two hours, 44-48-100 the court or jury 'must' determine whether, beyond a reasonable doubt, 44-48-110(A)(1) A resident committed pursuant to this chapter 'must' have

an evaluation of his mental condition...

The Plaintiff further states that the named / un - named defendants continue to bear the burden of proving dangerousness beyond a reasonable doubt on a 'yearly basis' pursuant to 44-48-110(A)(1) A resident committed pursuant to this chapter must have an evaluation of his mental condition performed by a Department of Mental Health - designated qualified evaluator within one year from date of initial commitment will evaluate the resident's mental condition within one year after a pending review is resolved by a filed court order.... As in (Martin v Bartow 628 F. 3d 871, 874 (7th cir)) each state order continuing (petitioners) commitment or deny to his challenge to such commitment constitute a new judgement for purpose of law and therefore starts a new statute of limitations. Plaintiff further believes that the S.C.D.M.H. and KELLY GOTHARD failed to provide plaintiff with the annual review as required by statutory law 44-48-10 seq. al. this failure in the Time Line Notice and requirement violated the plaintiffs Liberty Interest under Due Process clause enumerated in the UNITED STATES Constitution as well as the Constitution of the state of SOUTH CAROLINA as the interest of the S.C.D.M.H. and KELLY GOTHARD infringes upon a fundamental right... must be narrowly tailored to serve a compelling state interest. This interest being protection of the public though not at the expense of plaintiff being deprived of Liberty Interest. It is further alleged this lack of proving dangerousness runs afoul of the Double Jeopardy Clause as can not be punished for a crime not committed or a crime already served a sentence. By doing so the named / un - named defendants changed the guidelines 44-48-10 seq. al. from treatment to warehousing of plaintiff As lastly there is no statutory guidelines that allows an extension of the Time Line Notice for performing the Annual Review on a yearly basis. Named / un - named defendants unjust enrichment of funding provided by the State to perform to Statutory Guidelines of control, care, treatment does not lie simply because one party benefits from the effort of others instead it must be shown that party was unjustly enriched in the sense that the term 'unjustly' could mean illegal

Public Policy is believed by plaintiff that one cannot "take advantage of his own wrong doing" this being the failure to perform the annual review and spending the money recieved to perform such procedures. The Fourteenth Amendment does not allow the State, S.C.D.M.H. to impose a life sentence or confinement of indefinite duration on individuals who have committed sex offenses once they no longer pose a danger to society. It has been shown that it must be taken into consideration the empasizes that political presure and polotics have on trumpping the fundamental rights of the plaintiff. The Constituion protects individual rights even when they are unpopular. AsJustice Sandra Day 'OConner sagley observed "[a] nation's success or failure in achieving a Democracy is judge in part by how well it responds to those at the bottom and margins of societal order. It has been further stated that "the politics around the program are really thick" and the "politics guide the thinking of those involved in the [release] process" which has been seen as a "political crap shoot". (Third Annual William French Memorial Lecture: A Conversation with Retired Justice Sandra Day O'Conner, 37 Pepp. L. Rev. 63, 65 (2009)). By this failure to perform the S.C.D.M.H. and KELLY GOTHARD cannot know whether any individual satisfy the statutroy criteria for continued committment. By not providing the periodic annual review the named / un - named defnedants authorize prolonged committment, even after committed individual no longer pose a danger. The aversion seems to be the State's concession that a person could be continuedly targeted by one's chronic state therfore prolonging incarceration to indefinite status and a death sentence by Civil Committment.

