THE STATE OF SOUTH CAROLINA

In the Court of Appeals

From Richland County Court of Common pleas

The Honorable Daniel Coble

MICHAEL T.BRAXTON.....Appellant,

v.

Don A.Thompson.....Respondent.

Appellate Case No. 2025-000172

FINAL BRIEF

MICHAEL T. BRAXTON, Appellant

4546 Broad River Rd

Columbia, SC 29210

TABLE OF CONTENTS

TABLE OF AUTHORITES

i cont.

U.S. CONSTITUTIONAL STATUTES

Pg

SOUTH CAROLINA STATE STATUTES

SOUTH CAROLINA STATE COURT RULES

S.C.D.C. AGENCY POLICIES

i cont.

ISSUES ON APPEAL

1. Was the Defendant **Attorney Don A. Thompson** while acting in his Professional Capacity, under **COLOR OF STATE LAW**, Grossly Negligent and **INEFFECTIVE** in his role as a prominent impediment in the Infringement of the Appellant's **4th Amendment** Right to a Constitutionally Adequate **[PROBABLE CAUSE]** determination; as well as the Abrogation of the Appellant's **5th,6th,8th and 14th United States Constitutional Due Process rights**, by failing to provide him EFFECTIVE Assistance of counsel Pre-trial, which undermined the proper functioning of the Adversarial Process?

2. Did the **INEFFECTIVENESS** and **APATHY** of the Defendant **Don A. Thompson** cause his representation to fall Below the **OBJECTIVE STANDARD OF REASONABLENESS** thereby **SUBSTANTIALLY PREJUDICING** the Appellant, then provided the vehicle to **ILLEGALLY** confine him under an [act] that is **NOT** applicable to him?

STANDARD OF REVIEW

" Questions of statutory construction are a matter of law". **Boiter v. S.C. Depart of Transp., 393 S.C. 123,132,712 S.E. 2d 401,405 (2011)**

The **United States Supreme Court** " repeatedly has recognized that a Civil Commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection". **Addington v. Texas, 441 U.S. 418,425,99 S.Ct 1804,60 L.Ed 2d 323 (1979) accord Vitek v. Jones, 445 U.S. 480,491-92, 100 S.Ct 1254,63 L.Ed 2d 552 (1980)**

In accordance with these directives, **Section 44-48-90** of the South Carolina Code provides: " At all stages of proceedings under **[the Act]**, a person subject to **[the Act]** is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel to assist person". **S.C. Code Ann. 44-48-90 (B)**

Given the significant due process implications inherent in Civil Commitments, we find **Section 44-48-90's** right to counsel is not merely a statutory right, but also a constitutional one arising under the **FOURTEENTH AMENDMENT** and the **SOUTH CAROLINA CONSTITUTION**. C.F. **Vitek, 445 U.S. at 496-97,100 S.Ct 1254; In re Care & Treatment of Ontiberos, 295 Kan. 10,287 P.3d 855,864-65 (2012)**

Lest this right ring hollow, we further hold this right to counsel, one consequently has right to effective assistance of counsel during SVP proceedings. **Smith v. State, 146 Idaho 822,203 P.3d 1221,1232-33 (2009)**

STATEMENT OF THE CASE

This matter is respectfully brought before the **honorable Court of Appeals in the state of South Carolina.**

The Appellant Michael T. Braxton submits his appeal of the Final decision of the **Richland County Court of Common Pleas, dated January 7, 2025.**

Upon hearing on **December 19, 2024,** the honorable Daniel Coble Dismissed the Appellant's complaint against the Defendant Don A. Thompson, inspite of a Clear and Concise showing that the Defendant was Ineffective and Indifferent during his tenure as the Appellant's counsel.

STATEMENT OF THE FACTS

1). **On April 6, 1983**, the Appellant and two co-defendants were accused of sexually assaulting a woman in a Days Inn hotel room in Anderson, South Carolina.

2). On **June 1, 1983**, the Appellant was indicted on a charge of CSC 1st degree by the Grand Jury of Anderson County under an **ILLEGALY** obtained **TRUE - BILLED** indictment. R.

This indictment is **VOID**, since it was obtained **OUTSIDE** the **MANDATORY** statutory **TERM OF COURT. Case No. 1983-GS-04-801 (EX- A) R.(DoM)**

3). On **October 24, 1983**, the Appellant being **UNINFORMED** of **ALL** the **FACTS** and **CONSEQUENCES** pled Guilty in the Criminal Court of Anderson County to a **1-6 Year YOA sentence** that was supposedly pre-negotiated. R.

4). On **November 17, 1983**, the Appellant was sentenced to a (30) THIRTY YEAR sentence, or the option of CASTRATION, then upon the surgical completion (5) FIVE Years probation. R.

BOTH of these conditions of the plea were unbeknown to the Appellant prior to the plea!

5). After serving (10) TEN YEARS and (4) FOUR MONTHS, the Appellant was Paroled to the State of Tennessee via Interstate Corrections Compact Agreement.

6). The Appellant remained on successful Parole supervision from **March 31,1994 – April 16, 1996**, at which time he was detained for an unrelated offense at the Davidson County Justice Center in Nashville, Tennessee.

7). A Parole Violation Warrant was served against the Appellant on **May 28, 1996.** R.

8). The Appellant's **Unscrupulous, Ineffective, Ultimately DISBARRED** Counsel in Tennessee allowed him to be detained for (2) TWO YAERS, while the State suppressed his entire consent defense; a PROBABLE CAUSE or REVOCATION hearing was not afforded to the Appellant.

The Appellant's Detention was predicated on the accusation of him sexually assaulting a woman in a Tennessee Day Inn Hotel room. The **[RECORD]** in this matter corroborates the accuser's testimony **UNDER OATH that "She REMOVED HER OWN CLOTHES", " COULD HAVE LEFT ANYTIME SHE GOT READY", or the Appellant "WOULD HAVE TAKEN HER ANYWHERE SHE WANTED TO GO".**

This testimony went on to include her RECANTMENT at trial that the Appellant **"PENETRATED HER WITH HIS PENIS"**, then at trial she stated that **"SHE WAS ABLE TO PREVENT THE PENILE PENETRATION, BUT SOMEHOW THE APPELLANT WAS ABLE TO FORCIBLY PERFORM ORAL SEX ON HER?**

Her testimony was the **ONLY** confirmation of sex EVER occurring, even though BOTH Hospital and T.B.I. examination reports were available. **(Case No. 97-B-1350)** R.

9). On **March 23-24, 1998**, the Appellant completely disarmed of his viable defense, was found guilty by a Davidson County Jury of Aggravated Rape and Aggravated Assault.

10). On **May 1, 1998**, the Appellant was sentenced to (23) TWENTY-THREE YEARS in the Tennessee Department of Corrections, with NO Parole eligibility.

11). On **June 8, 1998**, a SECOND Parole Violation Warrant was issued against the Appellant.

12). On **November 2, 2015**, the Appellant Expired his Tennessee sentence, without **EVER** receiving a **PROBABLE CAUSE or REVOCATION** hearing.

13). After a brief detention at the Lauderdale County Detention Center in Ripley Tennessee, the Appellant was ILLEGALLY Extradited back to Anderson County, South Carolina on **November 8, 2015.**

14). On **November 18, 2015, (20) TWENTY YEARS LATER**, the Appellant received an Administrative Hearing in Anderson County to address the Parole Violation Warrant. (EX- B) R. (Doms)

15). On **January 20, 2016,** the Appellant went before the Full Parole Board of the State of South Carolina, at that time he was remanded back to the South Carolina Department of Corrections under a **NEW** sentence **WITHOUT DUE PROCESS!**

16). From **January 20, 2016 – February 26, 2021**, the Appellant served the NEW sentence within SCDC, the Expiration status of his ONE and ONLY South Carolina sentence was **NOT** recognized PRIOR to his inception back into SCDC; and regardless of his notification efforts provided to ALL known parties in authority, the Appellant's sentence **EXPIRED (2) TWO MORE** Times while serving the ILLEGAL sentence!

This includes when the Appellant's sentence was **INVALIDATED** by the Honorable SOUTH CAROLINA COURT OF APPEALS on **July 1, 2020**.

The South Carolina Department of Corrections **REFUSED** to adhere to the Order of this court or the directive of the South Carolina Administrative Law Court.

17). The Appellant was transferred to the Anderson County Detention Center from SCDC on **February 26,2021**, and he remained at this facility until **January 17, 2023 (678) SIX-HUNDRED SEVENTY-EIGHT DAYS**, imprisoned under an [Act] that is inapplicable to him.

