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AUG 28 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from the Richland County Court of Common Pleas

Before the Honorable Daniel Coble

MICHAEL T. BRAXTON.....Appellant,

v.

Don A. Thompson .....Respondent.

Appellate Case No. 2025-000172

SUPPLEMENTAL RECORD ON APPEAL

MICHAEL T. BRAXTON
4546 Broad River Rd
Columbia, SC 29210

STATE OF SOUTH CAROLINA

In the Court of Appeals

MICHAEL T. BRAXTON.....Appellant,

v.

Don A. Thompson ..... Respondent.

Appellate Case No. 2025-000172

RECORD ON APPEAL

RECEIVED
JUL 18 2025
SC Court of Appeals

MICHAEL T. BRAXTON, Appellant
4546 Broad River Rd
Columbia, SC 29210

INDEX TO BE INCLUDED WITH THE PLAINTIFF'S DESIGNATION OF MATTER IN THE RECORD ON APPEAL:

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(1)

THE STATE OF SOUTH CAROLINA

In the Court Of Appeals

MICHAEL T. BRAXTON Appellant, v. Don A. Thompson Defendant,	Appellant Case No. MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, Michael T. Braxton hereby humbly submits his **MOTION FOR LEAVE** to proceed in this action without prepayment of fees or cost or security. In support of my motion, I declare under penalty of perjury that the following facts are true:

1). I am the Appellant in this action and I believe that I am entitled to redress.

2). Because of my poverty due to my excessive, illegal confinement, I am unable to pay the cost of said proceedings or give security thereof.

Date: 01/27/2025 JH

JANIE HOUGH
NOTARY PUBLIC, STATE OF SOUTH CAROLINA
My Commission Expires 12/9/2031

NOTARY OF SOUTH CAROLINA

Janie Hough

Date: 01/27/2025

Expires: 12/09/2031

Michael T. Braxton

MICHAEL T. BRAXTON

4546 Broad River Rd

Columbia, SC 29210

(1)

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

MICHAEL T. BRAXTON
Appellant,

v.

Don A. Thompson
Defendant.

PROOF OF SERVICE

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Appellant Case No.

I **Michael T. Braxton** hereby declares under penalty of perjury that on the ____ day of **January 2025,** that he placed a true and exact notarized copy of his **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS** in the U.S. Mail, Postage Pre-paid addressed to the following listed below:

The South Carolina Court of Appeals
Jenny A. Kitchings, Honorable Clerk
V. Clarie Allen, Honorable Deputy Clerk
P.O.Box 11629
Columbia, SC 29211

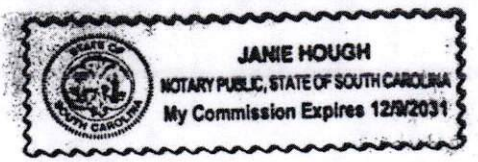
Michael T Braxton

MICHAEL T. BRAXTON
4546 Broad River Rd
Columbia, SC 29210

Attorney(s) for the Defendant Don A. Thompson
CLARKSON/ WALSH/ COULTER
P.O.BOX 6728
Columbia, SC 29211

Jeanette W. McBride
Honorable Clerk of Court
Richland County
P.O. Box 2766
Columbia, SC 29202

NOTARY OF SOUTH CAROLINA
Janie Hough
Date: 01/27/2025
Expires: 12/09/2031



②

JEANETTE W. McBRIDE
Clerk of Court

VIRGINIA F BELCHER
Chief Deputy Clerk of Court

MAILING ADDRESS:
POST OFFICE BOX 2766
COLUMBIA, S.C. 29202-2766

TELEPHONE:
Phone: (803) 576-1950
Fax: (803) 576-1785
TDD (803) 748-4999

RICHLAND COUNTY CLERK OF COURT
Richland County Judicial Center
1701 Main Street, Room 205
Columbia, S. C. 29201

January 31, 2025

Michael T Braxton
4546 Broad River Rd
Columbia SC 29210

We have received your inquiry and respond as follows:
2024cp4002262

[ ] We were unable to find a case with the name(s) and/or case number that you provided. If the case is a Richland County Case, please provide us with as much information as possible. (For example: a list of the **full** names of **ALL** parties in the case number and approximate filing date).

[ ] The document you requested was not in the referenced case file. If the document was a Proposed Order, you may want to contact the Chief Administrative Judge or the Judge to whom you proposed this Order.

[ ] The record you requested is sealed by Court Order. A court order will be required to open the file. Please contact an attorney.

[ ] In order to obtain a transcript, send a written request to South Carolina Court Administration at 1015 Sumter Street, Suite 200, Columbia, SC 29201. You need to provide the case number, the Judge's name, and the date of the trial. If you have any questions, call (803) 734-1800.

[ ] A $5.00 money order or law firm check and a self-addressed stamped envelope are required for copies of all documents that are less than 20 pages. For documents over 20 pages, please contact this office for an exact amount.

[ ] This office is not permitted to provide legal advice or legal forms. Please contact an attorney to assist you.

[ ] This office cannot assist you with your request. For assistance, please contact:

[X] Other: We are returning your filing because your in forma pauperis has already been filed with Clerk of Court in this case. (See clocked copy.) If you are wanting to file this Motion for Leave to Proceed In Forma Pauperis at Court of Appeals, Court of Appeals is at PO Box 11629, Columbia, SC 29211.

Sincerely,

Jeanette W. McBride AS

Richland County Clerk of Court

(3)

2024CP4002202

IN THE COURT OF COMMON PLEAS, FIFTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND

MICHAEL T. BRAXTON
Plaintiff,

v.

DON A. THOMPSON
Defendant.

COMPLAINT (JURY TRIAL)

FILE NO.

RICHLAND COUNTY
FILED
2024 APR 11 AM 9:27
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

Now comes the Plaintiff MICHAEL T. BRAXTON complaining of the above-named Defendant as follows:

JURISDICTION

1. This is brought pursuant to the South Carolina Tort Claims Act, South Carolina Code Ann. 15-78-30 etc., seq. The jurisdiction of this court is pursuant to Article I, Section 3, Article I, Section 4, Article I, Section 8, Article I, Section 22, Article I, Section 23 and Article XII, Section 2 of the South Carolina Constitution.
The jurisdiction of this court is further involved pursuant to the South Carolina Code of Laws governing Life and Liberty.

VENUE

2. Venue in this circuit is proper as the Department of Mental Health (Hereby DMH) is an agency of the State of South Carolina, whose headquarters is located in Columbia, South Carolina.

PARTIES

3. The Plaintiff at All times mentioned herein is a Prisoner of the State of South Carolina, in the custody of the South Carolina Department of Mental Health (DMH)

(3)

He is currently confined under an act that is Inapplicable to him, while being continuously encaged within an **ILLEGAL** and **EXPIRED** sentence at the WELLPATH/ CORRECT CARE Facility located in Columbia, South Carolina.

4. The Defendant acted in his Professional Capacity being **Grossly Negligent** in his **Sixth (6th) and Fourteenth (14th) Amendment** violation(s) of the Petitioner's Due Process, by failing to provide the Petitioner with **EFFECTIVE ASSISTANCE OF COUNSEL** Pre-trial, which undermined the proper function of the Adversarial Process that a trial cannot be relied on as having produced a just result.

5. Attorney Don A. Thompson has violated the Petitioner's Due Process by failing to provide **EFFECTIVE ASSISTANCE OF COUNSEL** during **(SVP)** Civil Commitment proceedings arising under the **Fourteenth Amendment** and the **MANDATORY** South Carolina Statutory provision enacted under **South Carolina Code Ann. 44-48-90.**

6. Attorney Don A. Thompson has violated **RULE 17 (b) RULES OF LAWYER DISCIPLINARY ENFORCEMENT (RLDE)** contained in **RULE 413 (SCACR) PROTECTION OF THE INTREST OF CLIENTS – RULE 31,** by his breach of his Fiduciary duties assigned under **7A C.J.S. ATTORNEY & CLIENT 345, 347, 363, and 375.**

7. The Substance of the Petitioner's complaint is that he is **IMPROPERLY** and **ILLEGALLY** in custody due to the **INEFFECTIVENESS** of Attorney Don A. Thompson.

RELIEF

8. WEREFORE, the Plaintiff respectfully prays that this court enter judgment granting Plaintiff:

9. A Declaration that the acts or omissions described herein violated Plaintiff MICHAEL T. BRAXTON'S rights under the **U.S. CONSTITUTION** and the **State Laws of South Carolina.**

(3)

10. Compensatory Damages in the amount of **$ 300.000.00 dollars** against the Defendant.

11. A Jury Trial on ALL issues.

12. Plaintiff's Cost in suit.

13. Any additional Relief the court deems just, proper and equitable, **South Carolina Code Ann. 15-53-120.**

Respectfully Submitted,

This 2 **day of April 2024**

Michael T. Braxton

MICHAEL T. BRAXTON
4546 Broad River Rd
Columbia, SC 29210

Notary of South Carolina
Date: 4/01/2024
Notary: Janie Hough
Expires: 12/09/2031

JANIE HOUGH
NOTARY PUBLIC, STATE OF SOUTH CAROLINA
My Commission Expires 12/9/2031

(2)

IN THE COURT OF COMMON PLEAS, FIFTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND

MICHAEL T. BRAXTON
Plaintiff,
V.
Don A. Thompson
Defendant.

Case No. 2024CP4002262

PROOF OF SERVICE

The Above-named Defendant has been placed on notice for PROOF OF SERVICE by the Plaintiff. Upon this 2nd Day of **July 2024** the Defendant was served a certified copy of Proof of Service by mailing personally within the U.S. Mail, postage pre-paid, addressed to the following listed below:

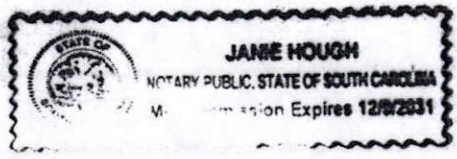
Clarkson, Walsh & Coulter
Attorneys at Law
P.O.Box 6728
Greenville, SC 29606

Jeanette W. McBride
CLERK OF COURT
RICHLAND COUNTY
P.O.BOX 2766
Columbia, SC 29202-2766

Michael T. Braxton
MICHAEL T. BRAXTON
4546 Broad River Rd
Columbia, SC 29210

Notary of South Carolina
Date: July, 02 2024
Notary: Janie Hough
Expires: 12/09/2031





(4)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No.: 2024-CP-40-02262
Michael T. Braxton,	)	
	)	**DEFENDANT'S ANSWER TO**
Plaintiff,	)	**PLAINTIFF'S COMPLAINT**
	)	
vs.	)	**(JURY TRIAL DEMANDED)**
	)	
Don A. Thompson,	)	
	)	
Defendant.	)	
	)	

Defendant Don A. Thompson, (hereinafter "Defendant"), responding to the Complaint of the Plaintiff, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. The Defendant denies the allegations contained in Paragraph 1 of the Complaint due to the fact that they contain legal conclusions.

2. The Defendant denies the allegations contained in Paragraph 2 of the Complaint. Further responding to these allegations, the Defendant would show that he does not reside in Richland County and that the events at issue in this case did not occur in Richland County. The Defendant resides in Greenville County and Plaintiff's underlying case which forms the basis of this action occurred in Anderson County. As such, venue is improper in Richland County and should be transferred.

3. The Defendant denies the allegations contained in Paragraph 3 of the Complaint based on a lack of direct knowledge due to the fact that the allegations do not pertain to the Defendant.

4. The Defendant denies the allegations contained in Paragraph 4 of the Complaint.

(4)

5. The Defendant denies the allegations contained in Paragraph 5 of the Complaint.

6. The Defendant denies the allegations contained in Paragraph 6 of the Complaint.

7. The Defendant denies the allegations contained in Paragraph 7 of the Complaint.

8. The Defendant denies the allegations contained in Paragraph 8 of the Complaint.

9. The Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. The Defendant denies the allegations contained in Paragraph 10 of the Complaint.

11. Responding to the allegations contained in Paragraph 11 of the Complaint, the Defendant also requests a trial by jury.

12. The Defendant denies the allegations contained in Paragraphs 12, 13 and all remaining allegations contained in the Complaint not specifically admitted herein.

FOR A SECOND DEFENSE

13. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

14. The Plaintiff's Complaint fails to state a claim for which relief can be granted and, as such, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

15. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

16. The Defendant alleges the Plaintiff has failed to properly serve his Summons and Complaint; therefore, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(2), (4) and (5) of the South Carolina Rules of Civil Procedure.

(4)

FOR A FOURTH DEFENSE

17. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

18. The Defendant alleges the Court lacks subject matter jurisdiction and therefore, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE

19. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

20. The Defendant alleges that Richland County is an improper venue for the above-captioned action pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure and that venue should be transferred to Greenville County where the Defendant resides or to Anderson County where the events forming the basis of the Plaintiff's allegations occurred.

FOR A SIXTH DEFENSE

21. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

22. The Defendant alleges that he is not a governmental employee and that he is not a state actor for purposes of Plaintiff's attempted federal claims; therefore, the Plaintiff's Complaint should be dismissed.

FOR A SEVENTH DEFENSE

23. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

(4)

24. The Defendant alleges that the Plaintiff has failed to allege a cognizable claim for relief for alleged ineffective assistance of counsel; therefore, the Plaintiff's Complaint should be dismissed.

FOR AN EIGHTH DEFENSE

25. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

26. The Plaintiff's alleged injuries and damages occurred solely as a result of the Plaintiff's own conduct and negligence. As such, the Plaintiff's Complaint should be dismissed.

FOR A NINTH DEFENSE

27. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

28. The Defendant alleges that even assuming he was negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on his part operated as a proximate cause of the incident and the Plaintiff's resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that the Plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed more than 50% to the cause of the incident and the Plaintiff's resulting injuries and damages, if any. For that reason, the Defendant is not liable to plaintiff in any sum whatsoever.