- 2) Did Lower Courts err in Defendants failure to speak on Amended Complaint as seen on Page #2 / Paragraph #3 "Plainitff here asserts that he should fully released from the SOUTH CAROLINA sexual violate predator treatment program (hence forth S.C. s.v.p.t.p.) based upon Procedural Time Limits :

B) In the Palintiffs Amended Complaint filed in the courts on 8, March 2024 and served upon Defendants at the according time. Plaintiff changed remedies asked for to Injunction and letters of accepting, steps taken, planned to stop the failure to provide Annual Review in the furture. As the S.C.D.M.H. and KELLY GOTHARD must prove under Statutory Law that the Plaintiff continues to meet the guidelines of the S.C. s.v.p.t.p. as confinement under civil commitment is Constitutional only if the state determines and confirms that the basis for commitment still exists or that the Statutory guidelines still apply. It is Constitutionally mandated individuals who constitute a "real, continuing and serios danger to society" may continue to be civilly committed See (Hendricks, 521 U.S. @ 372 (Kennedy, J. concurring) Individuals who are no longer dangerous cannot be Constitutionally continue to be confined. Also (Foucha 504 U.S. @ 77)) holding that a committed individual "may be held as long as he is both mentally ill and dangerous, but no longer", quoting (Jones 463 U.S. @ 368). In (Young v Weston 898 F. Supp. 744 (W.D. Was. (1995)) "we the meaningful Annual Review is central to the s.v.p.a. statue's Constitutionality" Further "We held that s.v.p. committment is narrowly tailored" in part because it is "not subject to any rigid time limit" but rather to the nature and duration of the mental illness". See (P.R.E. LLC v Greenville City Assessor 395 S.C. 67, 74, 716 S.E. 2d 877, 881 (2011)) reading a statute as a whole and in harmony whith it's purpose the courts must read statue in manner such that "no word, cluase, sentence, provision in whole or part" shall be rendered surplusage or superfluous for the General Assembly obviously intended the statue to have some efficacy or legalization would have not enacted the Law. Lastly see (Thrope v VanHolden 63 N.Y. 2d 546, 555, N.Y.S. 1984)) Department of Health failed to comply with the Time Line Notice and Hearing Requirement. See also (Re. Miller 358 S.C. 539), (Rule 41(b) SOUTH CAROLINA Rules of Civil Procedures as such Time Line are Statutory and Constitutional guarantee to adequate reminders to present "Liberty without Due Process" for timeline violation the Supreme Court of SOUTH CAROLINA stated the proper remedy

was to file a 'Motion to dismiss'. The Plaintiff has the belief that under such cases as (Re. Del Ambers 160 Wash. 2d 543, 583, N.4, 559, N.7 158 P. 3d, 1144, (2007)) "opined that because of the states continued Due Process obligation to confine only dangerous persons it might be unconstitutional to require [] a more stringent standard to the annual review hearing then is required for initial commitment. This violation being the annual review hearing, the Attorney Generals right to challenge, then appearance before the S.C. D.M.H. release board, before the release trial. This extra step being more stringent as have already been reviewed by a S.C.D.M.H. qualified evaluator per 44-48-80(D). This causing a presumption of punitive conditions where the individual is detained for civil commitment under conditions that are identical to, similar to, or more restrictive than those held to for pre-commitment.

3) Did the Lower Court err in regards to defendants statement on page #2 / Paragraph #3 "that the State has the burden of proving continued dangerousness".

C) Involuntary commitment of a person pursuant to this chapter "must" conform to Constitutional requirements. Under 18 U.S.C. § 4248(b). The Adam Walsh Act authorizes civil commitment of an individual by "clear and convincing evidence". This burden is satisfied 'only' when the material offered instantly tilts the scales in (it's favor). Under (Hendricks supra 521 U.S. 346, 358 [117 S. Ct. 2072, 2080] "the verdict can not be based on prior crimes absent evidence of a current mental disorder". The "narrow exception aside from permissible confinement for mental illness" relate to the authority to detain.... prior to... "carefully limited" circumstances in order to protect the power to prosecute and the reasonable protection of the community". Also under (Foucha v Louisiana 540, U.S. 71, 80 - 83, 112 S. Ct. 1780 118 L. Ed. 2d 437 (1992)) continued confinement improper absent a determination... of a 'current' mental illness and dangerousness. The State 'must' determine if individual continues to meet the definition of s.v.p. The State and