18). On **January 17, 2023**, the Appellant was transferred from the Anderson County Detention Center to the **WELLPATH** Treatment facility, a subsidiary of the South Carolina Department of Mental Health, located in Columbia, South Carolina.

The Appellant remains confined at this **MAXIMUM**-security facility even though he was recommended for release by the South Carolina Department of Mental Health on **May 29, 2024.**

ARGUMENT I

Attorney Don A. Thompson was not the Appellant's counsel at trial, however, he was assigned as counsel to the Appellant with the intent to prepare him for trial in this matter.

Attorney Thompson's Controversial and Abrupt departure was the result of his unyielding devotion to his role within a **" BAD-FAITH"** Prosecution.

Throughout his tenure as the Appellant's appointed counsel, he exerted a Conscious, Methodical Agenda to ensure that the Appellant was deprived Due Process.

This is not only a violation of the Code of Conduct he is bound by as a Fiduciary; his oppressive tactical regiment resonates as an **UNDENIABLE** Infringement on the **Appellant's 14th Amendment** Right to " **EFFECTIVE** assistance of counsel at **[ALL]** stages of the (SVP) proceedings". **S.C. Code Ann. 44-48-90**

Attorney Don A. Thompson stated in his testimony at a hearing before the Honorable Eugene C. Griffith on **July 1, 2024**, that he has been in the practice of law for on or around **(40) FOURTY YEARS**; he was appointed in the cause of the Appellant by the **Anderson county Court of Common Pleas on July 27, 2020**.

His First contact with the Appellant was on **October 21, 2020**, this interaction occurred by phone, and with the Appellant being totally naïve to the SVP induction process, he agreed to forgo his right to a **[PROBABLE CAUSE]** Hearing.

Attorney Thompson's platform upon which he based his appeal to the Appellant to waive his Probable Cause Hearing, was basically that the hearing was a Formality, instead of what it actually was a **NECESSITY!**

Attorney Thompson stated at the **July 1, 2024 Habeas Corpus Hearing** that **" there was no way in the world that a judge is not going to find Probable Cause in this matter and I said we just need to go ahead and waive Probable Cause and get this thing moving along as quickly as possible". (EV-TR pg. 86) Michael T. Braxton v. SCDMHS, Case No. 2023-000661/ 2024-001727 (EX D) R.**

Attorney Thompson also conveyed his concern of the delays due to COVID, but what was never proposed was conducting an investigation to present a Contest to Probable Cause.

The following issues were available to contest Probable Cause in the matter of the Appellant:

A). The Expiration Status of the Appellant's sentence BEFORE he was extradited back to South Carolina, then TWICE while being incarcerated within the South Carolina Department of Corrections, BEFORE the (SVP) Process was applied to him.

1). After a Parole violation warrant was lodged against the Appellant on **May 28, 1996**, while being detained at the Criminal Justice Center in Davidson County, Nashville Tennessee on unrelated charges, the Appellant's Service Time on his One and Only South Carolina sentence was **TOLLED** during his **(2) TWO YEAR Pre-trial detention, which was the FIRST occasion of his South Carolina sentence EXPIRING.**

The Tolling continued for the duration of the Appellant's Tennessee sentence, until finally he was returned to South Carolina on **November 8, 2015**.

This UNLAWFUL Tolling has transpired in stanch disregard to Congressionally Sanctioned Statute enacted as **TITLE 18 [FUGITIVE TOLLING ACT] 3583 (i).**

The **UNITED STATES COURT OF APPEALS** is **UNAMBIGUIOUS** in it's holding that **ONLY** if a defendant fled " with intent to avoid arrest or prosecution" would he have fugitive status for purposes of tolling limitations period based on fugitive status.

The Honorable Court went on to establish it's holding in **U.S. v. Thompson, U.S.C.A. 4th Cir 924 F.3d 122 (May 10,2019),** as it stated: " defendant was no longer a fugitive, and tolling no longer applied as of the date he was located and arrested.

The Material Fact(s) contained within the record are Unequivocally Clear on the issue of the Appellant **NEVER** absconding from custody after being detained on **April 16,1996** to this date.

Synchronous to the aforementioned [Act] and supporting Federal Caselaw, the Appellant provides: **S.C.Code Ann. 17-11-10 [INTERSTATE AGREEMENT ON DETAINERS]**, as it states: " During continuance of temporary custody or while prisoner is otherwise being made available for trial as requested by this agreement, time being served on the sentence **SHALL CONTINUE TO RUN** but good time shall be earned by the prisoner only if and to the extent, the law and practice of the jurisdiction which imposed the sentence may allow".

In conjunction with the **[I.A.D.] (INTERSTATE AGREEMENT ON DETAINERS ACT), jurisdictions, proceedings, persons, offenses involved Parole and Probation, 35 C.J.S. EXTRADITIONS and DETAINERS 101 provides:** " **[I.A.D.]** act generally Does **NOT** apply to persons who have been placed on parole in the **SENDING** state, however, it **DOES** apply to a prisoner who

is paroled from the **SENDING** state, while awaiting trial in the **RECEIVING state".**

The **SUPREME COURT** in the State of South Carolina has provided in **State v. Ellis, 397 S.C. 576 No. 27127,** Term "PAROLE" means conditional release from imprisonment and **DOES NOT** suspend the running of a prisoner's sentence.

The Appellant's "PAROLE" status remained active as a result of him **NOT** receiving a Timely Probable Cause or Revocation hearing from **May 28, 1996-November 18, 2015.** (EX- B) R. (Dom)

In **Sanders v. McDougal, (S.C. 1964) 160,134 S.E. 2d 836, the South Carolina Supreme Court provides**: " A prisoner upon release on parole continues to serve his sentence **OUTSIDE** prison walls".

The Honorable Court goes on to provide in **Crooks v. Sanders, 123 C.28 115 S.E. 760, 28 ALR 940** " Convict released from the bounds of prison on Parole, which DID NOT suspend the running of his sentence, is **ENTITLED TO CREDIT FOR TIME ON ACCOUNT OF GOOD BEHAVIOR".**

The following South Carolina Department of Corrections Policies align accordingly in **O.P.-21.09 (INMATE RECORDS PLAN) 13.4.5 TOLLING OF A PRISONER'S EWC/EEC's,** since the Appellant was sentenced prior to **January 1, 1996,** this policy prescribes: " An inmate time of imprisonment **WILL CONTINUE TO RUN** while inmate is subject to the temporary custody of the RECEIVING State.

The inmate **WILL CONTINUE TO EARN GOOD TIME**, but not Earned educational or Earned work credits".

South Carolina Department of Corrections policy **O.P.-21.09 (INMATE RECORDS PLAN) 13.4.3** goes on to state " At the earliest possible time AFTER trial and sentencing are completed in the RECEVING state, the inmate **MUST** be returned to the custody of officials in the SENDING state and notified of the disposition of the charges".

South Carolina Department of Corrections Policy O.P.-21.11 (LOSS OF STATUTORY GOOD TIME), Section 2.2 offers additional confirmation of statutorial intent by stating : " An inmate whose crime occurred prior to **January 1, 1996,** who is eligible to earn GOOD TIME who does **NOT** fall in the categories listed below in **Section 2.3** and the crime is a Parolable offense **WILL RECEIVE (20) TWENTY DAYS PER MONTH GOOD TIME CREDIT for EACH MONTH SERVED UNLESS:**

SEVING A LIFE SENTENCE

ON DEATH ROW

SENTENCED UNDER YOA

HABITUAL OFFENDERS

SENTENCED TO FAMILY COURT CONTEMT

THOSE SENTENCED UNDER ARMED ENFORCEMENT ACT

The Appellant does **NOT** reside under **ANY** of the aforementioned categories, however, he is positioned mercilessly within the vice of the malicious intent of the South Carolina Department of Corrections and the South Carolina Department of Probation, Parole and Pardon services; by extraditing the Appellant back to an **EXPIRED** sentence, then incorporating a **NEW** sentence **WITHOUT** Due Process.

This action was implemented in disregard to not only Federal Statutorial provisions, but with **INDIFFERANCE** to this state's **OWN** established legislation, **South Carolina Supreme Court** precedent, as well as the policies, protocol and procedures used to govern the applicable agencies operations and obligations.

