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Mar 04 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
The Honorable Daniel Dewitt Hall, Circuit Court Judge
The Honorable William A. McKinnon, Chief Administrative Judge

Appellate Case No. 2025-001916

In The Matter of the Care and Treatment of
TYRELL JERMAINE NEELY,

APPELLANT

CONSENT MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM

Appellant Tyrell Neely is currently detained in the York County Jail under the Sexually Violent Predator Act after a probable cause finding by the Honorable William A. McKinnon dated September 29, 2021. The action under the SVPA against Mr. Neely is still pending resolution due to problems obtaining a second opinion under S.C. Code Ann §44-48-90(C), which is the subject of this appeal.¹ Counsel for Mr. Neely and the State have reached an agreement that would resolve the matter on appeal, but because Mr. Neely's competence has been an issue throughout the

¹ The present appeal does not involve the merits of the SVP action against Appellant. The second evaluation requested by the State was not completed because of Mr. Neely's behavior and/or refusal to comply with certain aspects of the testing. The State sought and was granted by Judge Hall an Order compelling cooperation with the evaluation. After further motion practice in the lower court, it is essentially that Order compelling compliance that is the substance of the appeal currently before this Court.

underlying proceedings, this Court should appoint a Guardian ad Litem to determine whether it is in Mr. Neely's best interest to accept the resolution offered by the State and dismiss his appeal. The State agrees that appointment of a Guardian ad Litem is necessary in this circumstance. In support of this motion, appellant states:

1. Mr. Neely was found incompetent to stand trial with competency unlikely to be restored on the underlying, qualifying criminal charge forming the basis of the State's SVP action by order of the Honorable R. Keith Kelly on April 23, 2021. Mr. Neely was deemed incompetent to make decisions regarding his mental health treatment in Probate Court under S.C. Code Ann §44-23-430(2) by the Honorable Carolyn Woodruff on June 29, 2021.
2. The State initiated a Sexually Violent Predator action on September 17, 2021, following Mr. Neely's referrals from the Multidisciplinary Team and the Prosecutor's Review Committee as required under S.C. Code Ann. § 44-48-70.
3. Because Mr. Neely was charged with a sexually violent offense, but found incompetent to stand trial, a probable cause hearing was held on April 12, 2023, pursuant to S.C. Code Ann. § 44-48-100(B). For this proceeding, Don A. Thompson was appointed by the circuit court as Mr. Neely's guardian ad litem, but was relieved by an Order dated June 13, 2023. This Order is attached as "Exhibit A" to this motion.
4. Mr. Neely was evaluated by Dr. Marie Gehle from the Department of Mental Health who found that he did not meet the definition of an SVP. Dr. Gehle also reviewed Mr. Neely's extensive mental health history and noted his diagnosis of Schizoaffective Disorder, Bipolar Type in her report. Pursuant to S.C. Ann. § 44-48-90(C), the State exercised its

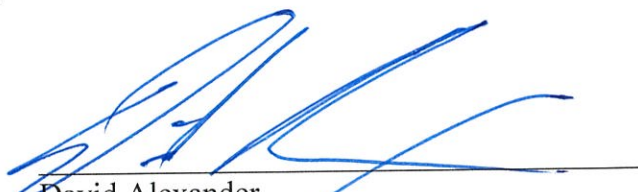
right to have Mr. Neely evaluated by its own expert. That evaluation is not completed and is the subject of the circuit court's Orders now on appeal.

5. The State, through counsel Christopher Runyan, has now offered to allow Neely to proceed with an evaluation by a different evaluator, who will evaluate Mr. Neely at the York County Detention Center, to mitigate the safety issues present by Mr. Neely to himself, law enforcement transportation officials, and MUSC staff and facilities.
6. On February 3, 2026, both undersigned appellate counsel met with Mr. Neely at the York County Jail and explained the State's offer to him. Mr. Neely seemed to agree with the that offer and to dismiss his appeal.
7. However, given Mr. Neely's previous finding of incompetency, the long recitation of his difficult mental health history by the DMH evaluator, and counsel's own observations of Mr. Neely during the meeting, counsel sees the need for appointment of a guardian ad litem who can independently evaluate the decision to drop Mr. Neely's appeal, which is a decision only the client can make.
8. Rule 264, SCACR, provides that attorneys and guardians ad litem shall continue as such on appeal, but, as noted above, Mr. Thompson was relieved by an order of the circuit court.
9. Counsel for Mr. Neely contacted Mr. Thompson and asked if he would be willing to serve as guardian ad litem for Mr. Neely if appointed by this Court. Mr. Thompson had instant recall of the case and Mr. Neely's situation and said he would be happy to serve if appointed by this Court.
10. Counsel for the State, Mr. Runyan, consented to this Motion and agrees that Mr. Thompson would be a diligent and competent guardian if this Court is inclined to appoint him.