FOR A TENTH DEFENSE

29. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

30. The Defendant alleges that even if he was negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely

(4)

for the purpose of this defense and no other, and even if any such conduct on his part operated as a greater than 50% cause of the incident and the Plaintiff's resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, he is entitled to a determination as to the percentage which the Plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed to the incident and to a reduction of any amount awarded to Plaintiff in an amount equal to that percentage of Plaintiff's own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR AN ELEVENTH DEFENSE

31. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

32. The Defendant alleges that to the extent that the Plaintiff recovers damages, including punitive damages, related to the loss complained of in the Complaint, such damages/punitive damages must be reduced and/or limited to the amounts as specified and controlled by S.C. Code Ann. §15-32-530.

FOR A TWELFTH DEFENSE

33. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

34. The Defendant alleges that ineffective assistance of counsel claims are not cognizable as a constitutional tort under Section 1983 where the Plaintiff makes no allegations to plausibly show the Defendant exceeded the traditional functions of counsel. As such, the Plaintiff's claims should be dismissed.

(4)

35. In addition, the Defendant alleges that his representation in the state civil/criminal case fell squarely within the parameters of his legal representation until he was relieved as counsel and substitute counsel was appointed.

36. The Plaintiff's allegations contained in his Complaint do not set forth any allegations of any alleged conduct outside the traditional functions of counsel or outside the parameters of legal representation. As such, Plaintiff's claims must fail.

FOR A THIRTEENTH DEFENSE

37. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

38. The Defendant alleges that the Plaintiff failed to properly mitigate his damages. The Defendant pleads such failure as a complete bar to any recovery and/or that any recovery should be reduced by an amount to be proved at the trial of this case.

FOR A FOURTEENTH DEFENSE

39. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

40. The Defendant alleges that the Plaintiff's claims are or may be barred by the legal and equitable doctrines of waiver, estoppel, laches and/or unclean hands.

FOR A FIFTEENTH DEFENSE

41. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

42. The Defendant alleges that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection clauses

of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding sections of the Constitution of the State of South Carolina, Article 1, Section 3.

43. The Plaintiff's claim for punitive damages violates the Defendant's right to access to the Courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills Defendant's exercise of that right.

44. The Plaintiff's claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons:

(a) The standard or test for determining the requisite mental state of the defendant for imposition of punitive damages is void for vagueness; and

(b) Insofar as punitive damages are not measured against actual injury to the Plaintiff and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damage that may be awarded is indeterminate at the time of the Defendant's alleged conduct.

FOR A SIXTEENTH DEFENSE

45. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

46. The Defendant pleads the intervening, superseding actions of a third party for which the defendant would not be liable.

FOR A SEVENTEENTH DEFENSE

47. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

48. The Defendant alleges that the Plaintiff is improperly attempting to relitigate his prior state criminal case. The Plaintiff may not challenge his state conviction in a civil rights action and/or through a purported civil action for damages rather than a Post-Conviction Relief (PCR) action.

49. In Heck v. Humphrey, 512 U.S. 477, 486–87, 114 S.Ct. 2364, 129 L.Ed.2d 383, the Supreme Court held that until a plaintiff's sentence and conviction are set aside, any civil rights action based on the conviction, sentence, direct appeal, and related matters will be barred. 512 U.S. at 484

50. As such, this case should be dismissed.

FOR AN EIGHTEENTH DEFENSE

51. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

52. The Defendant alleges that to the extent Plaintiff's Complaint can be construed as a legal malpractice claim, the Plaintiff has failed to file a contemporaneous expert affidavit as required by S.C. Code Ann. § 15-36-100.

53. The failure to file an expert affidavit is fatal to the Plaintiff's case and, as such, should be dismissed.

WHEREFORE, the Defendant, having answered the Complaint of the Plaintiff herein, respectfully requests the Court to dismiss the Plaintiff's Complaint with prejudice, and for such other and further relief as the Court may deem just and proper.

(4)

Respectfully submitted,

James P. Walsh (SC Bar No.: 15180)
P. Christopher Smith, Jr. (SC Bar No. 74086)
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400 Phone
(864) 235-4399 Fax
jwalsh@clarksonwalsh.com email
csmith@clarksonwalsh.com email

ATTORNEYS FOR DEFENDANT

Greenville, SC
May 1, 2024

THE DEFENDANT DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

James P. Walsh (SC Bar No.: 15180)
P. Christopher Smith, Jr. (SC Bar No. 74086)
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400 Phone
(864) 235-4399 Fax
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csmith@clarksonwalsh.com email

ATTORNEYS FOR DEFENDANT

Greenville, SC
May 1, 2024

(5)

STATE of SOUTH CAROLINA

COUNTY of RICHLAND

CASE NUMBER

2024 – CP – 400 – 2262

Michael T. Braxton

V

DON A. THOMPSON

PLAINTIFFS REBUTTAL

to DEFENDANTS ANSWER to

COMPLAINT with MEMORANDUM

The Plaintiff submits the following : **PLAINTIFFS REBUTTAL to DEFENDANTS ANSWER to COMPLAINT with MEMORANDUM** to the courts for review to rebut the allegations set forth by three defendants and their counsel.

RICHLAND COUNTY
FILED
2024 AUG 27 AM 8:11

1) **DEFENDANTS FIRST GROUNDS :**

Page 1,2,3,4, Numbers 1 – 31 improper denial of allegations :

a) **PLAINTIFFS REBUTTAL :**

Plaintiff declares to show appropriate and proper alleged proof to all allegations stated in Plaintiffs Amended Complaint at appropriate time as submitted evidence.

2) **DEFENDANTS SECOND DEFENSE :**

Page 4 / # 33 Failure to state a claim dismissal pursuant to Rule 12 (b), (6) :

b) **PLAINTIFFS REBUTTAL :**

It is the Plaintiffs belief that defendants move for dismissal under Rule 12 (b), (6) is / can be construed as a Rule 12 (c) motion for Summary Judgement. The

(5)

standard of review is the same. A Motion to dismiss Rule (c) test the sufficiency of the claim it does not resolve the contest surrounding the facts or the merits of the claim or the applicability of the defenses. Pursuant to Federal Rules of Civil procedures 12(c) is treated under the same standards as a motion to dismiss Under the Federal Rules of Civil Procedures 12 (b) (6) judgement on the pleading will only be granted where the moving party has established that no issue of facts remains to be resolved, and that the movant is entitled to judgement as a matter of law The courts must view the facts and inference to be drawn from the pleadings in the light most favorable to the non – moving party.

3) **DEFENDANTS THIRD DEFENSE :**

Page 5 / #35 Failed to properly serve :
Page 5 / # 36 Amended Complaint Improper :

c) **PLAINTIFFS REBUTTAL :**

TO #35 The courts allow service by Sheriffs Department or Deputies , by personal service or through the UNITED STATES Postal Service the last being the one used by the Plaintiff to not prejudice the defendants in any form to proper notice of the allegations

To #36 The courts grant leave to amend the complaint once in order to satisfy deficiency, add / remove defendants, etc. without admission to leave this Plaintiff took advantage of, if Plaintiff errored it is on the grounds the Plaintiffs Lack of Capacity and not being a learned member of the B.A.R. association.

4) **DEFENDANTS FOURTH DEFENSE :**

Page 5 / # 38 subject matter jurisdiction

(5)

d) **PLAINTIFFS REBUTTAL :**

It is the plaintiff's belief that the filing of the complaint and the actual notice on the courts and commencement, along with the service on the defendants in a timely fashion, and the duty to defend has been received by one served the Provisions of Rule 4 should be liberally constructed to effectuate service and uphold jurisdiction of the courts. Furthermore granting / giving subject matter jurisdiction to the court as a proper defense on merits.

5) **DEFENDANTS FIFTH DEFENSE :**

PAGE 5 / # 40 IMPROPER VENUE :

e) **PLAINTIFFS REBUTTAL :**

Plaintiffs filing of the case to the courts of Richland County sets proper venue to the courts and a proper defense on merits. It is the plaintiff's belief that the filing of the complaint and the actual notice on the courts and commencement, along with the service on the defendants in a timely fashion, and the duty to defend has been received by one served the Provisions of Rule 4 should be liberally constructed to effectuate service and uphold jurisdiction of the courts. Furthermore granting / giving subject matter jurisdiction to the court as a proper defense on merits.

6) **DEFENDANTS SIXTH DEFENSE :**

Page 6 / # 42 Not a governmental employee / not a state actor :

f) **PLAINTIFFS REBUTTAL :**

The Supreme Courts has advanced a number of tests to determine whether conduct by a "Private party" is a 'State Action". The test focus on (1) whether there is a symbiotic relationship, (2) whether the private actor assumes a public function, (3) whether the private actor is of a close nexus to the state because the state has either order or coerced the private actor to action, (4) whether there is joint participation, (5) whether the private actor and the state actor are pervasively entwined. The Plaintiff alleges that

(5)

the Lawyer Don A. Thompson meets the requirements under the above stated test as a finding of indirect state action can be made if any of these tests are satisfied.

7) **DEFENDANTS SEVENTH DEFENSE :**

Page 6 / # 44 Failed to allege a cognizable claim for relief :

g) **PLAINTIFFS REBUTTAL :**

Plaintiff alleges all relevant information pertaining to Ineffective Assistance of Counsel is enumerated in the Complaint and reiterated in the Amended Complaint filed by the plaintiff in the courts. Further the Plaintiff alleges any other evidence that may or any not be submitted in court to continue to prove the issues may / can be forth coming.

8) **DEFENDANTS EIGHTH / NINETH DEFENSE :**

Page 6 / # 46 alleged injuries and damage solely occurred as result of Plaintiff also
Page 6 / # 48 contributed more than 50% of the incident

h) **PLAINTIFFS REBUTTAL :**

Under 44 – 48 – 10 Seq. Al specifically 44 – 48 – 110 upon filing a petition alleging residents' indigent status and the desire for counsel the designated judge shall appoint from the contract attorney pool. Further the Plaintiff alleges officials are charged by the courts with not only a knowledge of general legal principals but also their applications in similar and analogues circumstances.

9) **DEFNDANTS TWELLFTH DEFNSE :**

Page 8 / # 54 Ineffective Assistance of Counsel not cognizable under 1983
Page 8 / # 55 representation squarely within parameters
Page 8 / # 56 No allegations of conduct outside traditional function

(5)

i) **PLAINTIFFS REBUTTAL :**

The Supreme Courts has advanced a number of tests to determine whether conduct by a "Private party" is a 'State Action". The test focus on (1) whether there is a symbiotic relationship, (2) whether the private actor assumes a public function, (3) whether the private actor is of a close nexus to the state because the state has either order or coerced the private actor to action, (4) whether there is joint participation, (5) whether the private actor and the state actor are pervasively entwined Plaintiff alleges all relevant information pertaining to Ineffective Assistance of Counsel is enumerated in the Complaint and reiterated in the Amended Complaint filed by the plaintiff in the courts. Further the Plaintiff alleges any other evidence that may or any not be submitted in court to continue to prove the issues may / can be forth coming.

10) **DEFENDANTS FOURTEENTH DEFENSE :**

Page 9 / # 60 Bared by equitable doctrine, Estoppel :

j) **PLAINTIFFS REBUTTAL :**

Plaintiff alleges the while the Doctrine of Wavier or equitable Estoppel may be invoked as an affirmative defense to the counter claim or may be used to bar enforcement of commitment, restrictive, or conduct amounting to false representation or concealment of noticeable facts also a voluntary and intentional abandonment of know facts. Plaintiff has not alleged any of these nor has there been a counter claim submitted or offered by the defense. Further it is alleged were claims are not "virtually identical" to those asserted in state forum the Doctrine does not bar a claim.

11) **DEFENDANTS FIFTEENTH DEFENSE :**

Page 9 / # 62 Impermissible and excessive fine
Page 9 / # 63 chills defendants' rights
Page 9 / # 65 violation of Due Process

(5)

k) **PLAINTIFFS REBUTTAL :**

To alleged chilling of exercised rights it is the plaintiff's belief that the jury and the courts come prepared to weigh and measure the compensation to the individual for harm / damage done by corporations, agencies, etc. It is further the Plaintiff beliefs that agencies, corporations pay on a yearly bases insurance to cover the maximum sum of ($500,000.00) five Hundred Thousand Dollars U.S to cover the harm / damaged caused by their errors. South Carolina tort claims act 78 / 15 – 78 – 30 (J)

12) DEFENDANTS SIXTEENTH DEFENSE :

Page 10 / # 66 Third Party Actions :

l) **PLAINTIFFS REBUTTAL :**

Plaintiff alleges that at no times have a third party's action been inferred in this matter unless the defense alleges that their vetted / appointed lawyer is the third-party actor to the alleged harm caused.

(5)

13) DEFENDANTS SEVENTENTH DEFENSE :

Page – 10 / # 68 relitigate state criminal case

Page – 10 / # 69 Heck v Humphrey

l) **PLANTIFFS REBUTTAL :**

Plaintiff alleges as shown in in alleges to prove in court the argument is Constitutional Violations (State of SOUTH CAROLINA and UNITED STATES) in regards to the Involuntary Civil Commitment Scheme and the Ineffective Assistants of Counsel in regards to that as allowed by 44-48-115. Right to challenge commitment and periodic reviews on basis of ineffective assistance of counsel It is the Plaintiffs continued belie that these allegations are not governed by Heck v. Humphrey

14) DEFENDANTS EIGHTEENTH DEFENSE :

Page – 10 / # 72 Amended Complaint constructed as a Legal Malpractice Claim

m) **PLAINTIFFS BEBUTTAL :**

If the courts decide that the case is to be constructed as a Legal Malpractice Claim the Plaintiff request time to apply, secure, submit an expert affidavit through the Indigent Defense Fund Application as the Plaintiff is acting as Pro Se filer with a Lack of Capacity in the matters of law

CONCLUSION :

In so far, the Plaintiffs rebuttal to the allegations in Defendants answer, any enumerated allegations not specifically rebutted are denied by the Plaintiff. If the courts require a specific rebuttal to these enumerated allegations the Plaintiff requested an extension of time to research, compile and submit such rebuttal to the courts. Further if the allegations stand as stated in the answer to the amended complaint the Plaintiff request specific documented proof to those allegations be submitted without speculation in a timely fashion or at the date of court hearing.