The Due Process Clause protects individuals on **BOTH** Procedural and Substantive levels. At the heart of Liberty Interest protected from arbitrary government actions is Freedom for Bodily restraint. **Youngburg v. Romero, 457 U.S. 307,316,102 S.Ct 2452, 2458, 73 L.Ed 2d 28 (1982)**

U.S. v. Paskow, U.S.C.A. 9th Circuit provides: " It is the Original sentence that is executed when the Defendant is returned to prison after violation of terms of **BOTH** Parole and Supervised release".

An agency **"MUST"** conform its action to procedures that it has adopted. **Sweet v. Sheanan, 235 F. 3d 80 (2nd Cir 2000)**

The Appellant was remanded back into the custody of the South Carolina Department of Corrections on **January 20, 2016.**

Once he arrived at the Kirkland Reception & Evaluation Center located in Columbia, South Carolina, **June 28, 2022** was assigned as the Full Expiration Date of the Appellant's 1983 South Carolina conviction; the Appellant immediately knew this date was erroneous. (EX- E) R. (DOM)

On **February 23, 2016** the Appellant was transferred to his " Permanent Institution" Kershaw Correctional Institution, shortly afterwards the Appellant was informed by Classification that his Service Time on Parole, the accompanying Good Time and his Time Served Pre and Post trial in Tennessee was **NOT** incorporated

into the calculations used to determine the Appellant's remaining obligation in South Carolina.

On **February 28, 2016** Classification assigned the Appellant a job, at which time it was explained to him that his Good Time and Work Credits had been pre-calculated into his Projected sentence calculation.

This " pre-calculation" moved the Appellant's Full Expiration date from **June 28, 2022 to September 8, 2021.**

The Appellant began his journey through the Administrative Process in order to obtain his delinquent Parole time, Pre-& Post trial time served in Tennessee, along with the accompanying Good Time, and to have his future Earned Good Time and Work Credits applied under Pre **January 1, 1996**-criteria.

After being Stonewalled and Diverted at Kershaw Correctional, the Appellant contacted **ANYONE** that he deemed to have the authority to correct this discrepancy. This includes but is **NOT** limited to **Main Classification by Mail, Phone and Kiosk, Former Head of Inmate Records Michael Stobbe, Former South Carolina Supreme Court Clerk Daniel Shearouse; who forwarded the Appellant's request for an "Accurate Sentence Computation" to the Director of the South Carolina Department of Corrections Bryan Stirling.** **(EX- F) R. (Dom)**

What made this task even more tedious is when the Kershaw Correctional Inmate Grievance Coordinator (Ms. Hendrix) **REFUSED** to acknowledge the Appellant's issue, by **NOT** filing his complaint that along with his Parole time, Pre & Post trial time, along with his Earned Good time in Tennessee being Delinquent, his Good Time and Earned Work Credits were being applied under **Post January 1, 1996** criteria instead of by **Pre 1996 guidelines**.

Kershaw Correctional Inmate Grievance Coordinator Hendrix determination that the Appellant's delinquent Earned Parole Time, his time being detained Pre and Post trial in Tennessee is a **"DUPLICATE"** issue to the **MISAPPLICATION** of his Earned Good Time and Work Credits was not only **INACCURATE it was ILLOGICAL!**

Had this fallacious deduction not been made, the Appellant's Illegal **NEW** sentence would have **Expired in 2018**, which was the **SECOND** time his South Carolina sentence was defunct.

On **July 1, 2020** the **Honorable South Carolina Court of Appeals INVALIDATED** the Appellant's South Carolina sentence, by rendering the Order that he **DID NOT** receive **(2) TWO YEARS and (16) SIXTEEN DAYS of his Earned Parole time.**

The Honorable Court neglected to award the Appellant with the accompanying Good Time, and the time he served Pre and Post trial in Tennessee. **Michael T. Braxton v. SCDC, Case No.2017-001964**

This ruling **INVALIDATED** the Appellant' sentence, thus **EXPIRING it for the (3rd) THIRD time**; since on **July 1,2020** the Full expiration date on this sentence at that time was **March 1, 2021**.

Attorney Thompson's **INEFFECTIVENESS** precluded him from investigating the Material Fact that the South Carolina Department of Corrections was in **CONTEMPT** of the Order directed by the **South Carolina Court of Appeals and the Order on Remand issued by the Administrative Law Court of South Carolina on August 28, 2020. Case No. 20-ALJ-04-0325-A-AP** R.

Attorney Thompson ignored the Appellant's appeal to him that the issue of the South Carolina Department of Correction's **REFUSAL** to apply this delinquent time was a viable focal point.

Conducting an investigation was imperative for the Appellant's defense in contest to Probable Cause, the presentation of the facts in support of him being **OUTSIDE** of the scope of the SVP process, was essential to his quest to contest the Probable Cause determination.

Additionally, with these evidentiary Facts available, the testimony provided by Assistant Attorney General Runyan at the Appellant's Civil Commitment Trial on **January 9,2023**, could have been disputed if not discarded; however, the desirable result would have been the acknowledgement of the Expiration status of the Appellant's sentence **PRIOR** to trial.

Positioning the Appellant under the **Chapter 48 " Sexually Violent Predator Act" 1998 Act No. 321 7 effective June 5, 1998**, even though he was **NOT [SERVING]** his South Carolina sentence which is enumerated in **section 44-48-30 (2)**. And by him **NOT** being **CONVICTED [ON] or [AFTER]** the effective date of the [Act], was an obtainable defense that **EFFECTIVE** counsel would have valued.

(TR-pg.39 L 1-21) illustrates how vital factual clarity was needed to rebut the **CONFUSING** testimony of the Assistant Attorney General, a testimony which appeared to be based on Secondhand information.

His testimony on how **"THEY"** assumed the Appellant was appropriately under the [Act] ended as such: " so we think that he was served—he was under the act while he was serving this sentence in 1998 when he was convicted. And he was also under this act in 2020 when he was set to be released Maxed out from SCDC". **TR-pg.39 l 15 -19 marked as (EX- G)** R. (DOM)

2). Attorney Thompsons's self-proclaimed expeditious approach in regard to the Appellant's defense, disallowed for him to simply review his **OWN** Attorney File.

Had he done so the improprieties employed by the South Carolina Department of Corrections Multidisciplinary Team, then endorsed by the Prosecutor's Review Committee, could NOT be ignored in constructing an **EFFECTIVE** defense in Contest to **[PROBABLE CAUSE].**

The South Carolina Department of Corrections Multidisciplinary Team cited a **"FABRICATED"** Conviction within the **"REFERRAL DATA"** history of the Appellant!

Conveniently listed under **[CURRENT CONVICTIONS]** within the conviction history is the **MANUFACTURED** offense of **" Criminal Sexual Conduct with a MINOR, 1st Degree"!! NOWHERE** within **ANY** conviction of the Appellant did the circumstance involve a **MINOR! (EX-** H) R. (Dom)

Attorney Thompson **INEFFECTIVENESS** allowed the Appellant to be subjected to the (SVP) process by a determinative body of SCDC, with the inclusion of Manufactured Data. Nonetheless, the South Carolina Department of Corrections **OWN** inferred **PREDETERMINATION** ultimately concluded that the Appellant **"DID NOT"** suffer from a Serious Mental Illness.

Confirmation of the Appellant's "Mental State" within the South Carolina Department of Corrections is compiled within the Treatment Notes of Mental Health Professionals at Kershaw Correctional Institution, and Dr. Lee who is employed by SCDC state wide.

These notes are documented on pgs. 8-9 of the Initial Court appointed examiner's report submitted to the court on **March 16, 2021**. (EX- I) The Appellant also submits as (EX- J) the Treatment notes of QMHP Jennifer Buker and Dr. Lee **BOTH** were employed by SCDC. R. (Dom)

The Appellant was seen periodically from **2017-2021**, due to suffering from anxiety as a result of being confined under an **EXPIRED** sentence, and having to endure dire family issues within a truly challenging setting.

NOWHERE within these Treatment Notes was it asserted that the Appellant was saddled with a **[MENTAL ADNORMALITY or PERSONALITY DISORDER]**.

The South Carolina Department of Corrections logged its Predetermination of the Appellant's Mental State within the **OFFENDER MANAGEMENT SYSTEM/ DISCIPLINARY SYSTEM, DISPLAY INMATE HISTORY dated May 26,2020, which clearly states: SERIOUS MENTAL ILLNESS : N ! (EX-** K) R. (Dom)

Also, within Attorney Thompson's OWN Attorney File is the presence of SCDC's calculated unethical attempt to acquire **ANY** Inflammatory evidence or information from Tennessee Law Enforcement Agencies, in its effort to justify a Probable Cause determination.

