

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM ANDERSON COUNTY
Court Of Common Pleas, 04th Judicial Circuit

J.C. Nicholson, Circuit Court Judge

Appellant Case No: 2013-000879

State Of South
Carolina..... Respondent,

v.

William
Deans.....Appellant.

AMENDED INITIAL BRIEF OF APPELLANT

RECEIVED

FEB 07 2014

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. DOES / DID THE COURT HAVE BOTH SUBJECT MATTER JURISDICTION AND JURISDICTION OVER THE PERSON TO CONTINUE CIVIL COMMITMENT
2. DID THE COURT ERR BY NOT HAVING A ANNUAL REVIEW HEARING
3. DID THE COURT ERR BY NOT ALLOWING APPELLANT TO CONTEST STATES WITNESS / SOUTH CAROLINA CODE OF LAW 44-48-110, 2012 ANNUAL REVIEW REPORT, DENYING APPELLANT THE RIGHT TO CONFRONT THE WITNESSES AGAINST HIM.

IN/ALT/ DID THE COURT ERR IN GIVING THE STATES SCC ANN. 44-48-110 EXPERT WITNESS ABSOLUTE DEFERENCE, IN DENYING APPELLANT THE RIGHT TO CONFRONT THE WITNESSES AGAINST HIM.

STATEMENT OF CASE

1. DOES THE COURT HAVE BOTH SUBJECT MATTER JURISDICTION AND JURISDICTION OVER THE PERSON TO CONTINUE CIVIL COMMITMENT.

This matter arose, when on Oct. 30, 2002, (filed Oct. 31, 2002) his Honor Judge Nickolson signed an Order to Dismiss this case, On Nov. 7, 2007 Judge Nickolson signed an Order to With Draw the prior Order To Dismiss.

The Order Of With-Drawal Order Of Dismissal was filed on Nov. 12, 2002, a full 12 days after first being duly filed.

In the over eight years since civil commitment, the Court has conducted only two SCC Ann.n 44-48-110 annual review hearing, One being represented by appointed attorney Gordon Senerius and one by Appellant.

At no time prior to when Appellant first motioned to represent himself did the appointed attorneys, Mr. Cox nor did Mr. Senerius Nov. 2002 to 2/13/13 inform (Respondant) Appellant of the Courts lack of subject matter jurisdiction.

Appellant who has absolutely zero access to research in a legal library became aware of the issue shortly prior to herein referenced Motion For Evidentiary Hearing Be Scheduled in Feb. 2012, and not allowed to bring up the issue until the subject of this appeal, 2/13/13 Annual ,Review Hearing.

at 2/13/12 presumed SCC Ann. 44-48-100 Annual Review Hearing, his Honor J.C. Nicholson opened by first reading the States Annual Review Report, Dr. Domino of 12/18/13.

When allowed to speak, Appellant stated he had a number of unaddressed motions before the Court, being Motion To Schedule a Evidentiary Hearing and a request for a Status Review Of Case Hearing.

The Court stated it was not hearing any such motions, that this was a Annual Review Hearing, only.

Appellant stated he challenged the jurisdiction of the court based upon an Order Of With-drawal of Order Dismissal of This Case that was issued in violation of the SCRCF statute of limitations mandated in the South Carolina Rules of Civil Procedure, Rule 58 (a) (2) and Rule 59 (d).

Appellant: "I requested for a Status Of Case Review.

The Court stated again it was not hearing any such challenges.

Appellant had timely filed for a evidentiary Hearing to challenge the jurisdiction, and the States bogus Evidentiary which would be provided to the States expert who would examine this Appellant for the States Report to the court to determine whether probable cause exist to determine whether Appellant had so changed to be released at large. ie: order a trail be held on the merits.

The Court refused to schedule such a Evidentiary Hearing, that in turn caused a complete lack ^{no} of communication between the parties with Appellant attempting to show it was a waste of time to appoint an independent examiner who would be given the bogus information, and the Court believing Appellant did not understand the purpose of the hearing which was for an SCC Ann. 44-48-110 Annual Review.

note: complete brake down of communication means in this context, Appellant had to argue with the Court which refused to listen or allow Appellant to speak on any subject other than annual review issue. Appellant did get the point across that the State has refused to provide (SVP) treatment to Appellant for which he was civilly committed to/for, instead the State holding Appellant civilly committed since July 2004 for custodial criminal interrogation attempting to force Appellant, into admitting guilt to out of State dismissed criminal charges and uncharged allegation.