S.C.D.M.H. failure to present this 'Prima Facie' evidence on a 'yearly basis' as required by 44-48-110(A)(1) transferred the civil commitment into a warehousing of individuals. The State and the S.C.D.H.M. attempts to apply post 2023 Legislative amendments to the Plaintiffs case fails as this does not remedy the pre - 2023 amendments harm done by the Time Line Failure and continued confinement with out proof. As can be seen in (Martin v Bartow 628 F. 3d 871, 874 (7th Cir.) Each state court order continuing (petitioners) commitment or deny to his challenge to such commitment constitute a 'New Judgement' for purpose of Law and therefore starts a "new" statue of Limitation. Lastly the allegation that the statue does not set grounds for the individual's petition for "Less Restrictive Setting" This lack of affirmative action on behalf of the individual who no longer satisfy the criteria or who no longer prove a danger to society is a fatal flaw that renders the statue not narrowly tailored and results in punitive effect and application contrary to the purpose of Civil Commitment. See (Hendricks 521 U.S. @ 361 - 362)).

4) Did the Lower Courts err in ruling on grounds of Defendants statement of "Mootness"?

D) In such cases as (Federal Election Comm'n v Wisconsin Right to Life 551 U.S 449, 127 S. Ct. 2652, 168 L. Ed. 2d 329)) issue if the conflict with in the established exception to Mootness for dispute capable of repetition, yet needing review (Id). Under (2) there is a reasonable exception that some complainig party will be subjected to the same action again. Further mootness under the 'personal stake requirement' as the Plaintiff overall allegations of Constitutional, Statutory violations are still a legal cognizable interest and concern in the outcome as the decision of S.C.D.M.H. and the state in performing the Annual Review remains as no Judicial sanctions for the failure to perform per statue. Lastly the Plaintiff refrained from application of 'Class Certification' as there is 150 - 200 (+ / -) individuals are housed under the S.C. s.v.p.a. Further see a number of

other cases alleging the same failure in Statutory conforming action by the named / un - named defendants (Richard Capps v S.C.D.M.H., Roy Wade v S.C.D.M.H., David Walls v. S.C.D.M.H. This class certification would have voided the mootness argument. Further the Plaintiff states that the State, and S.C.D.M.H. performing the annual review does not moot the allegations or answer the Due Process and 'more restrictive' issues to not be confined under a system that ignores proper Statutory and Constitutional safeguards to protect Plaintiffs Liberty Interest. As the harm being holding individuals through the unjust confinement. That fails to properly assess whether individuals continue to pose a sufficient risk to warrant continued detention. This compounding a sense of helplessness, and the belief of incarceration up to death

5) Did the Lower Courts err in failing to apply Liberty Interest under Due Process?

E) In cases such as (Caldwell v Miller 790 F. 2d 584, 609 - 610 (7th Cir. 1986)) an agency must conform its actions to procedures that it has adopted. By the S.C.D.M.H. accepting the responsibility to undertake the S.C.s.v.p.t.p. they must also undertake the Statutory wording of Legislative Intent. Constraint have been applied to decisions that deprive the Liberty or Property Interest within the wording of the Due Process of the Fourteenth Amendment. This can arise from two (2) sources the Due Process Clause itself and the Law of the State. State and Federal caselaw has long recognized that civil commitment is a "massive curtailment of Liberty". The Substantive Due Process of civil commitment may be defined 'only' if they are both mentally ill and pose a Substantial Danger to the Public as a result of the Mental Illness. The state at all Pre - commitment Hearings has the burden of proving dangerousness and the "current" mental abnormality or personality disorder. In (Martin v Bartow 628 F. 3d 871, 874 (7th Cir.)) Each State order continuing or deny to his challenge to such commitment constitute a New Judgment for the purpose of Law and therefore states a New Statute of Limitation.