South Carolina Department of Corrections Agent Jessica M. Salley had NO problem integrating a **FALSE** narrative to Tennessee officials by stating **" The Offender has committed additional SVP offenses in South Carolina".** **(EX- L) R. (Dom)**

On cross examination at the **July 1, 2024** Habeas Proceeding, when Attorney Thompson was asked what standard had to be met at the Probable Cause hearing, he stated " Normally the court just looks at the Petition and makes a finding of it". "Now we can present any evidence we want to present, but honestly we had **NONE** to present at that time". **EV-TR pg.100 L 22-25, Pg. 101 L 1-3. (EX- M) R. (Dom)**

Additionally, Attorney Thompson stated at the **July 1,2024** proceeding when asked if he felt the Appellant should've just conceded to the situation? Should he have conceded to commitment? His response was **"YES". EV-TR pg. 103 L 19-25.** **(EX- N) R. (Dom)**

Rendering **EFFECTIVE** representation thereby being bound under the **OBJECTIVE STANDARD OF REASONABLENESS,** would surely require competent counsel to review his **OWN** Attorney File, **IF** he intends to launch an investigation?

7A C.J.S. ATTORNEY CLIENT 375 Liability for conduct Litigation provides: An Attorney **"MUST"** exercise reasonable Care, Skill and Knowledge in the conduct of litigation on behalf of the client, and **"MUST"** be properly diligent in the prosecution or defense of the case.

Not only **MUST** an attorney exercise reasonable care and diligence in the acting for the client, but an attorney is also bound to conduct itself as a Fiduciary.

It is the **DUTY** of an attorney to exercise the ultimate Honesty, Good Faith, Fairness, Integrity and Fidelity; Attorney Thompson upheld his OATH to DUTY, but his allegiance was **NOT** to the Appellant!

3). The Probable Cause Determination was handed down by the Anderson County Court of Common Pleas on **November 4, 2020**. (EX- O) R. (Dom)

The State has made a valent attempt to distort the record in this matter by stating the Probable Cause determination was rendered on **November 12, 2020**. **TR-pg.42 L 6-10 (EX- P) R. (Dom)**

The significance being the **(1st) FIRST** Continuance filed **"OUT OF TIME"** by the South Carolina Department of Mental Health Services on **January 14, 2021** **INVALIDATED** the SVP process in the Appellant's cause!

S.C.Code Ann. 44-48-90 sets forth the **MANDATORY** provision that an evaluation **MUST** be conducted within **(60) SIXTY DAYS** subsequent to the Court Ordering an evaluation by its Court appointed expert.

The CONTINUANCE filed by the South Carolina Department of Mental Health Services on **January 14, 2021** was delinquent, since it was filed **(71) SEVENTY ONE DAYS AFTER** the Order for evaluation was issued on **November 4, 2020.**

Additionally, it took **(61) SIXTY ONE DAYS** subsequent days before the evaluation was actually administered on **March 8, 2021**; which brought the total to **(132) ONE HUNDRED THIRTY TWO DAYS** before the evaluation was conducted.

This initial Continuance remains **UNCONTESTED and UNCONSIDERED** as a result of the INEFFECTIVE inept representation of Attorney Don A. Thompson.

The Legislature's use of the word **"SHALL"** by the South Carolina sexually Violent Predator Act, in particular **S.C.Code Ann. 44-48-90** makes holding of a trial within **(60) SIXTY DAYS** of a Probable Cause Hearing **MANDATORY! In re Mattews, 345, S.C. 638,550 S.E. 2d 311 2001.**

S.C.Code Ann, 44-48-80 and 44-48-90 state **MANDATORY** provisions and is **NOT** a DIRECTORY. This is due to the statutory language of **"MUST" and "SHALL" that declare SUBSTANCE!**

NON-COMPLIANCE affects SUBSTANTIAL RIGHTS and inflicts SUBSTANTIAL PREJUDICE! **S.C. Police Officers Retirement v. City of Spartanburg, 301 S.C. 188,391 S.E. 2d 239,241 (1990).**

Because the Legislature set definite timelines for actions under the Sexually Violent Predator Act, a court had to give plain meaning to clearly written statutes; the General Assembly used strong language like **"SHALL"** and intended to make exceptions to the **[SIXTY DAY]** requirement **ONLY** in limited circumstances. **In re Miller, 385 S.C. 539.685 S.E. 2d 619 2009.**

S.C.Code Ann. 44-48-80(D) provides: that **[ONE]** extension upon request of expert and showing of good cause may be granted by the court. Any further extensions **[ONLY]** may be granted for **"EXTRAORDINARY"** circumstances.

After speaking to Attorney Thompson on **October 21,2020**, the Appellant Did **NOT** speak to him again until **May 18, 2021**.

During this span, the action of **Filing and Granting of the Continuance by the South Carolina Department of Mental Health**, the conducting of the evaluation on **March 8,2021**, and its submission on **March 16, 2021** to the Anderson County Court of Common Pleas had transpired.

Apparently the **(265) TWO-HUNDRED SIXTY-FIVE DAY** gap in communication with the Appellant, offered **NO** opportunity for Attorney Thompson to investigate the impropriety of the **(1st) FIRST** Continuance filed in this cause.

Attorney Thompson's Negligent **MISCONDUCT** constitutes grounds for discipline under **RULES OF LAWYER DISCIPLINARY ENFORCEMENT (RLDE), RULE 413, (SCACR), Rule 7 (a)(1)** (Lawyer shall not violate the rules of professional conduct.) **Rule 7 (a)(3)** (lawyer shall not engage in conduct tending to pollute the administration of justice or conduct demonstrating an unfitness to practice law.)

(RULES OF PROFESSIONAL CONDUCT) RULE 407, (SCACR): Rule 1.1 (Lawyer shall provide competent representation to client.) **Rule 1.2** (Lawyer shall pursue client's objectives.) **Rule 1.3** (Lawyer shall act with reasonable diligence and promptness in representing client.) **Rule 1.4** (Lawyer shall consult with client about objectives of representation, keep client reasonably informed about status of the matter, and promptly comply with reasonable request for information.) **Rule 3.2** (Lawyer shall make reasonable efforts to expedite litigation.) **Rule 8.4** (a) (Lawyer shall **NOT** violate the **RULES OF PROFESSIONAL CONDUCT**.)

During the **May 18, 2021** phone correspondence, Attorney Thompson conveyed to the Appellant that he would seek a **SECOND** evaluation.

In **June of 2021**, Assistant Attorney General Runyan stated that Attorney Thompson reached out to inform him that " Dr. Mckee's opinion had come back, and he was **NOT** going to be called as a witness". " We reached out to the court and looked for a trial date". **EV-TR pg.108 (EX- Q)** R. (Dom)

Attorney Thompson contacting the Attorney General with this **FALSE** information is an **ODDITY,** considering the ease upon which it can be confirmed that Dr.Mckee conducted his evaluation of the Appellant on **August 11,2021** at the Anderson County Detention Center. **(EX- R)** R. (Dom)

The initial evaluation was submitted to the court on **March 16,2021, NO** Continuance was filed in order to obtain a **[SECOND]** evaluation on **August 11,2021.**

Instead, the Appellant's SUTILE counsel contacted the Attorney General with information he **KNEW** was **UNTRUTHFUL**, then once he and the Attorney General obtained a trial date for the Appellant, Attorney Thompson implemented

further his devious program of attempting to influence the Appellant, by confining him to a state of **Legal PURGATORY**.

This manner of **ILLEGAL** confinement was devised by Attorney Thompson in order to induce the Appellant into a decision under **DURESS,** to waive his rights provided within the (SVP) process; which is to be provided a Constitutionally Adequate **[PROBABLE CAUSE]** determination, and to be Lawfully tried by a jury on the diagnosis rendered, that placed him within the (SVP) process.

Attorney Thompson's **[BAD FAITH]** agenda included not only his failure to disclose exculpatory discovery information to the Appellant in a Timely manner, he nor the trial court would disclose the Appellant's established trial date of **November 1, 2021.**

The **" PRIORITY"** was that the Appellant "just go ahead and sign up for treatment", especially AFTER he engineered a **[SECOND]** evaluation to bolster his plea to the Appellant.