After much confusion, the Court took the initiative to issue an injunction, enjoining the State, SCDMH from interrogating this Appellant in the form of a basic gag order not allowing the parties to discuss the said out of State dismissed charges and un-charged allegations.

As follows Appellant argues the Court refused to permit Appellant to confront the State evidence or witness, with the Court ordering a denial of relief based on the report (herein Appellants Record On Appeal, Exhibit E-^w1, of a un-qualified, highly defective review, that during the proceedings (the review) was actually discredited by the court.

Appellant asserts and blames the Court for causing Appellant to having been prejudiced out of a fair annual review hearing when the Court refused to schedule a Evidentiary Hearing, or a SCC Ann. 44-48-110 Status of Case Review prior to any hearing of annual review.

During the 2/13/13 hearing the Court kept asserting the purpose of the hearing was requiring Appellant to show how he has so changed, and admonished Appellant for trying to address treatment

issues. when finally the Court refused to speak to Appellant. There is two basic issues address in this appeal, #1. the Court lack of subject mater jurisdiction. and #2, the impossibility of Appellant to take or advance through a SVP treatment Program who's information on Appellant is 99% false, twisted, incorrect, and this being not for what this Appellant claims but to what the documented information provided to the SC Dept Mental Health by the State Attorney Generals Office SVP unit.

The treatment program requires Appellant to admit guilt to any criminal charges, convictions, dismissed charges or allegation, uncharged allegations, hear say notes made by any person, or state official, and to any belief or combination thereof by the case managers.

Similarly: all present and past therapist persist in requiring Appellant to admit guilt to dismissed out of State criminal charges. And, just the same Appellant has refused to admit guilt, and faces a life sentence of civil commitment for doing so.

whereby, it is reported in this and all past annual review reports to the court that Appellant is refusing to take SVP treatment.

The Court kept telling Appellant it did not want to hear about any 10-/20 year old issues, Appellant argued that he is being held to these 10/20 year old issues and has every right to challenge any incorrect information the State is using to keep Appellant civilly committed to.

This includes the States 2012 expert (Dr. Domino) used at the 2/13/13 annual review hearing subject of this appeal, noting in her report that Appellant own 2004 civil comment trial defense expert recommended appellant be civilly committed, when in fact in 2007 this defense expert, a Dr. Berg admitted she rigged her report

against (respondent) appellant at the order to do so, by an assistant Attorney General.

Appellant further argued that the State had violated the 2004 court having sealed the Dr. Berg report / by giving the Dr. Berg report to Dr. Domino.

As shown in the following appeal, the Court refused to hear / or allow Appellant to argue against the Dr. Berg report being referenced by Dr. Domino.

further noting: there are no sexual or other wise SVP qualified case managers / ie: therapist assigned to this appellant in the last ten years of civil commitment being approximately thirteen (13-14)

Example: The State claimed / and was reported in the States expert witness annual review report that Appellant was not even participating in treatment: answer: not so, Appellant had attended over 88 weekly group sessions / which includes assignments and testing before the 2/13/13 hearing.

The court again refused to allow Appellant to explain this or any other issue excepting the States 10 year long interrogation of this Appellant into admitting guilt to out of State dismissed allegations, even though Appellant had three experts reports contradicting the present Dr, Domino's report and that Dr. Domino's contradicted her own report.

The most telling fact thus far documented in this case for Appellant is the SC Dept. Mental Health General Counsel, Attorney Carter testifying that for the Court enjoining the State from interrogating Appellant any^{wo} further makes the purpose of the civil commitment moot.

As follows Appellant attempts to put fourth an appeal based on the reserved issues of legal merit in the shortest to the point context.

Appellant does not expect this Court to even begin to comprehend appeal issues addressing a fictional program that in turn bases it's findings on fictional medical assertions, which in turn the State attempts to argue as actual legal issues. ~~FACTS~~, ^{WD}.

Appeal is as follows:

ARGUMENT

1. The Court erred and abused it's discretion in refusing to hear Appellants challenge of the Courts lack of both subject matter jurisdiction and jurisdiction over the person, Tr. 24 Ln. 7 / Tr. 25 Ln. 4 specifically at Tr. 26 Ln. 2-3

On 2/13/2013, the Court refused to allow Respondant to challenge the Courts lack of jurisdiction in violation of SCRPC, 12 (b) which states: Court: "I don't want to hear any jurisdictional challenge".

see SCRPC, Rule 12 (b 1-8)...." A motion making any of these defenses shall be made before pleading if a further pleading is permitted".....

Appellant followed this instruction rule and did make [any] challenges prior to any claimed Annual Review hearing.