(5)

VERIFICATION :

By the Plaintiffs signature below he declares to the best of his knowledge, the information and beliefs submitted in the rebuttal to Defendants Answer (1) is not being presented for improper purposes such as to harass, cause unnecessary delays or needlessly increase cost of litigation (2) is supported by existing law (3) the factual content has evidentiary support or if specifically identified will likely have evidentiary support after a reasonable opportunity for further investigation.

Further the Plaintiff sayth not.

Michael T. Braxton

Michael T. Braxton

August 23, 2024

Michael T. Braxton
C/o WELLPATH
4546 Broad River Road
Columbia, SOUTH CAROLINA
29210

August 23, 2024

MICHAEL T. BRAXTON
Plaintiff,

v.

Don A. Thompson
Defendant.

Case No. 2024-CP-400-2262

PROOF OF SERVICE

The Plaintiff Michael T. Braxton declares under penalty of perjury that on the 24th day of August 2024, he placed a true and exact copy of his **PLAINTIFF'S REBUTTAL TO DEFENDANT'S ANSWER TO COMPLAINT with MEMORANDUM** in the U.S. Mail, postage pre-paid, addressed to the following listed below:

Jeanette W. McBride
CLERK OF COURT
RICHLAND COUNTY
P.O.BOX 2766
Columbia, SC 29202-2766

CLARKSON, WALSH & COULTER
ATTORNEY'S AT LAW
P.O. BOX 6728
Greenville, SC 29606

RICHLAND COUNTY
2024 AUG 27 AM 8:29

Michael T. Braxton

MICHAEL T. BRAXTON
4546 BROAD RIVER RD
Columbia, SC 29210

6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No.: 2024-CP-40-02262
Michael T. Braxton,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**DEFENDANT'S MOTION TO DISMISS**
	)	
Don A. Thompson,	)	
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Defendant Don A. Thompson, (hereinafter "Defendant"), by and through his undersigned attorneys, on the tenth day after the filing of this motion, or such time after as set by the Court, will move before the Presiding Judge for the Court of Common Pleas for Richland County for an order dismissing the above-referenced Defendant in accordance with Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. This motion is based upon the grounds that the Plaintiff has failed to state a claim for which relief may be granted against the Defendant.

In addition, the Plaintiff has failed to properly serve his Summons and Complaint; therefore, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(2), (4) and (5) of the South Carolina Rules of Civil Procedure. Also, the Court lacks subject matter jurisdiction and therefore, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

The Defendant is not a governmental employee and is not a state actor for purposes of Plaintiff's attempted federal claims. See Lott v. Sheek, No. 819CV00954DCCJDA, 2019 WL 3308415, at *4 (D.S.C. Apr. 4, 2019), report and recommendation adopted, No. 8:19-CV-00954-DCC, 2019 WL 2511253 (D.S.C. June 18, 2019). The Plaintiff has also failed to allege a

cognizable claim for relief for alleged ineffective assistance of counsel. Id. Ineffective assistance of counsel claims are not cognizable as a constitutional tort under Section 1983 where the Plaintiff makes no allegations to plausibly show the Defendant exceeded the traditional functions of counsel. Id. The Plaintiff's allegations contained in his Complaint do not set forth any allegations of any alleged conduct outside the traditional functions of counsel or outside the parameters of legal representation. Id.; citing Polk Cty. v. Dodson, 454 U.S. 312, 325 (1981) (explaining ineffective assistance of counsel claims are not cognizable as a constitutional tort under § 1983 where plaintiff makes no allegations to plausibly show an attorney exceeded the "traditional functions as counsel"); Martin v. Burton, No. 0:12-cv-01088-RBH, 2012 WL 2502711, at *2 (D.S.C. June 28, 2012), aff'd, 485 F. App'x 634 (4th Cir. 2012); Trexler v. Giese, No. 3:09-cv-144-CMC-PJG, 2010 WL 104599, at *3 (D.S.C. Jan. 7, 2010) (finding attorney was entitled to summary dismissal in § 1983 action where attorney's representation in the state criminal case fell "squarely within the parameters of his legal representation" although the plaintiff was unhappy with the manner in which the attorney represented her).

The Plaintiff is improperly attempting to relitigate his prior state criminal case. The Plaintiff may not challenge his state conviction in a civil rights action and/or through a purported civil action for damages rather than a Post-Conviction Relief (PCR) action. In Heck v. Humphrey, 512 U.S. 477, 486–87, 114 S.Ct. 2364, 129 L.Ed.2d 383, the Supreme Court held that until a plaintiff's sentence and conviction are set aside, any civil rights action based on the conviction, sentence, direct appeal, and related matters will be barred. 512 U.S. at 484; see also Hart v. Ranier, No. CIV.A.8091688RBHBHH, 2010 WL 2228405, at *3 (D.S.C. May 4, 2010), report and recommendation adopted sub nom. Hart v. Rainier, No. 8:09-CV-01688-RBH, 2010 WL 2228413 (D.S.C. June 1, 2010).

(6)

To the extent Plaintiff's Complaint can be construed as a legal malpractice claim, the Plaintiff has failed to file a contemporaneous expert affidavit as required by S.C. Code Ann. § 15-36-100. The failure to file an expert affidavit is fatal to the Plaintiff's case and, as such, should be dismissed.

Based on the foregoing law which is directly applicable to the Plaintiff's attempted claims and based upon a plain reading of the allegations contained in the Plaintiff's Complaint, the Plaintiff has failed to state a claim against the Defendant. In addition, the Complaint and the Plaintiff's attempted service contain additional deficiencies. As a result, the Defendant requests that the Plaintiff's Complaint be dismissed with prejudice.

Respectfully submitted,

CLARKSON, WALSH & COULTER, P.A.

P. Cl & T.

James P. Walsh (S.C. Bar No. 15180)
P. Christopher Smith, Jr. (S.C. Bar No. 74086)
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400
Fax: (864) 235-4399
Attorneys for Defendant

Greenville, South Carolina
May 1, 2024

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

CASE NO. 2024-40-02262

MICHAEL T. BRAXTON
Plaintiff,
v.
DON A. THOMPSON
Defendant.

PLAINTIFF'S REBUTTAL TO DEFENDANT'S MOTION TO DISMISS WITH MEMORANDUM

The Plaintiff submits Michael T. Braxton submits his **REBUTTAL TO DEFENDANT'S MOTION TO DISMISS WITH MEMORANDUM** without a separate memorandum enclosed, as will be included in rebuttal as follows:

1). Defendant's 1st Defense Page # 1 / Paragraph # 1

" Plaintiff failed to state a claim"

PLAINTIFF'S REBUTTAL

a) Plaintiff's move for dismissal **12(b),(6)** can be construed as **Rule 12 (c)** Motion for Summary Judgement **(Edwards v. City of Goldsboro (4th Cir. 1989))** The standard of review is the same **(Republican party of N.C. v. Martin (4th Cir. 1992))**. A Motion to Dismiss under **12 (c)** test the sufficiency of a claim it does not resolve the contest surrounding the stated facts, the merit of the claim, or the applicability of defense. Under **(Doe v. Martin, 645 S.E. 2nd 245 (S.C. 2007))** the complaint should not be dismissed for failure to state a claim or cause of action merely because the courts doubt the Plaintiff will not prevail in the action. Further under **(Mictronics Inc. v. SOUTH CAROLINA Department of Revenue, 345 S.C. 506,511,548 S.E. 2d 266))** Public Policy focus deposition of cases on merit rather than technicalities.

(7)

2). Plaintiff's 2nd Defense Page # 1/ Paragraph # 2

" Failed to properly serve also Subject Matter Jurisdiction"

PLAINTIFF'S REBUTTAL

b) Under **Rule 6 (b) of the Administrative and Procedural Rules for Magistrate Court Service** shall be by personal service or service by publication in the manner provided under **Rule 15 of the SOUTH CAROLINA Code of Law** or by Mail...

Filing a complaint with the courts gives the court Subject Matter Jurisdiction. **See RULE 8 . GENERAL RULES OF PLEADING a) Claims for Relief.** A pleading which sets forth a Cause of Action, whether an original claim, Counter Claim, Cross-Claim or Third-Party Claim, shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it.

3). Plaintiff's 3rd Defense Page #1 & 2 / Paragraph #3

" Not a Governmental employee"

" Failed to allege Ineffective assistance of Counsel"

PLAINTIFF'S REBUTTAL

c) Individuals acting as or on behalf of State Agency liable under actions of governmental employee see **(Kentucky v. Graham, 473 U.S. 159,165,105 S.Ct. 3099,87 L.Ed.2d 114 (1985)).** Official capacity claims "generally represent only another way of pleading an action against an entity of which an officer is an agent". See further **(Taso v. Desert Palace Inc, 698 F. 3d 1128,1139 (9th Cir. 2012))** extending the "official policy" requirement for municipals liability under **Monell**. To provide entities under the law.

Failure to produce missing pages of evidence, **see letter to Don A. Thompson, Dec 10, 2020**, Failure to seek adjudication of Pre-trial motions filed by Plaintiff on his own behalf, failure to exercise reasonable care, skill, and knowledge in conduct of litigation in defense of the case, failure to inform Plaintiff of actions in the case, being a direct product of a **Bad-Faith**

(7)

Prosecution. **(l.e. Court date as described by Clerk of Court on filing Oct 21, 2021.**

(7)

VERIFICATION

The Plaintiff **Michael T. Braxton** declares by his signature below that the above stated facts are true and not intended to mislead in any way. Except those stated as allegations to be true to the best of the Plaintiff's knowledge.

Further the Plaintiff sayth not.

Signature page / Certificate of Service page to follow:

Michael T. [illegible]

(7)

STATE OF SOUTH CAROLINA
IN TH COURT OF COMMON PLEAS
COUNTY OF RICHLAND

CASE NO. 2024-CP-40-02262

MICHAEL T. BRAXTON
Plaintiff,
v.
DON A. THOMPSON
Defendant.

CERTIFICATE OF SERVICE

The Plaintiff Michael T. Braxton hereby declares under the penalty of perjury that he placed a true and exact copy of his **REBUTTAL TO DEFENDANT'S MOTION TO DISMISS WITH MEMORANDUM** in the U.S. Mail /Postage Pre-paid on the 5th day of June 2024, addressed to the following listed below:

CLARKSON, WALSH & COULTER, PA
P.O.BOX Box 6728
Greenville, SC 29606

JEANETTE W. McBRIDE
CLERK OF COURT
RICHLAND COUNTY
P.O.BOX 2766
COUMBIA, SC 29202

Michael T. Braxton

MICHAEL T. BRAXTON
4546 BROAD RIVER RD
COLUMBIA, SC 29210

(8)

IN THE COURT OF COMMON PLEAS, FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

MICHAEL T. BRAXTON

Plaintiff,

v.

Don A. Thompson

Defendant.

AMENDED COMPLAINT

File No. 2024CP4002262

The Plaintiff Michael T. Braxton humbly submits his **AMENDED COMPLAINT**, additions to be added to his Original complaint Clock-Stamped by the court on **April 11, 2024.**

Now comes the Plaintiff complaining of the above-named Defendant as follows:

JURISDICTION

1). This is brought pursuant to the **South Carolina Tort Claims Act, South Carolina Code Ann. 15-78-30 etc., seq.** The jurisdiction of this court is pursuant to **Article I, Section 3, Article I, Section 4, Article I, Section 8, Article I, Section 22, Article I, Section 23 and Article XII, Section 2 of the South Carolina Constitution.**

The jurisdiction of this court is further involved pursuant to the South Carolina Code of Laws governing Life and Liberty.

VENUE

2). Venue in this circuit is proper as the Department of Mental Health **(Hereby DMH)** is an agency of South Carolina, whose headquarters is located in Columbia, South Carolina.

(8)

PARTIES

3). The Plaintiff at all times mentioned herein is a Prisoner of the State of South Carolina, in the custody of the South Carolina Department of Mental Health **(DMH).** He is currently under an act that is inapplicable to him, while being continuously encaged within an **ILLEGAL** and **EXPIRED** sentence at the **WELLPATH/ CORRECT CARE** facility located in Columbia, South Carolina.

4). The Defendant acted in his Professional capacity being **Grossly Negligent** in his **Sixth (6th) and Fourteenth (14th) Amendment** violation(s) of the Plaintiff's Due Process, by failing to provide the Plaintiff with **EFFECTIVE ASSISTANCE OF COUNSEL** Pre-trial, which undermined the proper function of the Adversarial Process that a trial cannot be relied on as having produced a just result.

5). Attorney Don A. Thompson has violated the Plaintiff's Due Process by failing to provide **EFFECTIVE ASSISTANCE OF COUNSEL** during (SVP) Civil Commitment proceedings arising under the Fourteenth Amendment and the **MANDATORY** South Carolina Statutory provision enacted under South Carolina **Code Ann. 44-48-90.**

6). Attorney Don A. Thompson has violated **RULE 17 (b) RULES OF LAWYER DISCIPLINARY ENFORCEMENT (RLDE) contained in RULE 413 (SCACR) PROTECTION OF INTREST OF CLIENTS- RULE 31, by his breach of his Fiduciary duties assigned under 7A C.J.S. ATTORNEY & CLIENT 345,347,363 and 375.**

7). The Substance of the Plaintiff's complaint is that he is **IMPROPERLY** and **ILLEGALLY** in custody due to the **INEFFECTIVENESS** of Attorney Don A. Thompson.