From **June of 2021** until Attorney Thompson **RELIEVED** himself on **April 25, 2022,** the Appellant had pending his **SUMMARY JUDGEMENT MOTION and (4) FOUR SUCCESSIVE MOTIONS TO DISMISS under Rule 41(b) SCRCP.**

In **August of 2021** at the (1st) FACE TO FACE meeting between Attorney Thompson and the Appellant, this counsel had **FAILED** to present **ANY** of the Appellant's Pre-trial Motions to the court, and he stated **" he had NO idea when the Appellant's trial date was"? and " this law is designed to keep people under it jailed"!**

On **October 8, 2021** Attorney Thompson filed a **[SECOND]** Continuance in the Appellant's cause, this CONTINUANCE too was filed **WITHOUT** the Appellant's knowledge!

This Continuance was filed **(207) TWO-HUNDRED SEVEN DAYS AFTER** the initial Court appointed expert's evaluation was submitted to the court on **March 16,2021**, and **(58) FIFTY-EIGHT DAYS** AFTER the **SECOND** evaluation was actually conducted on **August 11,2021.**

(145) ONE-HUNDRED FORTY-FIVE DAYS elapsed between the initial evaluation submitted to the court on **March 16, 2021**, and the **SECOND** evaluation orchestrated by Attorney Thompson on **August 11,2021.**

The COVID-19 protocol is used throughout the record to justify the consistent lapses between the continuances, however, technology was in place that provided the vehicle to comply with Statutory filing requirements of **MANDATORY** requisite time periods.

Attorney Thompson's crafted **INEFFECTIVENESS** which rested firmly on a foundation of **DECIET**, enabled him to file for a continuance **WITHOUT** ever notifying the Appellant of his **November 1, 2021** trial date.

The **[ONLY]** way the Appellant discovered the Continuance had been filed as well as confirmation of his DATE CERTAIN, was through **E-MAILS** obtained by concerned family members, which validated communication between Attorney Thompson and Assistant Attorney General Runyan on **June 29 and August 6 of 2021. (EX- S)** R. (Dom)

The Appellant filed complaints against Attorney Thompson with the **Supreme Court of South Carolina, Case No. 2021-001016, and in the Anderson County Court of Common Pleas, Case No. 2020-CP-04-1330.**

The Appellant filed additional complaints with the **South Carolina and National Bar Association**, he lodged these complaints due to the tactical **[INORDINATE DELAY]** being employed to impede on his Due Process.

The Appellant spoke with Attorney Thompson on **October 28, 2021** about the continuance he filed **WITHOUT** the Appellant's knowledge, this is when he enlightened the Appellant on his situation concerning his wife's medical condition, which required the filing of the continuance.

The Appellant understood his rational and empathized with him totally, however, what the Appellant **DIDN'T** understand is **WHY** he couldn't have simply informed him of his **November 1, 2021 DATE CERTAIN**? And **WHY** he couldn't have simply called the Anderson County Detention Center to notify him of the continuance?

Attorney Thompson stated at the **July 1,2024** Habeas proceeding **EV-TR pg.93 L13-22 (EX- T)** Approvals for Extensions of Time, he stated **" NO, he DID NOT** need the Appellant's approval to continue his case, and since he didn't have time to drive to Anderson, notification wasn't possible". R. (Dom)

On the Contrary, Notification of the CONTINUANCE **was** required but was **NOT** a consideration, because that would mean that a TRIAL DATE DID exist!!

It is the undoubted duty of an Attorney to communicate with the client whatever information the attorney obtains that may affect the interest of the client in respect to the matters entrusted to him or her. **7A C.J.S. ATTORNEY & CLIENT 394**

An Attorney is liable in damages to client for injuries which result from attorney's **UNAUTHORIZED** acts. **7A LIABILITY FOR UNAUTHOURIZED ACTS 109**

Attorney Thompson stated at the **July 1, 2024 Habeas Proceeding** that " he and the Appellant talked about his trial occurring in I believe November". " He and I talked about that and I – we talked about it but the docket has not come out yet, so it's not definitely set". **EV-TR pg. 88 L15-24 (EX- U)** R. (DOM)

During the phone conversation on **October 8, 2021** between Attorney Thompson and the Appellant, the Appellant also addressed his concerns with Attorney Thompson as to **WHY** he had **NOT** had his Pre-trial **MOTIONS TO DISMISS** heard?

Attorney Thompson brushed these issues aside accept for his perceived recognition of the **FACT** that if the state did **NOT** comply with the **MANDATORY** requisite time period to conduct a trial within **(90) NINETY DAYS AFTER** the court appointed expert submits the evaluation results to the court, it is grounds for **DISSMISSAL** under **S.C.Code Ann. 44-48-90, also see In re Miller, 393 S.C. 248 (S.C. 2011)**

Thereafter, he forwarded the Appellant correspondence that confirmed he was **WELL AWARE** of the ***MANDATE! (EX- V)*** R. (DOM)

The **[INORDINATE DELAY]** was a calculated synchronized effort between Attorney Thompson, State Officials responsible for the prosecution of the Appellant, as well as the trial court; to position the Appellant within a **ROUGE** " State Corrective Process", by exhibiting **[BAD FAITH]** conduct which can be considered evident when viewing their continuious,vigorous action through Inaction within the (SVP) process.

This purpose driven coalition pursued the persecution of the Appellant, **WITHOUT** reasonable expectation of obtaining a **VALID** Conviction. **Kugler v. Helfant, 421 U.S. 117* ,95 S.Ct 1574**,44 L.Ed 2d 15***; 1975.**

Attorney Thompson's integral function within the **[BAD FAITH]** prosecution, by facilitating an **[INORDINATE DELAY]** is **IRREPARABLE** Injury that leaves the Appellant **NO** Adequate remedy at law. **Kugler v. Helfant, 421 U.S. 117*,95 S.Ct 1574**; 44 L.Ed 2d 15***;1975.**

Due to the Controversial content of the Subject Matter contained in the evaluations of **BOTH** the Initial evaluator Dr. Marie Gehle and the subsequent evaluator Dr. G. McKee, the Appellant sought an Independent evaluation.

This evaluation was conducted by Dr. David R. Price at the Anderson County Detention Center on **January 12,2022.**

The Appellant selected Dr. Price because he **OPPOSED** through Testimony Dr.Gehle's diagnosis of an individual that was diagnosed by her with the **SAME**

diagnosis as the Appellant, **[PARAPHILIA NOS NONCONSENT] and [ANTI SOCIAL PERSONALITY DISORDER].**

However, in his assessment of the Appellant he simply allowed Dr.Gehle's and Dr.McKee's diagnosis to **STAND?**

This peculiarity along with Dr.Price stating in his report that " the Appellant's examination is consistent with his assertion that he **DOES NOT** have a mental disorder, was the primary influence that compelled the Appellant to seek the testimony of Dr. Price at trial. **(EX-W)** R. (Dom) pg. 6 pp. 2

What also made Dr.Price's testimony absolutely necessary is the manner in which the Appellant's diagnosis has been Universally **DISPUTED**, by Dr. Price as well as the Psychiatric Community at large.

The Psychiatric Community **DOES NOT** list this diagnosis in its Diagnostic Manual the **[DSM-V]**; the diagnosis of **[PARAPHILIA NOS NONCONSENT]** is regarded as **["INCOMPETENT"] [PSYCHIATRICALLY UNJUSTIFIED"] ["PSEUDOSCIENCE"]. Page v. King, 932 F.3d 898*; (2019) U.S App. 2019 WL 3320617**

Attorney Thompson **NEVER** considered the inept classification of the diagnosis prescribed for the Appellant, it was immaterial for the **UNSUBSTANTIAL** Counsel to regard **ANYTHING** other than maintaining the **FAÇADE** of Effective representation.

Dr. Gehle's PEERS which determined that this proposed condition resides on a Foundation of **[PSEUDOSCIENCE]**, felt it was **IMPARATIVE** to **WARN** reasonable practioners that they should exercise **CAUTION** in making this diagnosis. **In the Matter of Richard Ridley, Appellate Case No. 2018-000527 (March 17, 2021)**

The Appellant's appointed counsel completely abandoned **EVERY** aspect of South Carolina's Statutory scheme which **CLEARY** envisions a **NEW** Civil Commitment proceeding being based on **[CURRENT]** evidence. **In re Taft, Supreme Court of South Carolina,413 S.C. 16* 774 S.E. 2d 462*** (2015)**

18 U.S.C.A. MANDATED that one's condition **[MUST]** be **[CURRENT]** when being considered for Civil Commitment as a (SVP).