In (State v Brewer 767 SO 2d 1249 (Fla. App. 5th Dist. (2007))) The state of Florida grants everyone two (2) basic but highly important protections 1) the Double Jeopardy Protection, 2) no one can be punished at all for a crime which he has not been convicted. There is another right so basic and logical that it is not even mentioned in the Constitution and that right is to not punish for a crime that has not yet occurred. This failure of the Time Line Statute violates that unmentioned basic right. When the annual review is not done in a Constitutional manner as failure to follow Statutory Law. When a Fundamental right is involved courts subject the law to Strict Scrutiny, placing the burden on the State to show the law is narrowly tailored to serve a compelling state interest. This fundamental right of the ability to Live Free from Physical restraint a constraint by curtailment of Liberty. It is believed this case is distinguishable from other challenges to the involuntary civil commitment where it is represented to the courts that the S.C. s.v.p.t.p. anticipated duration of completion is a few years or only 'potentially indefinite'. See (Kansas v Hendricks 521 U.S. 346, 364 (1997)) stating that "commitment under the Act is only 'potentially indefinite' because [t]he maximum amount of time an individual can be incapacitated pursuant to a single Judicial Review is one year. If the state seeks to continue the detention beyond a year the courts must once again determine the satisfaction of initial requirement rulings. The UNITED STATES Supreme Court has held that a civil commitment statutory scheme is permitted provided that an individual is not detained past the time they are no longer dangerous or no longer have a mental illness without rendering the statute punitive in purpose or effect to negate a Legitimate nonpunitive civil objective.

6) Did the Lower Courts err in failing to apply Strict Scrutiny Standard to Plaintiffs claim as a Fundamental Right to live Free from physical restraint.

F) The Plaintiff states that the S.C.D.M.H. cannot show how or why the failure to perform the annual review according to Statutory Law is furthering a "Compelling State Interest". Under a "narrowly tailored aspect" as set in the Strict Scrutiny Standard. Instead of an irreparable harm which lacks "careful, rational reflection [towards those] under their control, care, and treatment as set by 44-48-10 Seq. Al. Lastly it is essentially alleged a person denied proper treatment by named / un - named defendants. This purported periodic annual review is for all intent and purposes a 'sham', as it is alleged a systematic failure if not only in it's inconsistency with Due Process but also it's contrary to Statutory Standards (and corresponding Judicial Order). As an individual may be initially committed to the S.C. s.v.p.t.p. on proof of satisfaction of the Statutory criteria but prohibits a discharge unless he satisfies a higher standard, which requires that he demonstrate among other things that he "is capable of making acceptable adjustments to open society. This is alleged as a one - way door that has resulted in essentially lifelong commitment.

Lastly the Plaintiff alleges that the S.C.D.M.H. and named / un - named defendants acted with deliberate indifference or in the least gross negligence in failing to give slight care to the actions they performed or failed to perform. AS there is the existence of a legal duty to act for the care of those in care of a government agent is tantamount to the control, care, and treatment of the 44-48-10 Seq. Al Constitutionality. Acting under 'recklessness' and the state of mind that the S.C.D.M.H. and named / unnamed defendants were understanding and knowing they failed in the performing the annual review in a timely manner. They further failed in exercising slight care in their actions and done the harm in an intentional manner. The Supreme Court has recently concluded that 'deliberate indifference' exist when an official know that a serious risk of harm and disregards that risk by failing to take reasonable measures to abate it. This harm being that failure to perform the annual review in the TimeLimit of the Statutory Guidelines set by Legislation.

CONCLUSION :

Plaintiff states that as applied 44-48-10 Seq. AL. is not narrowly tailored to a 'compelling state interest' as the failure to perform the annual review as described in the above submitted paperwork has no Legislative sanctions to that failure. Further it is not narrowly tailored as there is no meaningful relationship between the treatment program and discharge from custody. as progression through the phases of treatment has been slow, for so many, and treatment has never been a way out of confinement for committed individuals, especially in light of the failure to perform the annual review in a timely manner. As there is no Timeline extension written into the Statutory Law of 44-48-10 Seq. Al.