8). After being appointed on July 27, 2020 by the Anderson County Court of Common Pleas, Attorney Don A. Thompson did NOT communicate again with the Plaintiff until October 21, 2020. This phone correspondence basically entailed coaxing the Plaintiff to waive his **[PROBABLE CAUSE]** hearing.

(8)

9). Attorney Thompson **FAILED** to contest the **FILING** and **GRANTING** of the Continuance **OUT OF TIME** by the South Carolina Department of Mental Health Services; this Continuance was GRANTED by **the Anderson County Court of Common Pleas on January 14, 2021, (71) SEVENTY-ONE DAYS AFTER the Order for evaluation was rendered on November 4, 2020.**

The Statutory language in **S.C. Code Ann. 44-48-80 and 44-48-90** is UNAMBIGUIOUS, as it states a Continuance may be filed within **(60) SIXTY DAYS** AFTER a [PROBABLE CAUSE] determination is rendered by the court, and a trial MUST be held before a Judge or Jury within **(90) NINETY DAYS** AFTER the Court-Appointed expert's examination report is submitted to the court.

10). Attorney Thompson FAILED to effectively communicate with the Plaintiff PRIOR to and AFTER Order for evaluation being rendered, then AFTER the Actual evaluation being conducted on the Plaintiff on **March 8,2021**.

The Plaintiff's initial phone conversation occurred with Mr. Thompson on **October 21, 2020**, He did NOT speak to this counsel again until **May 18, 2021 (265) TWO HUNDRED SIXTY-FIVE DAYS LATER!**

Prejudice was inflicted due to Attorney Thompson's lack of Preparation and Communication. **Smith v. State, 404 S.C. 493,745, S.E. 2d 378 (S.C. App. 2012)**

11). Attorney Thompson FAILED to contest the **ERRONEOUS** [PROBABLE CAUSE] determination of the South Carolina Department of Corrections Multidisciplinary Team and Prosecutor's Review Committee.

This counsel had an obligation to challenge this determination which was based on **FABRICATED, STALE, INACCURATE, SENSATIONALIZED and INCOMPLETE "Referral Data". 7A C.J.S. ATTORNEY & CLIENT 363, DUTY OF CARE** generally, " Attorney's are held to a degree of Care, Skill, Diligence and Knowledge commonly possessed and exercised by a reasonable, careful and prudent attorney.

12). Attorney Thompson was adamant in his intent NOT to query a court of Competent jurisdiction as to **WHY** the Plaintiff was placed under the (SVP) act, when the record clearly reflects: (a). The Plaintiff's sentence Likely EXPIRED PRIOR to the inception of the act on **June 5, 1998.**

The dubious holding of the **South Carolina Court of Appeals in Michael Braxton v. South Carolina Dept. of Corr., Case No. 2017-001964,**

(8)

INVALIDATED the Plaintiff's sentence on **July 1, 2020**, yet declined to award the Plaintiff with ALL his Delinquent time while on Parole and throughout his detention in Tennessee.

This would have been a focal point for a COMPETENT attorney, especially considering the 1983 Conviction and the justification applied to the ruling; which was the Plaintiff being assigned the "status of an escapee", even though he had an UNCONTESTED conviction, remained in Legal custody and continued to serve his sentence outside prison walls.

(b). The conditions of the act was **NOT** a **DIRECT or COLLATERAL** Consequence of the plea provided by the Plaintiff on **November 17, 1983**. **Brady v. United States, 397 U.S. 742, 90 S.Ct 1463, 25 L.Ed 747 (1970)** provides: The Supreme court held that a defendant's guilty plea " not only **MUST** be voluntary but MUST be **KNOWING and INTELLIGENT** act done with sufficient awareness of the relevant circumstances and likely consequences". **Id at 748,90 S.Ct. 1463**

Attorney Thompson **NEGLIGENCE** fostered the disregard of the Plaintiff being placed under the confines of an act that was applied not only in violation of the Statutory guidelines that one MUST be **[SERVING]** time on the offense on the Effective date of the act, the offense was also designated as the "QUALIFYING OFFENSE" under the criteria of the act, even though it was NOT statutorily designated as "**VIOLENT**" until **AFTER** the Plaintiff's conviction and sentencing on **November 17, 1983.**

If the offense was classified as **NON-VIOLENT** at the time of commission, but subsequently re-classified as VIOLENT, the **"STATUTE CLASSIFICATION" will reflect NON-VIOLENT !!**

Additionally, listed under **O.P.-21.09 " INMATE RECORDS PLAN" (14.3) ["VIOLENT OFFENSES DEFINED BY STATUTE"] 16-1-60 (14.3.1)** provides: the **SCDC Offense code of ***1101**, the offense Criminal Sexual Conduct 1st degree, and the **EFFECTIVE DATE** in which the offense was placed in the **"VIOLENT OFFENSE STATUTE", EFFECTIVE DATE [JUNE 5, 1986]**

13). By Attorney Thompson coaxing the Plaintiff to waive his [PROBABLE CAUSE] hearing was a violation of the Ex Post Facto Clause of the United States Constitution, being that the Plaintiff's plea and conviction occurred **PRIOR** to the (SVP) act becoming law.

Attorney Thompson's failure to advise the Plaintiff of the Consequences of waving contest to a [PROBABLE CAUSE] determination, thus triggering the (SVP)

(8)

Commitment process, was a violation that allowed for the **UNLAWFUL** and **ILLEGAL** Civil Commitment of the Plaintiff.

The **[SEXUALLY VIOLENT PREDATOR ACT] 1998 Act No. 321 7, June 5, 1998** provides as follows: " This act takes effect upon approval of the governor an applies to ANY person who, on the effective date of the act is **[SERVING]** a sentence for ANY offense set forth in **section 44-48-30 (2)**, as well as any person that is **[CONVICTED]** of a Sexually violent offense **[ON or AFTER]** the effective date of the act.

Also see, **Article I of the United States Constitution which provides: that neither Congress nor any State shall pass any " ex post facto law". Art. 1 9, cl 3; Art.1 10 cl 1.**

14). AFTER the appointment of Attorney Thompson on **July 27, 2020**, the Plaintiff's **(1st) FIRST Face to Face interaction** occurred with this counsel on or around **August 30, 2021. (399) THREE-HUNDRED NINTY NINE DAYS LATER!**

Within this meeting Attorney Thompson revealed his prominence in the **[INORDINATE DELAY]** of the " State Corrective Process" assigned to the Plaintiff.

Upon the Plaintiff's inquiry as to WHEN his trial would be conducted, Mr. Thompson responded " I have **NO IDEA** when a trial will happen, this process is designed to keep those within it jailed"!

Upon his departure from this meeting, and after failing to respond to ANY of the Plaintiff's correspondence, Attorney Thompson filed a CONTINUANCE in the Plaintiff's cause on **October 8, 2021 WITHOUT** the Plaintiff's knowledge; while having **FULL** awareness of the trial date assigned to the Plaintiff on **November 1, 2021.**

E.MAIL correspondence on **June 29, 2021** and **August 6, 2021** between Attorney Thompson, the Attorney General's Office and the Anderson County Clerk of Court confirms Attorney Thompson's Notification agreement of the Plaintiff's **DATE CERTAIN.** (Ex-1)

7A C.J.S. Attorney & Client 344,106,109,118,125 provides: Not only MUST an attorney exercise reasonable care and diligence in acting for the client, but an attorney is also bound to conduct itself as a Fiduciary, occupying a position of the highest trust and confidence, so that, in All the attorney's relations and dealings with the client, it is the attorney's duty to exercise ultimate honesty, good faith, fairness, integrity and fidelity.

15). Attorney Thompson filed a Continuance and allowed to be **FILED and** GRANTED (2) Additional continuances OUTSIDE the MANDATORY requisite time period provided by the procedure within the provisions of **S.C. Code Ann. 44-48-80 and 44-48-90.**

The Statutory language is Transparent that an evaluation MUST be conducted within **(60) SIXTY DAYS** of the issuance of the [PROBABLE CAUSE] order, and within **(90) NINETY DAYS AFTER** the Court-Appointed expert submits the examination report to the court, a trial MUST be conducted before a Judge or Jury in the county where the offense occurred; if there's no TERM OF COURT the next available date thereafter.

After the [PROBABLE CAUSE] order was handed down on November 4, 2020, the South Carolina Department of Mental Health filed the 1st FIRST Continuance in the Plaintiff's cause on **January 14, 2021 (71) SEVENTY-ONE DAYS LATER.**

This agency violated the statute further by not providing the actual evaluation of the Plaintiff until **(61) SIXTY-ONE DAYS LATER on March 8, 2021**.

The United States Supreme Court " repeatedly has recognized that 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 1840,60 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).**

16). Attorney Thompson violated the MANDATORY provisions of **S.C.Code Ann. 44-48-80 and 44-48-90, by filing the continuance in the Plaintiff's cause (207) TWO-HUNDRED SEVEN DAYS AFTER** the Court-appointed expert submitted the examination report to the court. The Plaintiff reiterates that this CONTINUANCE was filed **WITHOUT** his Knowledge, with DECIETFUL intent!

17). Attorney Thompson failed to contest the violation of the MANDATORY Guidelines of **S.C. Code Ann. 44-48-80 and 44-48-90**, by the Attorney General of South Carolina, in the State's filing of a continuance on **January 24, 2022, (311) THREE-HUNDRED ELEVEN DAYS AFTER** the court-appointed expert submitted the evaluation report to the court.

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

18). As of **June 1, 2021**, and throughout the remainder of his tenure as the Plaintiff's counsel, Attorney Thompson Failed to seek redress on the grounds of the allegations lodged within the Plaintiff's **SUMMARY JUDGEMENT Motion and**

(8)

(4) FOUR Successive MOTION(s) TO DISMISS, filed by Plaintiff due to Mr. Thompson's noted Subtle conduct.

Attorney Thompson stated before Judge R. Keith Kelly on **April 25, 2022** in the Anderson County Court of Common Pleas, that he had NO intention to present the Plaintiff's claims before the court, because "they have **NO MERIT**"!

The Plaintiff's pre-trial motions were ALL based on the MANDATORY Statutory provisions of **S.C.Code Ann. 44-48-80/ 44-48-90, TITLE 18 FUGITIVE TOLLING ACT 3583(i), INTERSTATE AGREEMENT ON DETAINERS ACT, C.J.S. EXTRADITIONS and DETAINERS 101, State v. Ellis, 397 S.C. 576 No. 27127, Crooks v. Sanders, 123 S.C. 28 115 S.E. 760 28 ALR 940, Sanders v. McDougal, (S.C. 1964) 299 S.C. 160,134 S.E. 2d 836; as well as S.C.D.C. Policies O.P.-21.09 and 21.11 and RULE 41(b) S.C.R.C.P.**

Attorney Thompson was WELL aware of the Statutorily MANDATORY requirement provided under **S.C. Code Ann 44-48-80 and 44-48-90**, that required the DISMISSAL of the (SVP) action against the Plaintiff, due to the violation of the requisite time period. See **In Re Miller, 393 S.C. 248 (S.C. 2011)**

Due to the legislative intent for the (60) and (90) DAY time limit to be MANDATORY under S.C.Code Ann, 44-48-80 and 44-48-90, a violation will INVALIDATE the process. MANDATORY DUTY is ESSENTIAL to the main objective of the statute(s). (See attached correspondence to the Plaintiff from Attorney Thompson marked as Ex-2)

19). Attorney Thompson failed to pursue relevant REBUTTAL Testimony from Dr. David R. Price, who on **January 12,2022** conducted an independent examination on the Plaintiff. In violation of **RULE 702 S.C.R.E, State v. Council, 385 S.C. 1,20,515 S.E. 2d 508.518 (1999)**

20). Attorney Thompson was a prominent impediment in the infringement of the Plaintiff's **4th Amendment Right** to a Constitutionally adequate [PROBABLE CAUSE] determination. The Plaintiff's complaint is that a form of legal process resulted in pre-trial detention UNSUPPORTED by PROBABLE CAUSE ! **Manuel v. City of Joliet, 137 S.Ct 911,197 L.Ed 2d 312 (2017)**

Given the significant due process implications inherent in Civil Commitments section 44-48-90 defines the right to counsel as being not merely a statutory one, but also a Constitutional one arising under the **4th,5th,6th,8th and 14th amendments.**

(8)

21). Attorney Thompson allowed the Plaintiff's **5th Amendment** protection against **[DOUBLE JEOPARDY]** to be violated which " is not against being twice punished, ,but against being **TWICE** put in jeopardy". That is against facing **TWO** trials! **Mannes v. Gillespie, 967 F. 2d 1310 (9th Cir 1992)**

22). Attorney Don A. Thompson's representation of the Plaintiff was clearly below the standard of **" Objective Reasonableness"**, and his **UNETHICAL** conduct of Constitutional proportions violates the Plaintiff's **4th,5th,6th,8th, and 14th Amendment rights!**

23). Attorney Thompson is in violation of **Section (c) and (d) of II (SERVICES) section of the contract in AGREEMENT FOR ATTORNEY SERVICES** with the South Carolina Commission Indigent Defense.

24). Attorney Thompson is in violation of **Section (c) of IV (QUALIFICATIONS OF ATTORNEY) in the contract AGREEMENT FOR ATTORNEY SERVICES**, provided by the South Carolina Commission Indigent Defense.

25). Attorney Thompson is in violation of **Section (b) XI TERMINATION/ CONTRACT in the contract AGREEMENT FOR ATTORNEY SERVICES** provided by the South Carolina Commission Indigent Defense.