The Appellant's evaluation was conducted **(2) TWO YEARS PRIOR** to Dr.Gehle's testimony at trial, and this testimony was based on data amassed **(30) THIRTY YEARS PRIOR** to her appearance at trial.

In response to this request, Attorney Thompson through his **March 24, 2022** correspondence questioned this request.

At the **(3rd) THIRD FACE to FACE** meeting between Attorney Thompson and the Appellant on **April 20, 2022**, this fiendish counsel vehemently objected to the proposal of the inclusion of Dr.Price's testimony; then he ultimately **REFUSED** to execute the process as he stated "I'm the lawyer! If he's there I won't be"! The Appellant responded " I don't care if you're there or not as long as he is"!

Attorney Thompson's testimony at the **July 1,2024 Habeas proceeding** coincides with the Appellant's account, except for his statement that " I did subpoena for Dr.Price to be at the trial and I did serve him with a subpoena simply for the remote possibility that something might come up during trial we might need something he had to say in rebuttal". **EV-TR pg. 96 L 15-25, pg.97 L 1-2 (EX- X)** R. (Dom)

Attorney Thompson professed during this hearing that he subpoenaed Dr.Price, but the Clerk of the Anderson County Court of Common Pleas Ms.Thomason, seems to have **NO** Record of this request? **(EX-Y)** R. (Dom)

What is recorded by the Anderson County Court of Common Pleas is the Appellant's **UNRECOGNIZED** attempt to have Dr.Price Subpoenaed through his **MOTION TO SUBMIT, REQUEST FOR SUBPOENA and supporting AFFIDAVIT, placed before the court on June 27, 2022. (EX-Z)** R. (Dom)

At the Appellant's **April 25,2022** long awaited trial before the Honorable R.Keith Kelly, Attorney Thompson stated " His motions which I believe has any merit". **TR pg. 6 L 4-8 (EX-AA)** R. (Dom)

Before Judge Kelly removed him from the Appellant's case, Attorney Thompson launched his **FINAL** attempt in his quest to ensure the Appellant was **DEPRIVED** Due Process.

Attorney Thompson **FAILED** to object to the court's **POSTPONING** of the LONG AWAITED Trial date of the Appellant, even though he stated he'd been in the practice of law **(44) FORTY-FOUR YEARS. EV-TR pg. 82 L 6 (EX-BB)** R. (Dom)

When asked how many (SVP) cases he had handled up to the time of the hearing? He stated "Probably a **HUNDRED, a little MORE**". " I probably averaged **TWO a MONTH**, so that's what, **SIX YEARS at TWO a MONTH". EV-TR pg.101 L 4-10;** And his research obviously **ESCAPED** him on the **PRECEDENT** in this matter established **WELL BEFORE (2023),and it escaped the Attorney General's review as well? (EX- N)** R. (Dom)

The legislature of this state denotes that delays similar to the one's recorded within **In re Miller** and in the Appellant's, cause should **NOT** be as Prolific given the **AMENDED legislation of the SVPA in 2010** to impose time limits for the completion of a court appointed examiner's evaluation and to expand the length of

time in which a circuit court **MUST** conduct a Civil Commitment trial following the issuance of the evaluation results. **See S.C.Code Ann. 44-48-90(B) (Supp 2010)**

The **Supreme Court of South Carolina** also empathized within **In re Miller, 713 S.E. 2d 253 (S.C.2011)** that "SVP trial should take **PRIORITY** when scheduling a court's docket, precisely because of the potential for **PROLONGED** Incarceration evidenced in the **Miller** case". **Id at 549,685 S.E. 2d at 624-25**

The Order submitted by counsel for the defendant on **January 21, 2025**, to the **Richland County Court of Common Pleas** stated on **pg.2** " Mr. Thompson is NOT a Government Employee"; and he goes on to amplify on **pg.5** " the defendant is NOT a Government Employee and is NOT a State Actor for purposes of the Plaintiff's attempted Federal claims". **Michael T. Braxton v. Don A. Thompson, 2024-CP-40-02262**

Contrary to the defendant's counsel statements within his argument, the defendant's **OWN** testimony on **July 1,2024** confirms his posture on the issue.

Attorney Thompson states the following "I took a Contract with the State in 2018". **TR-EV pg.101 L 5 (EX- N)** R. (Dom)

In addition to Attorney Thompson being in violation of **Section (c) and (d) of II (Services Section of Contract in AGREEMENT FOR ATTORNEY SERVICES) with the South Carolina Commission Indigent Defense, Section (c) of IV (QUALIFICATIONS OF ATTORNEY) in contract AGREEMENT FOR ATTORNEY SERVICES;** his perverted actions and inactions are also in violation of the **Federal Civil Rights Statute (18 U.S.C.241)**

The Statute provides: **(18 U.S.C. 241)**, which makes a Conspiracy to interfere with a citizen's free exercise or enjoyment of **ANY** right or privilege secured to him by the Constitution or laws of the United States a Criminal Offense, includes rights or privileges Protected by the **FOURTEENTH AMENDMENT**, and extends to conspiracies otherwise within the scope of the statute, participated in by Officials alone or in collaboration with private persons.

The Supreme Court of the United States unanimously held (1) that private individuals were criminally liable under **(242)**, if they are willing participants in joint activity with the State or it's agents and (2) the **(241)** reached assaults upon rights under the entire Constitution, including rights under the **Due Process Clause.**

The Phrase **" UNDER COLOR"** of any Statute, Ordinance, Regulation, or Custom should be accorded the same construction in **BOTH 18 U.S.C. 242** which provides Criminal Punishment of, and **42 U.S.C. 1983,** which gives a right of action against

a person who, **"UNDER COLOR"** of State Law subjects another to the deprivation of any rights, privileges, or Immunities secured by the Federal Constitution.

To act **"UNDER COLOR"** of law does **NOT** require that the accused be an officer of the state. It is enough that he is a willful participant in joint activity with the state or it's agents. **United States v. Price, Supreme Court of the U.S., 783 U.S.787*, 86 S.Ct 1152**; 16 L.Ed 2d 267***(1966)**

"UNDER COLOR" of Law means the same thing in **(242)** that it does in the Civil counterpart of **(242), (42 U.S.C. 1983) 1964 ed Monroe v. Pope, 365 U.S. 167,185**

Attorney Thompson's Blatant **INEFFECTIVENESS** throughout his pretrial **MISREPRESENTATION** of the Appellant, so Undermined the Proper functioning of the **" ADVERSARIAL PROCESS"** that the **ENGINEERED** Liability of his appointment assured a Purported trial **WITHOUT** Constitutionally Adequate trial preparation. **Brooks v. Texas, 381 F.2d 619,624 (5th Cir 1967)**

If an act is **[MANDATORY]** it is termed "Ministerial Duty"! **Wigfall v. Tideland Utils. Inc., 354 S.C. 100,111,580 S.E. 2d 100,105 (2003)**

A **" MINISTERIAL DUTY"** or **[act]** – is one which a person performs because of a Legal **MANDATE** which is defined with such precision as to leave nothing to the exercise of discretion.

Attorney Don A. Thompson acted with **DELIBERATE INDIFFEREANCE** in regard to the Statutory wording in the **South Carolina Constitution amended as Article 1§3, the United States Constitution amended as 4th,5th,6th,8th, and 14th, as well as the South Carolina Code of Laws 44-48-10 seq AL.**

Attorney Thompson has engaged in conduct involving Dishonesty, Fraud, Deceit and Misrepresentation, which is a violation of **RULES OF PROFESSIONAL CONDUCT contained in RULE 407,SCACR, Rule 8.4 (a),(d) and (e).**

The Appellant is of the mind that he has established his claim of INEFFECTIVE Assistance of Counsel, since (1) Attorney Thompson **FAILED** to render Reasonably Effective Assistance under prevailing Professional norms, and (2) Attorney Thompson's Deficient performance **SUBSTANTIALLY PREJUDICED** the Appellant' case.

Upon significant showing that Attorney Thompson's representation fell **BELOW** the **OBJECTIVE STANDARD OF REASONABLENESS**, as such, the Reasonable Probability exist that but for counsel's Pronounced Unprofessional Errors of law not occurred, the result of the proceeding would have been different. **Strickland v. Washington, 466 U.S. 886,104 S.Ct 2052 (1984), also see Chapman, 796 S.E.**

ARGUMENT II

The Appellant's Proclamation is that the **INEFFECTIVNESS ENDLESSY** displayed through Attorney Don A.Thompson's **EGREGIOUS** conduct, has inflicted Substantial Prejudice, and has him **UNLAWFULLY** confined under an **[act]** that has **NEVER** been applicable to him.