11. If this Court appoints a guardian ad litem, and the guardian ad litem agrees that the State's offer should be accepted and this appeal dismissed, appellate counsel will immediately file a motion to dismiss with this Court reporting the same. As the effect of the current motion could resolve this appeal, counsel for Mr. Neely and the State ask that the deadlines for the appeal be placed in abeyance pending this Court's decision on this motion and, if appointed, the report of the guardian ad litem.

WHEREFORE, counsel for Tyrell Neely asks this Court to appoint a guardian ad litem for the purposes described herein, and placement of the deadlines of this appeal in abeyance pending the outcome of the guardian ad litem's report.

WE SO MOVE:




David Alexander
Deputy Chief Attorney for Capital Appeals

Gary H. Johnson
Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEYS FOR APPELLANT

WE CONSENT:



Christopher Runyan
Senior Assistant Deputy Attorney General

Joseph Corrao
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ATTORNEYS FOR RESPONDENT

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EXHIBIT A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 IN THE MATTER OF THE CARE)
)
 AND TREATMENT OF)
)
 TYRELL JERMAINE NEELY,)
)
 RESPONDENT.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 CASE NO. 2021-CP-46-02853

**ORDER FOLLOWING HEARING
 PURSUANT TO S.C. CODE ANN. § 44-48-100B**

FILED-RECEIVED
 2023 APR 28 AM 8:57
 DAVID HAMILTON
 S.C.C.P. & OS
 YORK COUNTY

This matter comes before the Court on the Petition of the State of South Carolina for an Order requiring Respondent, Tyrell Jermaine Neely, to submit to an examination and to be detained in an appropriate secure facility pending a trial pursuant the Sexually Violent Predator Act S. C. Code Ann. §§ 44-48-10, *et seq.* (hereafter “the SVPA”). Respondent is represented by Kindle K. Johnson, Esq., as well as by and through his Guardian Ad Litem, Don A. Thompson, Esq. The State is represented by Suzanne J. Shaw, Assistant Attorney General.

Respondent was initially charged by way of a Direct Indictment for Assault with Intent to Commit Criminal Sexual Conduct, on or about June 20, 2019. State’s Exhibit B. A conviction of the conduct charged as indicted would qualify as a sexually violent offense as defined by S.C. Code Ann. § 44-48-30. That charge remains pending under docket number 2019-GS-46-03695. Following initial proceedings in the criminal matter, a competency evaluation was ordered, and it was ultimately determined Respondent was not competent to stand trial for the pending offense. The matter then proceeded to Probate Court on or about April 23, 2021, and Respondent was ultimately ordered to Involuntary Outpatient treatment¹ by way of a Judgment and Order for Treatment in Case #2015-MHES-46-00323, executed by the Hon. Carolyn E. Woodruff on June 29, 2021. State’s Exhibit A.

On July 15, 2021, the SCDC Multidisciplinary Team met, and following a vote, referred Respondent for further review. The Prosecutor’s Review Committee met on August 17, 2021, and following a vote, also referred Respondent for further review under the SVPA. The State filed its Petition on September 17, 2021. Because Respondent was declared incompetent to stand trial in the criminal court, prior to any probable cause findings or the issuance of an Order for Evaluation, this case must proceed under S. C. Code Ann. § 44-48-100(B).

Section 100(B) provides that since Respondent has been charged with a sexually violent offense, has been found incompetent to stand trial and is about to be released, and his commitment is sought by the State, the court must first hear evidence to determine whether Respondent committed the act or acts with which he is charged. The Section requires that: (1) the hearing on this issue must comply with all the procedures specified in S.C. Code Ann. § 44-48-100; (2) the rules of evidence applicable in criminal cases apply; and (3) all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply.