26). The following listed individuals will provide sworn testimony pertaining to the conduct and inactions of Attorney Don A. Thompson:

a). Bettie Scott

b). Dr. Romondo James

c). Jay Blankenship

d). Gwen Cartwright

RELIEF

27). **WHEREFORE**, the Plaintiff respectfully prays that this court enter judgement granting:

28). A Declaration that the acts or omissions described herein violated Plaintiff **MICHAEL T. BRAXTON'S** rights under the **United States Constitution, and the State Laws of South Carolina.**

29). Compensatory Damages in the amount of **$ 300.000.00 THREE HUNDRED THOUSAND DOLLARS** against the defendant.

(8)

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

31). Plaintiff's cost in the suit.

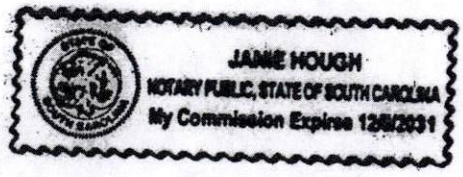
32). Any additional relief the court deems just, proper and equitable, **South Carolina Code Ann. 15-53-120**

Respectfully Submitted,
This 2nd day of July 2024

Michael T. Braxton

MICHAEL T. BRAXTON
4546 BROAD RIVER RD
COLUMBIA, SC 29210

Notary of South Carolina
Date July, 2 2024
Notary: Janie Hough
Expires: 12/09/2031



(9)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No.: 2024-CP-40-02262
Michael T. Braxton,	)	
	)	**DEFENDANT'S ANSWER TO**
Plaintiff,	)	**PLAINTIFF'S AMENDED**
	)	**COMPLAINT**
vs.	)	
	)	**(JURY TRIAL DEMANDED)**
Don A. Thompson,	)	
	)	
Defendant.	)	
	)	

Defendant Don A. Thompson, (hereinafter "Defendant"), responding to the Amended Complaint of the Plaintiff, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. The Defendant denies the allegations contained in Paragraph 1 of the Amended Complaint due to the fact that they contain legal conclusions.

2. The Defendant denies the allegations contained in Paragraph 2 of the Amended Complaint. Further responding to these allegations, the Defendant would show that he does not reside in Richland County and that the events at issue in this case did not occur in Richland County. The Defendant resides in Greenville County and Plaintiff's underlying case which forms the basis of this action occurred in Anderson County. The Defendant is not an employee of the Department of Mental Health and the Department is not a party to this action. As such, venue is improper in Richland County and should be transferred.

3. The Defendant denies the allegations contained in Paragraph 3 of the Amended Complaint as stated.

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4. The Defendant denies the allegations contained in Paragraph 4 of the Amended Complaint.

5. The Defendant denies the allegations contained in Paragraph 5 of the Amended Complaint.

6. The Defendant denies the allegations contained in Paragraph 6 of the Amended Complaint.

7. The Defendant denies the allegations contained in Paragraph 7 of the Amended Complaint.

8. The Defendant denies the allegations contained in Paragraph 8 of the Amended Complaint as stated and demands strict proof thereof.

9. The Defendant denies the allegations contained in Paragraph 9 of the Amended Complaint as stated and demands strict proof thereof.

10. The Defendant denies the allegations contained in Paragraph 10 of the Amended Complaint as stated and demands strict proof thereof.

11. The Defendant denies the allegations contained in Paragraph 11 of the Amended Complaint as stated and demands strict proof thereof.

12. The Defendant denies the allegations contained in Paragraph 12 of the Amended Complaint as stated and demands strict proof thereof.

13. The Defendant denies the allegations contained in Paragraph 13 of the Amended Complaint as stated and demands strict proof thereof.

14. The Defendant denies the allegations contained in Paragraph 14 of the Amended Complaint as stated and demands strict proof thereof.

(9)

15. The Defendant denies the allegations contained in Paragraph 15 of the Amended Complaint as stated and demands strict proof thereof.

16. The Defendant denies the allegations contained in Paragraph 16 of the Amended Complaint as stated and demands strict proof thereof.

17. The Defendant denies the allegations contained in Paragraph 17 of the Amended Complaint as stated and demands strict proof thereof.

18. The Defendant denies the allegations contained in Paragraph 18 of the Amended Complaint as stated and demands strict proof thereof.

19. The Defendant denies the allegations contained in Paragraph 19 of the Amended Complaint as stated and demands strict proof thereof.

20. The Defendant denies the allegations contained in Paragraph 20 of the Amended Complaint as stated and demands strict proof thereof.

21. The Defendant denies the allegations contained in Paragraph 21 of the Amended Complaint as stated and demands strict proof thereof.

22. The Defendant denies the allegations contained in Paragraph 22 of the Amended Complaint as stated and demands strict proof thereof.

23. The Defendant denies the allegations contained in Paragraph 23 of the Amended Complaint as stated and demands strict proof thereof.

24. The Defendant denies the allegations contained in Paragraph 24 of the Amended Complaint as stated and demands strict proof thereof.

25. The Defendant denies the allegations contained in Paragraph 25 of the Amended Complaint as stated and demands strict proof thereof.

(9)

26. The Defendant denies the allegations contained in Paragraph 26 of the Amended Complaint as stated and demands strict proof thereof.

27. The Defendant denies the allegations contained in Paragraph 27 of the Amended Complaint as stated and demands strict proof thereof.

28. The Defendant denies the allegations contained in Paragraph 28 of the Amended Complaint as stated and demands strict proof thereof.

29. The Defendant denies the allegations contained in Paragraph 29 of the Amended Complaint as stated and demands strict proof thereof.

30. Responding to the allegations contained in Paragraph 30 of the Amended Complaint, the Defendant also requests a trial by jury.

31. The Defendant denies the allegations contained in Paragraphs 31, 32 and all remaining allegations contained in the Amended Complaint not specifically admitted herein.

FOR A SECOND DEFENSE

32. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

33. The Plaintiff's Amended Complaint fails to state a claim for which relief can be granted and, as such, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

34. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

(9)

35. The Defendant alleges the Plaintiff has failed to properly serve his Summons and Amended Complaint; therefore, the Plaintiff's Amended Complaint should be dismissed pursuant to Rule 12(b)(2), (4) and (5) of the South Carolina Rules of Civil Procedure.

36. In addition, the Plaintiff's attempt at an Amended Complaint is improper because he has filed it without first receiving leave of Court.

FOR A FOURTH DEFENSE

37. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

38. The Defendant alleges the Court lacks subject matter jurisdiction and therefore, the Plaintiff's Amended Complaint should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE

39. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

40. The Defendant alleges that Richland County is an improper venue for the above-captioned action pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure and that venue should be transferred to Greenville County where the Defendant resides or to Anderson County where the events forming the basis of the Plaintiff's allegations occurred.

FOR A SIXTH DEFENSE

41. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

42. The Defendant alleges that he is not a governmental employee and that he is not a state actor for purposes of Plaintiff's attempted federal claims; therefore, the Plaintiff's Amended Complaint should be dismissed.

FOR A SEVENTH DEFENSE

43. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

44. The Defendant alleges that the Plaintiff has failed to allege a cognizable claim for relief for alleged ineffective assistance of counsel; therefore, the Plaintiff's Amended Complaint should be dismissed.

FOR AN EIGHTH DEFENSE

45. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

46. The Plaintiff's alleged injuries and damages occurred solely as a result of the Plaintiff's own conduct and negligence. As such, the Plaintiff's Amended Complaint should be dismissed.

FOR A NINTH DEFENSE

47. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

48. The Defendant alleges that even assuming he was negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on his part operated as a proximate cause of the incident and the Plaintiff's resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that the Plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed more than

(9)

50% to the cause of the incident and the Plaintiff's resulting injuries and damages, if any. For that ??
reason, the Defendant is not liable to plaintiff in any sum whatsoever.

FOR A TENTH DEFENSE

49. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

50. The Defendant alleges that even if he was negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on his part operated as a greater than 50% cause of the incident and the Plaintiff's resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, he is entitled to a determination as to the percentage which the Plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed to the incident and to a reduction of any amount awarded to Plaintiff in an amount equal to that percentage of Plaintiff's own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR AN ELEVENTH DEFENSE

51. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim. not argue

52. The Defendant alleges that to the extent that the Plaintiff recovers damages, including punitive damages, related to the loss complained of in the Amended Complaint, such damages/punitive damages must be reduced and/or limited to the amounts as specified and controlled by S.C. Code Ann. §15-32-530.

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FOR A TWELFTH DEFENSE

53. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

54. The Defendant alleges that ineffective assistance of counsel claims are not cognizable as a constitutional tort under Section 1983 where the Plaintiff makes no allegations to plausibly show the Defendant exceeded the traditional functions of counsel. As such, the Plaintiff's claims should be dismissed.

55. In addition, the Defendant alleges that his representation in the state civil/criminal case fell squarely within the parameters of his legal representation until he was relieved as counsel and substitute counsel was appointed.

56. The Plaintiff's allegations contained in his Amended Complaint do not set forth any allegations of any alleged conduct outside the traditional functions of counsel or outside the parameters of legal representation. As such, Plaintiff's claims must fail.

FOR A THIRTEENTH DEFENSE

57. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

58. The Defendant alleges that the Plaintiff failed to properly mitigate his damages. The Defendant pleads such failure as a complete bar to any recovery and/or that any recovery should be reduced by an amount to be proved at the trial of this case.

not argue

FOR A FOURTEENTH DEFENSE

59. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

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60. The Defendant alleges that the Plaintiff's claims are or may be barred by the legal and equitable doctrines of waiver, estoppel, laches and/or unclean hands.

FOR A FIFTEENTH DEFENSE

61. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

62. The Defendant alleges that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding sections of the Constitution of the State of South Carolina, Article 1, Section 3.

63. The Plaintiff's claim for punitive damages violates the Defendant's right to access to the Courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills Defendant's exercise of that right.

64. The Plaintiff's claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons:

(a) The standard or test for determining the requisite mental state of the defendant for imposition of punitive damages is void for vagueness; and

(b) Insofar as punitive damages are not measured against actual injury to the Plaintiff and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damage that may be awarded is indeterminate at the time of the Defendant's alleged conduct.

(9)

FOR A SIXTEENTH DEFENSE

65. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

66. The Defendant pleads the intervening, superseding actions of a third party for which the defendant would not be liable.

FOR A SEVENTEENTH DEFENSE

67. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

68. The Defendant alleges that the Plaintiff is improperly attempting to relitigate his prior state criminal case. The Plaintiff may not challenge his state conviction in a civil rights action and/or through a purported civil action for damages rather than a Post-Conviction Relief (PCR) action.

69. In Heck v. Humphrey, 512 U.S. 477, 486–87, 114 S.Ct. 2364, 129 L.Ed.2d 383, the Supreme Court held that until a plaintiff's sentence and conviction are set aside, any civil rights action based on the conviction, sentence, direct appeal, and related matters will be barred. 512 U.S. at 484

70. As such, this case should be dismissed.

FOR AN EIGHTEENTH DEFENSE

71. The Defendant realleges and incorporates each and every allegation contained in the paragraphs above as if contained fully herein and repeated verbatim.

72. The Defendant alleges that to the extent Plaintiff's Amended Complaint can be construed as a legal malpractice claim, the Plaintiff has failed to file a contemporaneous expert affidavit as required by S.C. Code Ann. § 15-36-100.

73. The failure to file an expert affidavit is fatal to the Plaintiff's case and, as such, should be dismissed.

(9)

WHEREFORE, the Defendant, having answered the Amended Complaint of the Plaintiff herein, respectfully requests the Court to dismiss the Plaintiff's Amended Complaint with prejudice, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

James P. Walsh (SC Bar No.: 15180)
P. Christopher Smith, Jr. (SC Bar No. 74086)
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400 Phone
(864) 235-4399 Fax
jwalsh@clarksonwalsh.com email
csmith@clarksonwalsh.com email

ATTORNEYS FOR DEFENDANT

Greenville, SC
July 17, 2024

THE DEFENDANT DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

James P. Walsh (SC Bar No.: 15180)
P. Christopher Smith, Jr. (SC Bar No. 74086)
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ATTORNEYS FOR DEFENDANT

Greenville, SC
July 17, 2024

(10)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No.: 2024-CP-40-02262
Michael T. Braxton,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**
	)	
Don A. Thompson,	)	
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Defendant Don A. Thompson, (hereinafter "Defendant"), by and through his undersigned attorneys, on the tenth day after the filing of this motion, or such time after as set by the Court, will move before the Presiding Judge for the Court of Common Pleas for Richland County for an order dismissing the above-referenced Defendant in accordance with Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. This motion is based upon the grounds that the Plaintiff has failed to state a claim for which relief may be granted against the Defendant.

In addition, the Plaintiff has failed to properly serve his Summons and Complaint and/or his improper attempt at an Amended Complaint; therefore, the Plaintiff's Complaint and improper attempt at an Amended Complaint should be dismissed pursuant to Rule 12(b)(2), (4) and (5) of the South Carolina Rules of Civil Procedure. Also, the Court lacks subject matter jurisdiction and therefore, the Plaintiff's Complaint and improper attempt at an Amended Complaint should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

The Defendant is not a governmental employee and is not a state actor for purposes of Plaintiff's attempted federal claims. See Lott v. Sheek, No. 819CV00954DCCJDA, 2019 WL 3308415, at *4 (D.S.C. Apr. 4, 2019), report and recommendation adopted, No. 8:19-CV-00954-

(10)

DCC, 2019 WL 2511253 (D.S.C. June 18, 2019). The Plaintiff has also failed to allege a cognizable claim for relief for alleged ineffective assistance of counsel. Id. Ineffective assistance of counsel claims are not cognizable as a constitutional tort under Section 1983 where the Plaintiff makes no allegations to plausibly show the Defendant exceeded the traditional functions of counsel. Id. The Plaintiff's allegations contained in his Complaint and improper attempt at an Amended Complaint do not set forth any allegations of any alleged conduct outside the traditional functions of counsel or outside the parameters of legal representation. Id.; citing Polk Cty. v. Dodson, 454 U.S. 312, 325 (1981) (explaining ineffective assistance of counsel claims are not cognizable as a constitutional tort under § 1983 where plaintiff makes no allegations to plausibly show an attorney exceeded the "traditional functions as counsel"); Martin v. Burton, No. 0:12-cv-01088-RBH, 2012 WL 2502711, at *2 (D.S.C. June 28, 2012), aff'd, 485 F. App'x 634 (4th Cir. 2012); Trexler v. Giese, No. 3:09-cv-144-CMC-PJG, 2010 WL 104599, at *3 (D.S.C. Jan. 7, 2010) (finding attorney was entitled to summary dismissal in § 1983 action where attorney's representation in the state criminal case fell "squarely within the parameters of his legal representation" although the plaintiff was unhappy with the manner in which the attorney represented her).