Prior to the Expiration of the Appellant's South Carolina sentence on **(3) THREE** Occasions, which proceeded the **ILLEGITIMATE** application of the **Chapter 48 Sexually Violent Predator Act 321 7, enacted on June 5, 1998,** he had entered a Guilty Plea on **October 24, 1983 in the Anderson County Court of General sessions. Case No. 83-GS-04-801**

This Plea was entered **WITHOUT** the (SVP) act, nor **"ANY"** provisions under the **[act]** being a **DIRECT or COLLATERAL** Consequence the plea!

" A guilty plea is **VOLUNTARY and INTELLIGENT** if a defendant enters the plea with full awareness of the **"DIRECT CONSEQUENCE". Virsnieks v. Smith, 521 F.3d 707, 715 (7th Cir 2008)**

"DIRECT CONSEQUENCES are **IMMEDIATE and AUTOMATIC** Consequences of a Guilty Plea". **U.S. v. Jordan, 870 F.2d 1310, 1317 (7th Cir 1989) Dalton v. Battaglia, 402 F.3d 729,133 (7th 2005)**

Brady v. United States, 397 U.S.742,90 S.Ct 1463,25 L.Ed 747 (1970), the SUPREME COURT held: that a defendant's guilty plea " not only **MUST** be **VOLUNTARY** but must be **KNOWING and INTELLIGENT** acts done with sufficient awareness of the relevant circumstances and likely consequences**". Id at 748,90 S.Ct 1463**

The Constitutional Violation of Attorney Thompson Neglecting to assert the impropriety regarding the **FAILURE** to exclude the Appellant from the Qualifying criteria under an **[act]** inapplicable to him, is a Constitutional Violation which in the setting constitutes " a denial of Fundamental Fairness Shocking to the Universal sense of Justice". **State v. Butler, 397 S.E. 2d 87,302 S.C. 466 (June 1990), Uvegas v. Commonwealth of Pennsylvania,835 U.S. 437,69 S.Ct 184,93 L.Ed 127 (1948)**

Attorney Thompson has allowed for the application of this Revised Guidelines Law to be attached to the Appellant, whose offense occurred **BEFORE** the law's **EFFECTIVE DATE**, which violates the **EX POST FACTO CLAUSE of Article I**

of the **Federal Constitution**, and is cited in **Miller v. Florida, 482 U.S. 423,107 S.Ct 2446,96 L.Ed 351 (1987)**

The revised guidelines law is Retrospective in that it changes the legal consequences of acts committed **BEFORE** its **EFFECTIVE** date, and the law **DID NOT WARN** the Appellant in **[1983]** of the specific punishment prescribed for his offense as of **June 5, 1998.**

The revised guidelines law is **MORE ONEROUS** that the law in effect at the time of the Appellant's offense, in that it **SUBSTANTIALLY** disadvantages the Appellant, and it is **NOT** merely a procedural change, since it increases the quantum of punishment for his offense.

Attorney Thompson when asked at the **July 1, 2024 Habeas Proceeding** " Were you familiar with the EX POST FACTO as it relates to SVP cases"? his response was " I was pretty sure I was but I went back and researched it to make sure". When asked "What did you discover"? he stated "Well, the sexual violent predator case is not a criminal case", "it's not punitive in nature". **"And, therefore there is no EX POST FACTO law". EV-TR pg.89 L 11-19 (EX- CC)** R. (Dom)

Again, Attorney Thompson **MALICE** revealed itself as he conveniently overlooked that although the [SVP] act has been found to be Civil in nature, even the legislature's intent to create a Civil system **CANNOT** control if the Statutory scheme is so **[PUNITIVE]** either in **"PURPOSE" or "EFFECT"** that it **CANNOT** be considered Civil. **See Hendricks, 521 U.S. at 361,117 S.Ct. 2072 (Citing Ward 448 U.S. at 248-49,100 S.Ct 2636**

Attorney Thompson was asked " Did you eventually communicate to Mr. Braxton that the Ex Post Facto provisions of the South Carolina Constitution and the U.S. Constitution do not apply"? his response was " I did and honestly as far as I can recall the issue never came up between Mr. Braxton and I again". **EV-TR pg. 84 L 1-4 (EX- DD)** R. (Dom)

The Appellant contends that he has made a **CONTINUIOUS** effort to assert his issue of the Constitutional Violation occurring in regard to the **"COLLATERAL CONSEQUENCES"** of the imposition of the [SVP] act, which was **NOT** a factor of consideration until **AFTER** his conviction of Guilty Plea on his **(1983)** South Carolina offense.

The Appellant continued his assertion of this issue at the **July 1, 2024 Habeas Proceeding. EV-TR pg. 41 L 1-25 (EX- EE)** R. (Dom)

[ONLY] the **" DIRECT CONSEQUENCES"** were applicable at the time of the Appellant's sentencing on his Guilty Plea in **(1983)**, the **"COLLATERAL CONSEQUNECES"** arose in **(1998).**

Contrary to Attorney Thompson's **"RESEARCH"**, **In Ginbra**, provided by the **SUPREME COURT** defined **"DIRECT CONSEQUENCES"** to include **[ONLY]** those consequences of the sentence which the court can impose. **Id at 961**

The risk of commitment under the [act] effects procedures provided by the act to evaluate then bring to trial a person alleged to be a (SVP), are **DIRECT** consequences to a plea to a " QUALIFYING OFFENSE", of which a person pleading to such offense **"MUST"** be informed.

ANY Defendant who pled to a **"QUALIFYING OFFENSE" WITHOUT** being told or having foreseen that the plea could possibly subject him to a **[LIFETIME]** of Civil Commitment, would consider the plea INVOLUNTARY; and the plea couldn't possibly be **KNOWING and INTELLIGENT. State v. Brewer, 767 So. 2nd 1249 (Fla 5th DCA 2000)**

Exposure to screening under the [act] and the accompanying infringement of liberty, is itself sufficiently **AUTOMATIC and PUNITIVE** to constitute a **DIRECT CONSEQUENCE** of a plea which defendant **"MUST" be [WARNED] Prior to entering a plea!**

Our **SUPREME COURT** has held: " that in order for a plea to be **KNOWING** and **INTELLIGENT** the defendant **[MUST]** understand the reasonable consequences of the plea, including the penalty to be imposed. **Ashley, 614 So 2d at 488**

The (SVP) act is a **"COLATERAL CONSEQUENCE"** of a plea. **Pearman v. State, 764 So 2d 739 (Fla 4th DCA 2000)**

Plea **REVERSED and REMANDED** due to the trial court and counsel's **FAILURE** to advise individual of possibility of Civil Commitment upon plea constituted **INEFFECTIVE** Assistance of counsel and rendered the plea **INVOLUNTARY! Waltrous v. State, 793 So. 2d 6 (Fla App.2 Dist 2001)**

Calder v Bull.3 Dall, 386 1 L Ed 648 (1798) First considered the scope of the **EX POST FACTO Prohibition**: " **(1st)** Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. **(2nd)** Every law that aggravates a crime, or makes it greater than it was when committed. **(3rd)** Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. **(4th)** Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of commission of the offense, in order to convict offender". **Id at 390 Accord Dobbert v. Florida, supra,at 292,975 S.Ct. ., at 2297,quoting Beazell v. Ohio, 269 U.S. 167,169-170,46 S.Ct. 68,68-69,70 L.Ed 216 (1925)**

Justice Chase explained that the reason the **EX POST FACTO** Clauses were included in the **Constitution** was to ensure that **Federal and State legislatures** were restrained from enacting arbitrary and vindictive legislation. **See Dall., at 389**

Justices **PATTERSON and IREDELL**, in their separate opinions likewise empathized that the clauses were aimed at preventing legislative abuses. **See Id at 396 (Patterson J.) Id at 399-400 (Iredell J.) see also Malloy v. South Carolina, 237 U.S. 180,35 S.Ct 507,508,59 L.Ed 905 (1915)**

Additional opinions in **Calder** as well as other early authorities, indicate that clauses were aimed at a **[SECOND]** concern, namely that legislative enactments "give **FAIR WARNING** of their effect and permit individuals to rely on their meaning until explicitly changed".