The treatment program has been plagued by lack of funding, staff shortages, and periodic alterations in the treatment program resulting in committed individuals having to go through stoppages and starting over again. Even if the treatment that was provided had lead to a reduction in the risk of offending of some committed individuals the identified risk assessment problems in the "new" program have nullified any such positive effect. The fourteenth amendment does not allow the State or the S.C.D.M.H. to impose a life sentence or confinement of indefinite duration on individuals once they no longer pose a danger to society. The courts emphasize that politics, and political pressures cannot trump the fundamental right pursuant to law of those civil committed. The Constitution protects individual rights even when they are unpopular. It is further alleged by Plaintiff that notwithstanding its civil attributes the practical effect of the statute 44-48-10 Seq. Al. may be to impose confinement for life. At this stage medical knowledge, cannot predict future treatment psychiatrist and other professionals engaged in treatment may be reluctant to find measurable success in treatment even after a long period and may be unable to predict that no serious danger will come from the release of the individuals. It has been the common response "A life term is exactly what the sentence should have been anyway (testimony of Jim Blaufuss App. 503)) The point however is

not how long the criminal sentence should have been as for some the life sentence may have been the only way to protect society and vindicate the wrong. The concern instead is whether it is the criminal system or the civil system which should make the decision in the first place. If the civil system is used simply to impose punishment after the State makes an improvident plea bargain on the criminal side, then it is not performing its proper function. These concerns persist whether the civil commitment statute is put on the individual before or after we should bear in mind that while incapacitation is a goal common to both the criminal and the civil systems of confinement, retribution and general deterrence are reserved for the criminal system alone.

When society acts to deprive one of its members of his life, liberty or property it takes most awesome steps. No grand respect for nor allowance to the law as a whole can be expected without judicial recognition of the permanent need for prompt and eminently fair law procedures. The method employed in the enforcement of the law how to apply them have been called the measures by which the quality of civilization may be judged.

Further the Plaintiff sayth not.

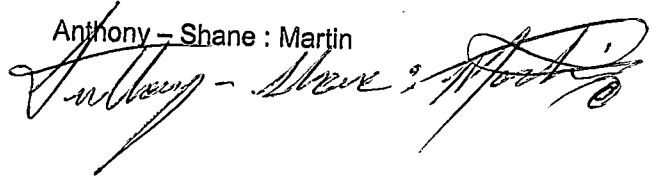
Verification, signature page to follow :

VERIFICATION :

By Plaintiffs signature below it is declared to the best of the Plaintiffs knowledge, information, and belief that this is true and (1) not being presented for improper purposes such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation, (2) is supported by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law, (3) the factual content(s) have evidentiary support or if specifically identified will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Further the Plaintiff sayth not

Anthony - Shane : Martin

A handwritten signature in cursive script that reads "Anthony - Shane : Martin". The signature is written in black ink and is positioned to the right of the typed name above it.

Anthony - Shane : Martin

C/o WELLPATH

4546 Broad River Road

Columbia, SOUTH CAROLINA

[29210]

DECLARATION of VULNERABLE ADULT / RESIDENT FILING

I Anthony - Shame : Martin declare by my signature below that on the following date : 27, Jan 2025 I deposited into the facility mail system the following paperwork : _____

Motion to appeal / Ruling (in court / served on defendants)
Motion to appeal (served on defendants counsel)

It is further declared that as Vulnerable Adult / Resident confined in a facility the above-named document(s) were mailed to the following : _____

Mc Kay Law Firm 3700 Forest Drive Ste 404 Columbia SC
Copland, Stein, Vale & Towell 40 Calhoun St. 9K400 Charleston SC

This done by the UNITED STATES Postal Service and First – Class Postage paid by the Vulnerable adult / Resident or the Facility. This is declared under Penalty of Perjury and is correct see (28 U.S.C. § 1746 ; 18 U.S.C. § 1621)).

SI Anthony - Shame : Martin

Anthony : Martin

C/o WELLPATH

4546 Broad River Road

Columbia, SOUTH CAROLINA

[29210]

RECEIVED

JAN 29 2025

SC Court of Appeals

Anthony & Martin
7/0 Well path
1546 Broad River Rd
Columbia, South Carolina
[29210]

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JAN 29 2025

SC Court of Appeals

Clerk of Court

Box 11330

Columbia, South Carolina

29211

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JAN 29 2025

S.C. SUPREME COURT