The Plaintiff is improperly attempting to relitigate his prior state criminal case. The Plaintiff may not challenge his state conviction in a civil rights action and/or through a purported civil action for damages rather than a Post-Conviction Relief (PCR) action. In Heck v. Humphrey, 512 U.S. 477, 486–87, 114 S.Ct. 2364, 129 L.Ed.2d 383, the Supreme Court held that until a plaintiff's sentence and conviction are set aside, any civil rights action based on the conviction, sentence, direct appeal, and related matters will be barred. 512 U.S. at 484; see also Hart v. Ranier, No. CIV.A.8091688RBHBHH, 2010 WL 2228405, at *3 (D.S.C. May 4, 2010), report and

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recommendation adopted sub nom. Hart v. Rainier, No. 8:09-CV-01688-RBH, 2010 WL 2228413 (D.S.C. June 1, 2010).

To the extent Plaintiff's Complaint and improper attempt at an Amended Complaint can be construed as a legal malpractice claim, the Plaintiff has failed to file a contemporaneous expert affidavit as required by S.C. Code Ann. § 15-36-100. The failure to file an expert affidavit is fatal to the Plaintiff's case and, as such, should be dismissed.

The Plaintiff has filed his Amended Complaint before receiving a ruling from the Court on his pending Motion to Amend. The Plaintiff has not been granted leave of Court to file the Amended Complaint. As such, his filing is an improper attempt at an Amended Complaint. Regardless, even if the allegations contained in the improper attempt at an Amended Complaint are considered, the Plaintiff has failed to set forth allegations to support a cause of action against the Defendant and the arguments and law set forth above compel dismissal of the Plaintiff's case with prejudice.

Based on the foregoing law which is directly applicable to the Plaintiff's attempted claims and based upon a plain reading of the allegations contained in the Plaintiff's Complaint and improper attempt at an Amended Complaint, the Plaintiff has failed to state a claim against the Defendant. In addition, the Complaint, the improper attempt at an Amended Complaint and the Plaintiff's attempted service contain additional deficiencies. As a result, the Defendant requests that the Plaintiff's Complaint be dismissed with prejudice.

[Signature appears on following page.]

(10)

Respectfully submitted,

CLARKSON, WALSH & COULTER, P.A.

James P. Walsh (S.C. Bar No. 15180)
P. Christopher Smith, Jr. (S.C. Bar No. 74086)
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400
Fax: (864) 235-4399
Attorneys for Defendant

Greenville, South Carolina
July 17, 2024

(10)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CASE NO. 2024-CP-40-02262
Michael T. Braxton,	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
vs.	)	
Don A. Thompson,	)	
Defendant.	)	

The undersigned hereby certifies that she is employed by the attorneys for the Defendant and that she has served the pro se plaintiff with a true and accurate copy of **Defendant's Answer to Plaintiff's Amended Complaint, and Defendant's Motion to Dismiss Plaintiff's Amended Complaint** by depositing a copy of the aforementioned documents in the United States mail, First Class, in an envelope with due and proper postage affixed thereto and addressed as shown below this **17th** day of **July, 2024**:

Michael T. Braxton
4546 Broad River Road
Columbia, SC 29210

Sandra K. Thompson
Paralegal to James P. Walsh and P. Christopher Smith, Jr.
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400 Phone
(864) 235-4399 Fax
jwalsh@clarksonwalsh.com
csmith@clarksonwalsh.com

Greenville, South Carolina

ATTORNEYS FOR DEFENDANT

(11)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No.: 2024-CP-40-02262
Michael T. Braxton,	)	
	)	
Plaintiff,	)	**DEFENDANT'S MOTION FOR LEAVE**
	)	**TO TAKE PLAINTIFF'S DEPOSITION**
vs.	)	
	)	
Don A. Thompson,	)	
	)	
Defendant.	)	
	)	

Defendant Don A. Thompson, (hereinafter "Defendant"), by and through the undersigned attorneys, on the tenth day after the filing of this motion, or such time after as set by the Court, will move before the Presiding Judge for an order granting this Defendant leave to take the deposition of the Plaintiff pursuant to Rule 30 of the South Carolina Rules of Civil Procedure. The rule sets forth that a deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes. Id.

Pro Se Plaintiff Michael T. Braxton is currently confined at the Wellpath/Correct Care facility which is a South Carolina Department of Mental Health facility in Columbia, South Carolina. The deposition of the Plaintiff is necessary in this case. To satisfy the requirements set forth in Rule 30, the undersigned counsel respectfully requests an Order from the Court granting leave to take the Plaintiff's deposition.

James P. Walsh (SC Bar No.: 15180)
P. Christopher Smith, Jr. (SC Bar No.: 74086)
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
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csmith@clarksonwalsh.com

ATTORNEYS FOR DEFENDANT

November 12, 2024
Greenville, South Carolina

(12)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2024-CP-40-02262

MICHAEL T. BRAXTON

Plaintiff,

v.

Don A. Thompson

Defendant.

REQUEST FOR DEPOSITION QUESTIONS

RICHLAND COUNTY FILED
2024 NOV 25 PM 2:28
JEANETTE W. McBRIDE CLERK OF COURT

The Petitioner Michael T. Braxton comes before this honorable court in response to the Defendant's **MOTION FOR LEAVE TO TAKE PLAINTIFF'S DESPOSITION**, filed on **November 12, 2024.**

If it may please the court, the Plaintiff request that he be provided with **ALL** questions (1a,1b, etc..) Affidavits, Declarations the defendant intends to employ during any deposition process the court might sanction.

If the court grants the defendant the opportunity to utilize this proposed pre-trial vehicle, he respectfully makes the additional request that these questions be provided to the Plaintiff at least (30) THIRTY DAYS prior to the deposition hearing.

The Petitioner Thanks the court for its time and consideration in this matter.

Respectfully Submitted,

Michael T. Braxton

MICHAEL T. BRAXTON
4546 Broad River Rd
Columbia, SC 29210

November 22, 2024

cc. **The Honorable Jeanette W. McBride, Richland County Clerk of Court**
CLARKSON, WALSH, COULTER, Attorneys at Law

(13)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No.: 2024-CP-40-02262
Michael T. Braxton,	)	
	)	
Plaintiff,	)	**DEFENDANT'S MOTION TO EXEMPT CASE FROM ADR**
	)	
vs.	)	
	)	
Don A. Thompson,	)	
	)	
Defendant.	)	
	)	

Defendant Don A. Thompson, (hereinafter "Defendant"), by and through the undersigned attorneys, on the tenth day after the filing of this motion, or such time after as set by the Court, will move before the Presiding Judge for an order exempting this case from the requirement of ADR pursuant to Rule 3(c) of the Court-Annexed Alternative Dispute Resolution (ADR) Rules. See SC R ADR Rule 3. Rule 3(c) sets forth that: "A party may file a motion to exempt a case from ADR for case specific reasons. For good cause, the Chief Judge for Administrative Purposes of the circuit may grant the motion. **For example, it may be appropriate to completely exempt a case from the requirement of ADR where a party is unable to participate due to incarceration or physical condition.**" Id. (Emphasis added).

Pro Se Plaintiff Michael T. Braxton is currently confined at the Wellpath/Correct Care facility which is a South Carolina Department of Mental Health facility in Columbia, South Carolina. As a result, meaningful Mediation would be difficult to conduct in this case. Further, it is questionable whether the *pro se* Plaintiff, who is confined, has the ability to pay his portion of the Mediator's fees as required by Rule 9 of the ADR Rules and which could total hundreds of dollars. See SC R ADR Rule 9. As set forth above, incarceration is a specific example set forth in the applicable rule for exemption from ADR. As a result, the undersigned counsel respectfully requests that the Court issue an Order exempting this case from the requirement of ADR.

SIGNATURE ON FOLLOWING PAGE

(13)

clG

James P. Walsh (SC Bar No.: 15180)
P. Christopher Smith, Jr. (SC Bar No.: 74086)
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
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(864) 235-4399 (fax)
jwalsh@clarksonwalsh.com
csmith@clarksonwalsh.com

ATTORNEYS FOR DEFENDANT

November 12, 2024
Greenville, South Carolina

(13)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NO. 2024-CP-40-02262
Michael T. Braxton,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
vs.	)	
	)	
Don A. Thompson,	)	
	)	
Defendant.	)	
	)	

The undersigned hereby certifies that she is employed by the attorneys for the Defendant and that she has served the pro se plaintiff with a true and accurate copy of **Defendant's Motion for Leave to Take Plaintiff's Deposition and Defendant's Motion to Exempt Case from ADR** by depositing a copy of the aforementioned documents in the United States mail, First Class, in an envelope with due and proper postage affixed thereto and addressed as shown below this **12th day of November, 2024**:

Michael T. Braxton
4546 Broad River Road
Columbia, SC 29210

Sandra K. Thompson
Paralegal to James P. Walsh and P. Christopher Smith, Jr.
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
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csmith@clarksonwalsh.com

Greenville, South Carolina

ATTORNEYS FOR DEFENDANT

(19)

ELECTRONICALLY FILED - 2025 Jan 21 11:41 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4002262

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No.: 2024-CP-40-02262
Michael T. Braxton,	)	
	)	
Plaintiff,	)	
	)	**ORDER GRANTING**
vs.	)	**DEFENDANT'S MOTION TO DISMISS**
	)	
Don A. Thompson,	)	
	)	
Defendant.	)	
	)	

This matter came before me on Thursday, December 19, 2024 for a hearing on multiple pending Motions. The hearing was conducted by videoconference. *Pro Se* Plaintiff Michael T. Braxton appeared for the hearing. Defendant Don A. Thompson was also present for the hearing, along with his attorney, P. Christopher Smith, Jr. Upon hearing arguments on the pending Motions, I hereby grant Defendant's Motion to Dismiss with prejudice. As a result, the remaining Motions are moot. Those Motions included the Defendant's Motion to Exempt the Case from ADR, Motion to Transfer Venue, Motion for Leave to Take Plaintiff's Deposition, as well as Plaintiff's Motion to Fortify the Record.

Defendant Don A. Thompson filed a Motion to Dismiss requesting an order dismissing the above-referenced case in accordance with Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The motion was based upon the grounds that the Plaintiff failed to state a claim for which relief may be granted against the Defendant. In addition, the Defendant argued the Court lacks subject matter jurisdiction and therefore, the Plaintiff's Complaint and improper attempt at an Amended Complaint should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

(19)

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In his pleadings, the Plaintiff alleges that he is a prisoner of the State of South Carolina in the custody of the South Carolina Department of Mental Health. He claims he is confined under an act that is inapplicable to him. He claims the Defendant was grossly negligent in his professional capacity. The Plaintiff claims the Defendant failed to provide effective assistance of counsel. He also alleges Constitutional claims. It is important to note that Mr. Thompson was not the Plaintiff's trial counsel. Further, Mr. Thompson is not a governmental employee. All of the Plaintiff's allegations pertain to alleged pretrial conduct before a substitution of counsel occurred.

In his pleadings, the Plaintiff references what he calls the "dubious holding" of the South Carolina Court of Appeals in the case of Michael Braxton v. South Carolina Dept. of Corr., Case No. 2017-001964. See Braxton v. S.C. Dep't of Corr., 430 S.C. 637, 846 S.E.2d 383 (Ct. App. 2020). That case pertains to Mr. Braxton's challenge to his sentence calculation with the South Carolina Department of Corrections. The Facts/Procedural History portion of the Court of Appeals' decision states in part:

> On November 17, 1983, Braxton was sentenced to thirty years' incarceration after pleading guilty to first degree criminal sexual conduct (CSC). Braxton served ten years and four months of his sentence, and on March 31, 1994, he was conditionally released to the state of Tennessee on parole. On April 16, 1996, while on parole in Tennessee, Braxton was arrested for two counts of aggravated rape. On May 28, 1996, while he was in custody for those arrests, South Carolina issued a parole violation warrant, and a parole violation hold was placed on Braxton. Braxton was held in pretrial detention until he was sentenced to twenty-three years' imprisonment in the custody of the Tennessee Department of Corrections (TDOC),1 and he was transferred to TDOC on June 1, 1998. On June 8, 1998, South Carolina issued a second parole violation warrant on Braxton. Braxton completed his sentence in Tennessee on November 2, 2015. Thus, from the time of his arrest in 1996 until he finished serving his sentence in 2015, Braxton served approximately nineteen years and five months in Tennessee. Following his release, beginning November 8, 2015, Braxton was incarcerated in Anderson County, South Carolina.2 Following an appearance before the Full Board of the South Carolina Board of Pardons and Parole on January 20, 2016, Braxton was transferred back into the custody of SCDC with a release date of June 22, 2022.

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Id. at 641–42, 846 S.E.2d at 385.