It is " axiomatic that for a law to be **EX POST FACTO** it **[MUST]** be **MORE** onerous than the prior law"; and a change in law that alters a Substantial Right can be Ex Post Facto, even if the statute takes a seemingly procedural form. **See Weaver, 450 U.S. at 29,n 12,101 S.Ct. at 964,n 12., Dobbert, supra at 294,97 S.Ct.., at 2299**

Due Process provides a law is **VOID for VAGUENESS** if it does **NOT** give fair **"WARNING"**, and it allows for arbitrary and discriminatory application. **Grayned v. City of Rockford, 408 U.S. 104,108 (1972) AFFIRMATIVE DISABILITY or RESTRAIANT** has been historically regarded as **"PUNISHMENT".**

The Appellant occupies the optimal position best to certify that the South Carolina (SVP) Statute accomplishes the traditional goals of **PUNISHMENT,** such as **RETRIBUTION or DETERRENCE!**

Attorney Thompson's Callousness has subjected the Appellant to restraint resulting from application of statute, which is **EXCESSIVE** in relation to the **NON-PUNITIVE purpose. Kennedy v. Mendoza-Martinez, 372 U.S. at 168-169**

The Appellant received a purported trial on **January 9-10 2023**, on **May 29,2024** he was recommended for **RELEASE** from **"TREATMENT".**

As of **April 2025,** the Appellant **REMAINS CONFINED** under the guise of the **NON-PUNITIVE** intent of statute, a status of " **LANGUISHING**" assigned to him by the MACHINARY OF THE STATE! **(EX- FF)** R. (Dom)

The Appellant also provides on exhibit evidence of the Unified Applied Classification of the **WELLPATH TREATMENT FACILITY**, by not only Governmental Agencies, but by the Chief Administrator of the facility as well. **(EX-GG)** R. (Dom)

Attorney Don A. Thompson has subjected the Appellant to a form of legal process that has resulted in his **UNLAWFUL** pretrial and post-trial detention UNSUPPORTED by [PROBABLE CAUSE], the infringement of this right lies within the 4th Amendment. **See Manual v. City of Joliet, 187 S.Ct. 911,197 L.Ed 2d 312 (2017)**

Attorney Thompson **DID NOT** commit errors of law, he remained consistently "INDIFFERENT" to not only the state of South Carolina's Statutory provisions, but to Congressionally sanctioned and United States Supreme Court endorsed directives.

The United States Supreme Court consistently upheld **INVOLUNTARY** Civil Commitment statutes **[ONLY WHEN]** the confinement takes place pursuant to proper procedures and evidentiary standards**. Id. At 357,117 S.Ct. at 2079-80,138 L.Ed 2d at 512, See also Allen v. Illinois, 478 U.S. 364,369,106 S.Ct 2988, 2992,92 L.Ed 2d 296,304 (1986)**

Selective Justices had noted that " Where so significant a restriction of an individuals' basic freedoms is at issue, a state CANNOT cut corners". **Id at 396,117 S.Ct at 2098,138 L.Ed 2d at 536**

18 U.S.C.S. sets forth the "CLEAR and CONVINCING" evidence standard, which is evidence being required to impose Civil Commitment.

Adherence to this standard is required in Civil Commitment proceedings because "[t]he individuals' interest in the outcome of a Civil Commitment proceeding is of such [great] weight and gravity". **U.S.C. 18 4248**

Detention beyond termination of sentence can constitute CRUEL and UNUSAL punishment if it is the result of "DELIBERATE INDIFFERANCE" to a prisoner's [LIBERTY INTREST], otherwise such detention can be held UNCONSTITUTIONAL only if it violates Due Process. **U.S.C.A. 5,8,14**

If [act] Congressionally sanctioned, it is subject to Federal construction, this interpretation of the act by the **U.S. Supreme Court and other Federal courts are binding on State courts.**

The normal rule of statutory construction is that if congress intends for legislation to change the interpretation of judicially created concept it makes that intent specific.

The legislative intent "MUST" prevail, the language MUST be constructed in the light of the intended purpose of statute. **Sweat, 386 S.C. at 350,688 S.E. 2d at 575**

Where the statute's language is plain and unambiguous and conveys a **CLEAR** and **DEFINITE** meaning, the rules of statutory interpretation are **NOT** needed and the court has NO right to impose another meaning. **Norman J. Singer, Sutherland Statutory Construction 46.03 at 94 (5th ed 1992) Hodges v. Rainey, 341 S.C. 79,85 533 S.E. 2d 578,581 (2000)**

S.C.Code Ann. 44-48-80 and 44-48-90 CLEARLY and SUCCINCTLY expressed in statute.

Prior to trial, Attorney Thompson had the responsibility to challenge a procedure that was distinct from the underlying process, full vindication of the Appellant's pretrial rights required intervention **BEFORE** trial. **Gerstein v. Pugh, 420 U.S. 107,95 S.Ct 854,43 L.Ed 2d 54 (1975)**

The Appellant's **IRREPARABLE** Injury is **BOTH** **"GREAT"** and **"IMMEDIATE"! Fenner v. Boykin, 271 U.S. 240,243 (1926)**

Arevalo v. Hennessy, 822 F. 3d 763 (9th Cir 2018) provides: **(1)** Regardless of the outcome at trial, a Post-trial adjudication will **NOT** fully vindicate the Appellant's RIGHT to a **[CURRENT]** and **[PROPER]** Pretrial **[PROBABLE CAUSE]** determination,**(2)** the Appellant's claim which could have been raised in contest of the (SVP) induction process, could **NOT** have prejudiced the conduct of the trial on the merits.

" The **5th AMENDMENT** Protection against **[DOUBLE JEOPARDY]** ... is NOT against Twice being punished, bur against being **TWICE** put in jeopardy". That is, against facing **TWO** trials. **Mannes v. Gillespie, 967 F.2d 1310 (9th Cir 1992)**

Attorney Thompson, South Carolina State Actors and Agents and the Court failed to provide the Appellant with a Constitutionally Adequate **[PROBABLE CAUSE]** determination.

The Appellant's claim is directed ONLY at the legality of the Pretrial detention **WITHOUT** a Constitutionally Adequate Judicial hearing **PRIOR** to trial.

The Appellant's presentation Pretrial of **NUMEROUS [COLORABLE CLAIMS]** should have afforded him Adequate if NOT Equal protection to prevent further infringement on his State and Constitutional Rights.

Attorney Thompson had the pretrial requisite showing available that could have disbanded the **IRREPARABLE [DOUBLE JEOPARDY]** Violation which has Substantially Prejudiced the Appellant; by allowing a **SECOND** Trial to occur **BEFORE** he had the opportunity to vindicate his Constitutional Rights.

The **" DOUBLE JEOPARDY CLAUSE"** does **NOT** apply ONLY to punishment imposed in criminal proceedings; rather, it's violation can be identified only by

assessing the character of the actual sanctions imposed by the **MACHINARY OF THE STATE.** **Halper at 446, 109 S.Ct. at 1901**

The Appellant had **NO** access to **EFFECTIVE, TRADITIONAL or ALTERNATIVE** avenues within the State of South Carolina's **" CORRECTIVE PROCEEDINGS"** whereby to raise his Constitutional contentions **BEFORE** any Double Jeopardy Injury could inure. **Nivens I, 319 F.3d at 159**

The efficacious operation of the persistent MUTING of **MANDATORY** State and Federal Constitutional Legislation, amplifies the Appellant's supplication established on the plethora of violations that can **ONLY** be characterized as **EXTREME!**

REQUSTED RELIEF

The Appellant **MICHAEL T. BRAXTON** humbly request that this Honorable Court enter a Judgement **GRANTING:**

1). A Declaration by **ORDER** that the acts and omissions described herein violated the Appellant's Rights under the **U.S. Constitution and the State Laws of South Carolina.**

2). That the county of **RICHLAND** located in **Columbia, South Carolina**, be granted **SUBJECT MATTER JURISDICTION** in the resolution of this cause.

3). That the Appellant be reimbursed for **ALL** Fees and Expenses associated with this cause.

4). A Jury Trial on **ALL** issues.

5). **ANY** Additional Relief the court deems Just, Appropriate and Equitable; **South Carolina Code Ann. 15-53-120.**

CONCLUSION

The Appellant comes before this Honorable Court on his **Plausible, Non-Frivolous, Cognizable, Constitutional Claims** that require an Equitable review.

The accrued **CAUSE OF ACTION** on Sequential Exhibition throughout the record, necessitates that **CLARITY** be appointed in this Obdurate Condemnatory Deprivation of Due Process.

Respectfully Submitted,

Michael T. Braxton

MICHAEL T.BRAXTON

4546 BROAD RIVER RD

COLUMBIA, SC 29210