¹ Among other conditions, including, in part, that Respondent was required to live with his mother in Richland County, and that he not physically be present in York County for a prescribed period.

After receiving the State's proposed Exhibits A (6/29/21 Judgment and Order for Treatment) and B (Certified copies of Direct Indictments under case #2019-GS-46-03695) in evidence without objection, and after hearing the testimony of, F.E., on April 12, 2023, this court makes the following specific findings on whether Respondent committed the act or acts with which he is charged; the extent to which Respondent's incompetence or developmental disability affected the outcome of the hearing, including its effect on Respondent's ability to consult with and assist counsel and to testify on his own behalf; the extent to which the evidence could be reconstructed without the assistance of Respondent; and the strength of the prosecution's case.

This court hereby finds the following: (1) on February 21, 2019, Respondent did engage in conduct toward F.E. which constitutes Assault with Intent to Commit Criminal Sexual Conduct, a Sexually Violent Offense; (2) Respondent was and presently remains incompetent, and unable to assist his counsel or Guardian in his defense; (3) Respondent's incompetence, given that he is represented by counsel and has a Guardian to speak on his behalf, did not materially affect the outcome of the hearing as he did not testify under oath and the State's witness was subject to cross examination; (4) the evidence in this case is straightforward, the victim testified clearly and credibly as to the events which occurred on February 21, 2019, and reconstruction of the record was not required; and (5) based on the evidence presented to the court, the State has proven beyond a reasonable doubt that Respondent committed the acts alleged in the indictment.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Respondent:

- (a) Is hereby adjudicated to have committed Assault with Intent to Commit Criminal Sexual Conduct for purposes of S.C. Code Ann. § 44-48-100(B); this finding is sealed, and shall not be used for any purpose other than civil commitment proceedings under the SVPA; and
- (c) Don A. Thompson, Esq. is relieved as Guardian Ad Litem; and
- (d) Kindle K. Johnson, Esq. is relieved as Counsel of Record for purposes of the 100B hearing, but remains counsel of record in the ongoing SVP proceeding.

IT IS SO ORDERED.



DANIEL DEWITT HALL
Judge of the Sixth Judicial Circuit
Court of Common Pleas

April 22, 2023
York, South Carolina

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STATE OF SOUTH CAROLINA

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In The Matter of the Care and Treatment of
TYRELL JERMAINE NEELY,

APPELLANT

CONSENT TO APPOINTMENT AS GUARDIAN AD LITEM

WHEREFORE, counsel for Tyrell Neely asks this Court to appoint a guardian ad litem due to concerns over appellant's competency, I hereby consent to the appointment and acknowledge I am familiar with Mr. Neely having served as his guardian ad litem during the Circuit Court proceedings and know of no conflict or prohibition preventing my service.

March 4, 2026

s/ Don A. Thompson

Don Thompson
107 Smithwood Ct
Simpsonville, SC 29681
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SCCID

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Wanda H. Carter, Chief Appellate Defender

March 4, 2026

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: In the Matter of the Care and Treatment of Tyrell Jermaine Neely
Appellate Case No. 2025-001916

Dear Ms. Kitchings:

Attached please find a Consent Motion to appoint Don Thompson, Esq., as guardian *ad litem* for appellant. Also please find Mr. Thompson's consent to the appointment. As outlined in the Motion, appellant's mental health status has been an ongoing issue related to this matter and the appointment of a guardian *ad litem* is needed to protect appellant's interests as a potential resolution of this appeal has been proposed but requires appellant's informed consent.

By copy of this letter, I am serving a copy of the motion on opposing counsel who has graciously consented to the motion. As the proposed resolution will resolve all matters associated with the present appeal, counsel is requesting that deadlines be held in abatement for a period of 30 days to complete the appointment and allow the Mr. Thomspson sufficient time to evaluate the propriety of the proposed resolution.

Sincerely,



Gary H. Johnson
Appellate Defender

GHJ/sl

cc: Christopher Runyan, Esquire
Joseph Corrao, Esquire
David Alexander, Esquire