The Court takes judicial notice of the Plaintiff's prior actions filed in State Courts and Federal Courts. The Plaintiff filed a separate Petition for Writ of Habeas Corpus in the South Carolina Supreme Court seeking release from his civil commitment to the Sexually Violent Predator Treatment Program alleging his incarceration is illegal and unconstitutional, claiming ineffective assistance of counsel by the Defendant and subsequent counsel. See Appellate Case No. 2023-000661. Further, the Plaintiff previously filed a habeas action in Federal Court challenging his civil commitment under the Sexually Violent Predator Act and his detention at the Anderson County Detention Center. That action was recommended for dismissal pursuant to the Younger Abstention Doctrine by the Magistrate, which was adopted by the District Court Judge and the subsequent appeal dismissed by the Federal 4th Circuit Court of Appeals. See Braxton v. Warden of Anderson Cnty. Det. Ctr., No. 822CV02806HMHJDA, 2022 WL 9501277, at *1 (D.S.C. Sept. 9, 2022), report and recommendation adopted, No. CV82202806HMHJDA, 2022 WL 9477346 (D.S.C. Oct. 13, 2022); appeal dismissed by Braxton v. Warden of Anderson Cnty. Det. Ctr., No. 22-7232, 2023 WL 4701007, at *1 (4th Cir. July 24, 2023), cert. denied sub nom. Braxton v. Warden, 144 S. Ct. 1075, 218 L. Ed. 2d 250 (2024).

It should also be noted that the Plaintiff filed a separate civil action pursuant to 42 U.S.C. § 1983, alleging the Defendants in that case violated his constitutional rights. Braxton v. Scarborough, No. 8:22-CV-1106-HMH-JDA, 2022 WL 1558765, at *1 (D.S.C. Apr. 19, 2022), report and recommendation adopted, No. CV82201106HMHJDA, 2022 WL 1558431 (D.S.C. May 17, 2022), aff'd, No. 22-6638, 2023 WL 2158369 (4th Cir. Feb. 22, 2023). That case noted that the Plaintiff was incarcerated at the time at the Anderson County Detention Center pursuant to a petition filed under the South Carolina Sexually Violent Predator Act ("SVP") at case number 2020-cp-04-01330 in the

(19)

ELECTRONICALLY FILED - 2025 Jan 21 11:41 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4002262

Anderson County Court of Common Pleas. Id. That case set forth Plaintiff's numerous similar and duplicative court filings in detail. Id.

The critical discussion in that case set forth:

> This action is subject to dismissal because the parties, the claims, and the operative facts in this action are all duplicative of prior actions filed by Plaintiff in the State court and in this Court. Crowe v. Leeke, 550 F.2d 184, 186 (4th Cir. 1977) ("The principle of res judicata ... is fully applicable in prisoners' civil rights suits brought under [§] 1983."). "Collateral estoppel, or issue preclusion, provides that once a court of competent jurisdiction actually and necessarily determines an issue, that determination remains conclusive in subsequent suits, based on a different cause of action but involving the same parties, or privies, to the previous litigation." Weinberger v. Tucker, 510 F.3d 486, 491 (4th Cir. 2007) (citation omitted).
>
> Plaintiff previously litigated his claims in the state court and in this Court. See Braxton, 846 S.E.2d 383; Braxton II, 2021 WL 252582. Those cases were decided on the merits, and Plaintiff lost. Thus, Plaintiff's claims in this action for damages under § 1983 are barred under res judicata. See Boston v. Stobbe, 586 F. Supp. 2d 574, 580 (D.S.C. 2008) (explaining res judicata precluded an inmate's § 1983 action based on the court's determination of the same issues in a prior habeas action). Accordingly, having previously lost in his cases filed in both the state court and in this Court, Plaintiff is precluded from taking another bite at the apple in this Court. See Wells v. Powers, No. 2:16-cv-1060-TMC-MGB, 2016 WL 6070088, at *4 (D.S.C. Sept. 12, 2016), Report and Recommendation adopted by 2016 WL 6039163 (D.S.C. Oct. 14, 2016).

Braxton v. Scarborough, No. 8:22-CV-1106-HMH-JDA, 2022 WL 1558765, at *5 (D.S.C. Apr. 19, 2022), report and recommendation adopted, No. CV82201106HMHJDA, 2022 WL 1558431 (D.S.C. May 17, 2022), aff'd, No. 22-6638, 2023 WL 2158369 (4th Cir. Feb. 22, 2023).

The Plaintiff makes similar claims in this case that he is being wrongfully detained under the Sexually Violent Predator Act. As set forth above, the Plaintiff claims the Defendant was grossly negligent in his professional capacity. The Plaintiff claims the Defendant failed to provide effective assistance of counsel. He also alleges Constitutional claims.

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Discussion

The Defendant is not a governmental employee and is not a state actor for purposes of Plaintiff's attempted federal claims. See Lott v. Sheek, No. 819CV00954DCCJDA, 2019 WL 3308415, at *4 (D.S.C. Apr. 4, 2019), report and recommendation adopted, No. 8:19-CV-00954-DCC, 2019 WL 2511253 (D.S.C. June 18, 2019). The Plaintiff has also failed to allege a cognizable claim for relief for alleged ineffective assistance of counsel. Id. Ineffective assistance of counsel claims are not cognizable as a constitutional tort under Section 1983 where the Plaintiff makes no allegations to plausibly show the Defendant exceeded the traditional functions of counsel. Id.

The Plaintiff's allegations contained in his Complaint and improper attempt at an Amended Complaint do not set forth any allegations of any alleged conduct outside the traditional functions of counsel or outside the parameters of legal representation. Id.; citing Polk Cty. v. Dodson, 454 U.S. 312, 325 (1981) (explaining ineffective assistance of counsel claims are not cognizable as a constitutional tort under § 1983 where plaintiff makes no allegations to plausibly show an attorney exceeded the "traditional functions as counsel"); Martin v. Burton, No. 0:12-cv-01088-RBH, 2012 WL 2502711, at *2 (D.S.C. June 28, 2012), aff'd, 485 F. App'x 634 (4th Cir. 2012); Trexler v. Giese, No. 3:09-cv-144-CMC-PJG, 2010 WL 104599, at *3 (D.S.C. Jan. 7, 2010) (finding attorney was entitled to summary dismissal in § 1983 action where attorney's representation in the state criminal case fell "squarely within the parameters of his legal representation" although the plaintiff was unhappy with the manner in which the attorney represented her).

Through this lawsuit, the Plaintiff is improperly attempting to relitigate his prior state criminal case. The Plaintiff may not challenge his state conviction in a civil rights action and/or through a purported civil action for damages rather than a Post-Conviction Relief (PCR) action. In Heck v.

(19)

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Humphrey, 512 U.S. 477, 486–87, 114 S.Ct. 2364, 129 L.Ed.2d 383, the Supreme Court held that until a plaintiff's sentence and conviction are set aside, any civil rights action based on the conviction, sentence, direct appeal, and related matters will be barred. 512 U.S. at 484; see also Hart v. Ranier, No. CIV.A.8091688RBHBHH, 2010 WL 2228405, at *3 (D.S.C. May 4, 2010), report and recommendation adopted sub nom. Hart v. Rainier, No. 8:09-CV-01688-RBH, 2010 WL 2228413 (D.S.C. June 1, 2010).

To the extent Plaintiff's Complaint and improper attempt at an Amended Complaint can be construed as a legal malpractice claim, the Plaintiff has failed to file a contemporaneous expert affidavit as required by S.C. Code Ann. § 15-36-100. The failure to file an expert affidavit is fatal to the Plaintiff's case.

The Plaintiff has filed his Amended Complaint before receiving a ruling from the Court on his pending Motion to Amend. The Plaintiff has not been granted leave of Court to file the Amended Complaint. As such, his filing is an improper attempt at an Amended Complaint. Regardless, even if the allegations contained in the improper attempt at an Amended Complaint are considered, the Plaintiff has failed to set forth allegations to support a cause of action against the Defendant and the arguments and law set forth above compel dismissal of the Plaintiff's case with prejudice.

In addition, based on the Plaintiff's other cases cited above, the Plaintiff is also improperly attempting to relitigate claims previously made pertaining to his detention under the Sexually Violent Predator Act, albeit against a different Defendant. To the extent the Plaintiff is relitigating claims already raised and ruled upon, those claims are also barred by the doctrine of collateral estoppel. See 2022 WL 1558765, at *5, supra.

Based on the foregoing law which is directly applicable to the Plaintiff's attempted claims and based upon a plain reading of the allegations contained in the Plaintiff's Complaint and improper

(14)

attempt at an Amended Complaint, the Plaintiff has failed to state a claim against the Defendant. The Plaintiff cannot set forth a Constitutional Claim. The Plaintiff has failed to provide the required Affidavit to support a legal malpractice claim. In addition, the Complaint, the improper attempt at an Amended Complaint are improper attempts to re-litigate claims previously raised in other Court actions noted above. As a result, this Court finds the above-captioned case should be dismissed with prejudice.

IT IS HEREBY ORDERED that the above-referenced case is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED

_____
The Honorable Daniel Coble
Presiding Judge

Date: _____

ELECTRONICALLY FILED - 2025 Jan 21 11:41 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4002262

(14)

ELECTRONICALLY FILED - 2025 Jan 21 11:41 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4002262

Richland Common Pleas

Case Caption: Michael Braxton vs Don A Thompson

Case Number: 2024CP4002262

Type: Order/Dismissal

So Ordered

s/ Daniel Coble, 2774

(15)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4002262

Michael Braxton
PLAINTIFF(S)

Don A Thompson
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

A Hearing on Defendant's Motion to Dismiss was held on December 19, 2024 via WebEx. P. Christopher Smith argued as counsel for the Defendant. Plaintiff Michael Braxton appeared pro se and was given the opportunity to respond. After arguments from both parties concluded, Judge Coble took the matter under advisement.

After careful consideration of the case law, arguments, and review of the case file, the Motion to Dismiss is GRANTED based on arguments presented at the hearing and the written motion. The prevailing party shall send in a more formal order within 10 days.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/07/2025 .

Michael Braxton for Michael Braxton
Michael Braxton for Michael Braxton

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2025 Jan 07 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4002262

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

FIFTH JUDUCAL CIRCUIT

Before the Honorable Daniel Coble

Michael T. Braxton

Plaintiff,

v.

Don A. Thompson

Defendant.

FILE NO. 2024CP4002262

PETITION TO FORTIFY RECORD

If it may please the court, after the Deposition/Motion to Dismiss argument brought before the court on **December 19, 2024** by counsel for the defendant in this matter, the Plaintiff seeks the admission of the **Subpoena/ and or Request for Subpoena** allegedly submitted to the Anderson County Court of Common Pleas by the Defendant Don A. Thompson.

The Plaintiff's supplication to compel the defendant to provide this verification is predicated on his testimony before the **Honorable Eugene C. Griffith Jr. on July 1, 2020**; as well as on counsel for the Defendants argument **on December 19, 2024, before the Honorable Daniel Coble.**

In **BOTH** instances, it was conveyed to the respective courts that in the Defendant's professional opinion it would have been **"MALPRACTICE"** to subpoena Dr. David R. Price to testify on behalf of the Plaintiff.

The Material **FACT** exist within the record that Dr. David R. Price **DID** testify at the **July 1, 2024 Habeas Corpus hearing** to determine if Attorney Don A. Thompson and Michael S. Gambrell were **INEFFECTIVE and INDIFFERENT** in their representation of the Plaintiff.

Dr. Price was subpoenaed at the request of the Plaintiff by Attorney Ashley A. McMahan, who **DID NOT** view it as **"MALPRACTICE"** to pursue **essential REBUTTAL Evidence, that was detrimental within the Adversarial Process of the Plaintiff.**

(16)

The Plaintiff respectfully makes the request that this honorable court review the record in its entirety in these proceedings, **(2020-CP-04-1330 / 2023-000661); as well as the Habeas Corpus Hearing before the Honorable Eugene C. Griffith Jr. on July 1,2024.**

Thereafter, as the court sees fit, that the Subpoena and or the alleged Request for Subpoena be introduced into the record in this cause, then thereby provided to the Plaintiff.

The Plaintiff **THANKS** the Court for its time and consideration in this urgent matter.

Respectfully Submitted,

Michael T. Braxton

MICHAEL T. BRAXTON
4546 BROAD RIVER RD
COLUMBIA, SC 29210

December 24, 2024

(16)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND, FIFTH JUDICAL CIRCUIT

MICHAEL T. BRAXTON

Plaintiff,

v.

Don A. Thompson

Defendant.

FILE NO. 2024CP4002262

PROOF OF SERVICE

The Plaintiff **Michael T. Braxton** hereby declares under penalty of perjury that on the 24th Day of December he placed a true and exact copy of his **PETITION TO FORTIFY THE RECORD** in the U. S. Mail/ Postage Pre-paid addressed to the following listed below:

JEANETTE W. McBRIDE
HONORABLE CLERK OF COURT
RICHLAND COUNTY
P.O.BOX 2766
COLUMBIA, SC 29202

CLARKSON/WALSH/ COULTER
ATTORNEYS AT LAW
P.O. BOX 6728
GREENVILLE, SC 29606

Michael T. Braxton

MICHAEL T. BRAXTON
4546 BROAD RIVER RD
COLUMBIA, SC 29210

(17)

ELECTRONICALLY FILED - 2025 Jan 06 3:45 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4002262

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No.: 2024-CP-40-02262
Michael T. Braxton,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**DEFENDANT'S RESPONSE TO PLAINTIFF'S "PETITION TO FORTIFY RECORD"**
	)	
Don A. Thompson,	)	
	)	
Defendant.	)	
	)	

Defendant Don A. Thompson, (hereinafter "Defendant"), by and through his undersigned attorneys, hereby files this Response to Plaintiff Michael T. Braxton's "Petition to Fortify Record". The Motions recently heard by the Court in this case pertain to Motions to Dismiss, a Motion to Exempt the Case from ADR, a Motion to Transfer Venue and a Motion for Leave to Take the Plaintiff's Deposition. None of these Motions directly pertain to the Subpoena or request for Subpoena referenced in the Plaintiff's Petition. The Motions to Dismiss and Motion to Transfer Venue are based solely on the allegations contained on the face of the Complaint. A Motion for Summary Judgment was not made where external evidence would be relied upon to support the Motion.

