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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger M. Young, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF BENJAMIN HEYWARD,

APPELLANT

APPELLATE CASE NO. 2024-001690

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in allowing appellant to voluntarily commit himself to the Sexually Violent Predator facility?

STATEMENT OF THE CASE

The Attorney General filed a petition in Charleston County seeking appellant's commitment to the Sexually Violent Predator secure facility and on September 3, 2024, a hearing was held before the Honorable Roger Young. R. 1. Christopher Runyan represented the Attorney General. R. 1. Nancy Carol Fennell represented appellant. R. 1. Judge Young found that appellant had freely and voluntarily decided to commit himself to the SVP facility. R. 12. The court entered a written Order of Voluntary Commitment. R. 14. This appeal follows.

STANDARD OF REVIEW

Statutory interpretation is a question of law and should be reviewed de novo.

ARGUMENT

The trial court erred in allowing appellant to voluntarily commit himself to the Sexually Violent Predator facility.

The Sexually Violent Predator Act does not contain a provision allowing voluntary commitment. The first contested proceeding in an SVP case is the probable cause hearing. S.C. Code Ann. § 44-48-80. The statute governing probable cause hearings uses mandatory language, stating the court “must determine” whether probable cause exists and that a defendant “must be taken into custody” if probable cause is found. S.C. Code Ann. § 44-48-80(A).

At the hearing, the court “must” verify the defendant’s identity, receive evidence and arguments from the parties, and determine the existence of probable cause. S.C. Code Ann. § 44-48-80(B). The statute also lists the defendant’s rights at the hearing. S.C. Code Ann. § 44-48-80(C). None of the listed rights include the ability of a defendant to voluntarily commit himself. S.C. Code Ann. § 44-48-80(C).

The next section in the SVP Act is dispositive. S.C. Code Ann. § 44-48-90. It states, very simply and very clearly, “The court must conduct a trial to determine whether the person is a sexually violent predator.” S.C. Code Ann. § 44-48-90(1). The remainder of section 90 describes how and when the trial must take place. It offers no mechanism for voluntary commitment. It gives no guidance on how to determine whether a defendant is an SVP without a trial.

Crucially, section 90 seems to contemplate there will be a trial even when a defendant does not contest the DMH evaluator’s opinion. S.C. Code Ann. § 44-48-90(B). If the DMH evaluator opines the defendant qualifies as an SVP, the defendant has the right to obtain his own expert to fight the Attorney General’s commitment attempt. S.C. Code Ann. § 44-48-

80(D). But section 90 says, “If neither party seeks an independent evaluation, then the trial must be before a judge, or a jury if a jury trial is requested, in the county where the offense was committed within ninety days of the date the [first evaluation is issued].” S.C. Code Ann. § 44-48-90(B). This part of the statute shows that even when a defendant does not contest the original evaluation, the court “must” still hold a trial.

The next section in the Act also supports the conclusion that a trial must be held. S.C. Code Ann. § 44-48-100(A). This section says that the “court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator.” *Id.* Again, nothing in this section allows a defendant to admit he is an SVP and circumvent the statutory requirement for a trial.

The SVP Act is styled as a civil statute to avoid bothersome legal technicalities like the Double Jeopardy Clause. *See In re Allen*, 351 S.C. 153, 568 S.E.2d 354 (2002) (holding SVP Act does not violate Double Jeopardy Clause). But examining the statutes pertaining to criminal procedure is instructive on this issue because they specifically provide for a guilty plea. S.C. Code Ann. § 17-23-80. “No person indicted for an offense shall be convicted unless by confession of his guilt in open court, by admitting the truth of the charge against him by his plea or demurrer, by the verdict of a jury accepted and recorded by the court or as provided in Section 17-23-40.” *Id.* No comparable statute titled “Manner by which persons may be committed” exists in the SVP Act.

The civil statutory scheme that somewhat resembles the SVP Act is the Probate Code as it also deals with commitment proceedings. If a person lacks capacity, the probate court can appoint a guardian. S.C. Code Ann. § 62-5-303(A). The Probate Code specifically gives the

guardian the power to consent to a custodial placement. S.C. Code Ann. § 62-5-303A(B)(1),(6). The SVP Act has no such provision.

In appellant's case, the trial court found probable cause and ordered him evaluated. R. 3. Dr. Christopher Gillen from DMH evaluated appellant and found he met the elements required for commitment. R. 3. Appellant's attorney told the court that appellant did not want an independent evaluation. R. 6. Appellant wanted to voluntarily commit partly because he thought he would receive better health care at the SVP privately run facility than at the Charleston County Jail. R. 6. She had previously explained to appellant he had the right to a trial and told the court that appellant understood the rights he was waiving. R. 6.

Appellant told the judge he was not giving up because he was an SVP, but because "all odds are against me" and he was not "going to be successful in this matter." R. 7. The judge and the defense attorney then went through a colloquy with appellant similar to a guilty plea colloquy. R. 8-12. The judge's written Order committing appellant cites no provision specifically allowing for voluntary commitment without a trial. R. 14-15.

The trial court lacked the statutory authority to commit appellant without conducting a trial. Unlike the criminal and probate codes, the SVP Act does not allow voluntary commitment and requires a trial. Regardless of the results of the colloquy or whether appellant understood his rights, the court could not find he was an SVP without conducting a trial. This Court should reverse appellant's commitment and remand for a trial.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's commitment and remand for a trial.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 3rd day of April, 2025.

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IN THE MATTER OF THE CARE AND
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APPELLATE CASE NO. 2024-001690

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Benjamin Heyward states:

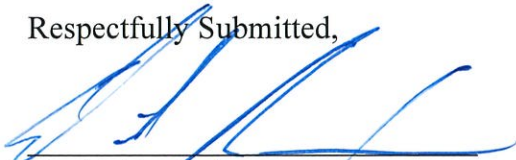
1. He is Deputy Chief Attorney For Capital Appeals for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Roger M. Young, which was held on September 3, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Benjamin Heyward.

Respectfully Submitted,



David Alexander

Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 3rd day of April, 2025.

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IN THE COURT OF APPEALS

Appeal from Charleston County

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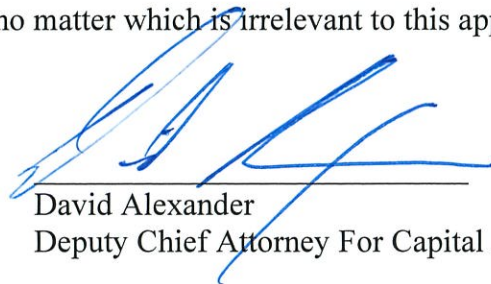
APPELLATE CASE NO. 2024-001690

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Hearing Transcript dated September 3, 2024; and
- (2) Order of Voluntary Commitment

I certify that this designation contains no matter which is irrelevant to this appeal.



David Alexander
Deputy Chief Attorney For Capital Appeals

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(803) 734-1330

ATTORNEY FOR APPELLANT

This 3rd day of April, 2025.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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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 Anders Brief of Appellant and Designation of Matter 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); and on Benjamin Heyward, Well Path, 4546 Broad River Road, Columbia, SC 29210, this 3rd day of April, 2025.



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