The Motion to Exempt the Case from ADR and Motion for Leave to Take the Plaintiff's Deposition are procedural motions made due to the fact that the Plaintiff is a *pro se* litigant who is confined at Wellpath/Correct Care in Columbia, South Carolina which is a South Carolina Department of Mental Health facility. The consideration of external documents for these Motions is arguably improper. Further, to the extent the Plaintiff sought to introduce any evidence to address the Motions, he had the opportunity to do so through filings before the hearing and during the hearing on the Motions. Therefore, arguably Plaintiff's subsequent Petition to Fortify Record is improper and should be denied for the foregoing reasons.

(17)

Based on the foregoing, the Defendant requests that the Plaintiff's Petition to Fortify Record be denied.

Respectfully submitted,

CLARKSON, WALSH & COULTER, P.A.

s/James P. Walsh
James P. Walsh (S.C. Bar No. 15180)
P. Christopher Smith, Jr. (S.C. Bar No. 74086)
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400
Fax: (864) 235-4399
Attorneys for Defendant

Greenville, South Carolina
January 6, 2025

ELECTRONICALLY FILED - 2025 Jan 06 3:45 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4002262

(17)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CASE NO. 2024-CP-40-02262
Michael T. Braxton,	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
vs.	)	
Don A. Thompson,	)	
Defendant.	)	

The undersigned hereby certifies that she is employed by the attorneys for the Defendant and that she has served the pro se plaintiff with a true and accurate copy of **Defendant's Response to Plaintiff's "Petition to Fortify Record"** by depositing a copy of the aforementioned document in the United States mail, First Class, in an envelope with due and proper postage affixed thereto and addressed as shown below this **6th day of January, 2025**:

Michael T. Braxton
4546 Broad River Road
Columbia, SC 29210

Sandra K. Thompson
Paralegal to James P. Walsh and P. Christopher Smith, Jr.
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400 Phone
(864) 235-4399 Fax
jwalsh@clarksonwalsh.com
csmith@clarksonwalsh.com

Greenville, South Carolina

ATTORNEYS FOR DEFENDANT

ELECTRONICALLY FILED - 2025 Jan 06 3:45 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4002262

(18)

IN THE STATE OF SOUTH CAROLINA

In the Court Of Appeals

Michael T. Braxton — Appellant

v.

Don A. Thompson — Defendant

NOTICE OF APPEAL

__Case No. 2024CP4002262__

Here comes the Appellant Michael T. Braxton currently Illegally confined to the **WELLPATH TREATMENT FACILITY**, a subsidiary of the **SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH.**

The Appellant submits his **NOTICE OF APPEAL** to this Honorable court pursuant to **SCACR** after his motion was **DISMISSED** on **January 7, 2025** in the **Richland County Court of Common Pleas**, after hearing on **December 19, 2024** before the Honorable Daniel Coble.

The Proposed Order of Dismissal is attached.

The Appellant Prays that he is properly before the court.

Respectfully Submitted,

Michael T. Braxton

MICHAEL T. BRAXTON

4546 Broad River Rd

Columbia, SC 29210

(18)

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

MICHAEL T. BRAXTON

Appellant,

v.

Don A. Thompson

Defendant.

CERTIFICATE OF SERVICE

Case No. 2024CP4002262

The Appellant Michael T. Braxton hereby declares under penalty of perjury that on the ___ day of **January 2025** he placed a true and exact copy of his **NOTICE OF APPEAL** in the U.S. Mail Postage Pre-paid, addressed to the following listed below:

The South Carolina Court of Appeals
Jenny A. Kitchings, Honorable Clerk
V. Clarie Allen, Honorable Deputy Clerk
P.O. BOX 11629
Columbia, SC 29211

Richland County Court of Common Pleas
Jeanette W. McBride, Honorable Clerk
P.O. BOX 2766
Columbia, SC, 29211

Michael T. Braxton

MICHAEL T. BRAXTON
4546 Broad River Rd
Columbia, SC 29210

Attorney's for the Defendant, Don A. Thompson
CLARKSON/ WALSH/ COULTER
P.O. BOX 6728
Greenville, SC 29666

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-40-02262
Michael T. Braxton Plaintiff, vs. Don A. Thompson Defendant.	**MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

RICHLAND COUNTY FILED
2024 MAY -6 PM 4:45
JEANETTE W. McBRIDE
C.C.P., G.S. & F.C.

Plaintiff's Attorney:	Defendant's Attorney:
Pro Se, Bar No. n/a Address: 4546 Broad River Road, Columbia, SC 29210 Phone: _____Fax _____ E-mail: _____Other: _____	James P. Walsh and P. Christopher Smith, Jr. Bar No. 15180 and 74086 Address: Clarkson, Walsh & Coulter, P.A., PO Box 6728, Greenville, SC 29606 Phone: (864) 232-4400 Fax(864) 235-4399 E-mail: jwalsh@clarksonwalsh.com and csmith@clarksonwalsh.com Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Transfer Venue
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ _____
Signature of Attorney for ☐ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE _____ Date: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No.: 2024-CP-40-02262
Michael T. Braxton,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**DEFENDANT'S MOTION TO TRANSFER VENUE**
	)	
Don A. Thompson,	)	
	)	
Defendant.	)	
	)	

TO: THE PRO SE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof, or at such time and place as the court may deem appropriate, the Defendant, by and through his undersigned counsel of record, and pursuant to Rules 12(b)(3) and 82(b) of the South Carolina Rules of Civil Procedure, will move before the Presiding Judge of the Court of Common Pleas, at such time, date and place as counsel may be heard, for an order transferring venue from Richland County to Greenville County or, in the alternative, Anderson County. This Motion is based on the grounds that venue in Greenville County is proper under S.C. Code § 15-7-30 due to the fact that is the County where the Defendant resides. Further, the relevant events complained of in the Plaintiff's Complaint occurred in Anderson County, where venue is also proper under S.C. Code § 15-7-30.

James P. Walsh (15180)
P. Christopher Smith, Jr. (74086)
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400
(864) 235-4399 (fax)
Attorneys for Defendant

May 1, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA
GENERAL SESSIONS
COUNTY OF RICHLAND

Docket Number
2024-CP-40-02262

MICHAEL BRAXTON,

Plaintiff,

vs.

DON A. THOMPSON,

Defendant.

March 7, 2025

MOTION HEARING

B E F O R E:

The Honorable Daniel Coble, Presiding Judge.

C O U R T:

South Carolina Circuit Court 5

T R A N S C R I B E D B Y:

Barbie Teboe, Transcriber

Legal Eagle
107 LeGrand Blvd.
Greenville, SC 29607
864-467-1373
transcripts@legaleagleinc.com

A P P E A R A N C E S:

IN PROPRIA PERSONA

For the Plaintiff

P. CHRISTOPHER SMITH, JR., Esq.
Clarkson Walsh & Coulter PA
1164 Woodruff Rd
Greenville, SC 29607

Attorney for the Defendant

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P R O C E E D I N G S

(Whereupon, the following proceedings started at 28:44)

THE COURT: All right. Mr. Braxton, can you hear me okay?

MR. BRAXTON: Yes, sir. Can you hear me?

THE COURT: Yes, sir.

All right. This is -- we're here for Motions Court.

This is the case of Michael Braxton versus Don Thompson, 2024-2262.

There are several motions by the defense.

Defense is represented by Mr. Smith. He is going to make his argument for the motion to dismiss.

After he makes that motion, you'll be given a chance to respond. Okay?

MR. BRAXTON: Yes, sir.

THE COURT: All right.

Yes, sir. Mr. Smith?

MR. SMITH: Yes, Your Honor.

Can you hear me okay?

THE COURT: I can. Yes, sir.

MR. SMITH: Okay. I had to use a headset because my mic wasn't working.

Chris Smith here, for Defendant Don Thompson.

And, yes, Your Honor. You're correct. I have, I think, five pending motions. But I think it's probably in the

interest of judicial economy to argue the Motion to Dismiss first. And if that's not granted, we can reach the others.

We filed a Motion to Dismiss this case based on the original complaint, primarily on Rule 12B. I mean, we also argue some service issues, but we're making an argument that there's a failure to state a claim.

Mr. Braxton filed an amended complaint without going through the proper process of filing a motion to amend that. But out of abundance of caution, we filed a motion to amend that as well.

And, quite honestly, Your Honor, I don't care if we argue the amended complaint, which has more of a factual recitation in it. But still, ultimately, this same arguments apply. And those are that Mr. Braxton is trying to relitigate a criminal history of crimes from many years ago with, I think, a 30-year sentence and 27-, I believe, year sentence, Tennessee and South Carolina.

But subsequently, how Mr. Thompson got involved, he was appointed as counsel for Mr. Braxton in a civil action. But it is a civil action to determine whether Mr. Braxton was a sexually violent predator, meaning, was there propensity of future conduct and making a determination of whether he would be submitted to -- Wellpath is where he ultimately went for mental health treatment to try to prevent future conduct upon his release.

Mr. Thompson was initially Mr. Braxton's attorney, but through multiple conflicts -- and those aren't really before us today, but I just want to give you a little background on that.

His mother -- Mr. Braxton's mother -- had hired a neuropsychologist, David Price, here in Greenville, wanting to provide opinions in that trial. And Mr. Thompson said, you know, "Dr. Price's opinions are consistent with the opposition's two psychologists. I don't think it helps you, and it would actually be malpractice for me to call Dr. Price to the stand."

So there was a conflict over that and a conflict over a motion that Mr. Braxton wanted to file, and Mr. Thompson ultimately withdraws as counsel. A separate attorney is appointed and substituted and subsequently tries that case last year, that sexually violent predator case.

And then I think Mr. Braxton has subsequently filed a habeas corpus petition. And there was a hearing this past summer on that, it's my understanding. I don't think there has been an ultimate ruling on that issue. But I know Mr. Thompson testified that the subsequent attorney testified, Dr. Price testified, and some others. I've seen a transcript of that hearing.

But Mr. Braxton is simply trying to relitigate his conviction, trying to make a claim, I guess, for attorney

malpractice, which would require an affidavit of an expert, which he hasn't done. And he's thrown in some language that would suggest to be a 1983 claim -- which I've cited the case law in my motion, that you simply cannot make a federal claim against a private attorney in an action like this. They are not deemed to be state actors. And, separately, the case law cited -- said that, basically, that attempt at an action fell squarely within the parameters of the legal representation and would be barred. And that's the, I guess, the Martin V Burton case and Trexler V Giese Case.

But, very simply, on the face of the complaint, reading all of the allegations, there's just not a viable cause of action stated. And there can't be the way that this is pled, Your Honor. So --

THE COURT: All right. And can you just -- Mr. Smith, briefly go through the other motions you have?

MR. SMITH: Yes.

THE COURT: I have the written motions. But just touch on them very briefly.

MR. SMITH: Yeah. Very briefly, two of them were the motions to dismiss the original complaint and amended complaint.

And then I have a motion to transfer venue from Richland County to either Greenville or Anderson. And I'm relying on the statute in those that indicate proper venue is where the

defendant resides. And Mr. Thompson resides in Greenville County; and -- or where the underlying facts occurred, and that was Anderson County.

And then the other two are typically -- I hate to call them "boiler plate motions," but they are motions that I file in every case that involves anyone that is incarcerated in any fashion, because even in cases where I represent the Department of Corrections, I can't arrange for my own client to allow me to take the deposition of the plaintiff unless I have a court order. So it's just seeking a court order to take that deposition in the event of the complaint or amended complaint are not dismissed.

And then there's a Motion to Exempt from ADR simply because -- with pro se litigants, I've found it unfair to ask them to foot half the bill for mediation, and I've found them to be incredibly inefficient the majority of the time.

THE COURT: Okay.

All right. Mr. Braxton, your response to all of that?

MR. BRAXTON: Good afternoon, Your Honor.

THE COURT: Yes, sir.

MR. BRAXTON: So I understand I may lack the capacity -- understand the complete process, but I've been under the direction of the Court. And all the issues that I have laid out are within the records.

And I -- you know, this man says that I don't -- I have

not stated any claims that are relevant. I mean, I -- all -- the only thing I'm contesting here today -- and as I've been contesting all along, is that Mr. Thompson misrepresented himself, okay. Mr. Thompson was deficient in his judiciary duties, okay, by deception, by enabling a process that he knew was inadequate.

So, you know, like, I'm sitting here today -- I had a question of why I'm here, okay. Because I just wasn't used to the defendant being able to cross-examine a plaintiff before a trial. And now I'm listening to this individual right here, and he seems to be wanting to present the motions that I presented before the Court and his motions to dismiss and all of this such. And I -- I just -- I didn't know why I've had to answer any questions. And I -- I mean, I don't see how it's beneficial -- benefitting me.

I mean, I just want -- I just wanted a trial on the matter, okay. Because, again, what I'm alleging is in the record. I'm not stating -- I'm -- as far as Mr. Thompson's contact with me throughout, it's failure to do anything for me other than try to hinder me, okay. Again, he's placed within the record -- his method of communication, his lack of regard, his indifference; it's in the record.

So, sir, again, I -- my response is what I just said. I'm -- that's why I'm here. Again, I know I'm not a lawyer.

THE COURT: Okay. All right. Mr. Braxton, what I'm

going to do is I'm going to take this under advisement, review the motion, review the case file before I make my decision.

When I do make my decision, you'll get something in the mail. Okay?

MR. BRAXTON: Yes, sir.

THE COURT: Okay. Thank you for being here.

MR. SMITH: Thank you, Your Honor.

THE COURT: Thank you.

(At 0:37:52, the hearing concluded.)

END OF TRANSCRIPT.

CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Richland

I, BARBIE TEBOE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the trial of the captioned case, relative appeal, in the Court of General Sessions for Richland County, South Carolina, on the 7th day of March, 2025.

I further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 13, 2025

Barbie K. Teboe

Barbie Teboe,
Transcriber