And like wise, The Court erred in not dismissing this case for the Courts lack of both subject matter jurisdiction and jurisdiction over the person, SCRPC., Rule 12 (b) (1) (2) (6), Rule 12 (d)

(a) see Record on Appeal, Respondant's Exhibit, A 1 and 2, Exhibit A-1, his Honor Judge Nicholson signed a Dismissal of this case on Oct. 30, 2002, and filed Oct. 31, 2002,

Appellant's Exhibit A-2, is Order Of With-Drawal of referenced Dismissal of case, dated as signed on Nov. 7, 2002, filed Nov. 12, 2002.

Respondant argues the Courts and the State are without the jurisdiction over the subject matter and this person to continue civil commitment pursuant to South Carolina Rules Civil Procedure, Rule 59 (d) states:

10th WD

ON INITIATIVE OF COURT. "Not later than 10 days after entry of judgment, the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party.".....

SCRCP, Rule 58 (a) (2) ENTRY OF JUDGMENT,

"",,,,,,,,,,A judgment is effective only when so set forth and entered in the record.""

Judge Nicholson's order's (Respondant's Exhibits A .2, was not "so set forth", and not entered until twelve days apart.

The argument can be understood as two fold,

(1) it was the Courts duty to have assured the order of With-drawal of Dismissal be entered within 10 days.

(2) Clerk of Court should not have allowed the order of With-drawal be (filed) entered after the 10 day statue of limitations.

SCRCP, Rule 3(a), Rule 58(a) (2), Rule 59(d).

Which, in turn has prejudiced this Respondant into being held un-constitutionally for ten years and counting. ie Aug. 22, 2003 to present date of May 20, 2013 and counting. (re-filed this

2- 4^m, 2014.

b) Appellant asserts the Clerk of Court was without the authority and should had never filed the Order Of With Drawal Of Order of Dismissal, Appellants Exhibit A page 2, pursuant to SCRCP, Rule 59 (d) and Rule 58 (a) (2), not to exclude any other rule or authority.

c) Appellant argues that R 58(a) (2) is not just merely directional or administrative, it is a constitutionally mandatory jurisdictional rule for the fact that after the ten day limit of R 59 (d), Rule 58

11^m wD

(a) (2) is devoid of authority, meaning that you can not enter what is not enter able, SCRCF, Rule 3(a).

SCRCF, Rule 59 (d) says of itself that the rule can only be applied for up to ten days after the last entry.

In another sense, the Judge's signature became null and void any time after the ten (10) day statute of limitation. SCRCF, Rule 59(d)

d) when the clerk of court entered the bogus document (Order of With Drawal), Appellant alleges this raises his burden of proof, when procedurally, it is the Court and State that must prove [it] has the jurisdiction authority to have civilly committed (appellant) in the first place to continue holding Appellant in a de-facto incarceration past his given prison sentence for with out the jurisdiction, as claimed, Appellant is not being held under a legal / binding civil commitment Order. See Appellants Record on Appeal, Exhibit I

e) Appellant asserts he has never willfully or other wise in any manner knowingly waived jurisdiction of this issue and Appellants demands for the Court and or the State to prove other wise, by documented evidence and not by merrily making a baseless assertion.

f) And, in so many words, the Court is without the authority to have re-written the rules, being SCRCF, Rule 3(a), Rule 59(d) and Rule 58(a) (2), compare this to that of a separation of powers argument, SC Const. Article I Sec. 8^{wp}

In that no where within these two rules, SCRCF, Rule 58(a) (2) and Rule 59(d) are there enabling authorities to allow the Court to circumvent, re-write, invoke more then what the rules mandate.

12^{wp} WD

see State vs Knuckles Op: 3438 SC Court of Appeal (2002)

"The Subject Matter Jurisdiction of a Court is fundamental lack of Subject Matter Jurisdiction may not be waived even by consent of the parties and should be taken Notice of by the Court.

It is well settled that issues related to Subject Matter Jurisdiction maybe raised at any time including for the first time on appeal in this Court".

Brown vs State 343 SC 342, 345 / 540 SE2d. 846, 848-49 (2001)

Anderson vs Anderson 295 SC 105 / 382 SE2d. 897, 900 (1989)

2. The Court erred by stating in it's Order of Denial Of Annual Review claims that the Court held a SCC. Ann. 44-48-110 Annual Probable Cause Hearing. see Appellant's Record on Appeal, Exhibit C, Order Of Denial Of Annual Review, specifically: at page 1 paragraph 1, Ln 15, 3d paragraph 1-5.

a) Appellant asserts that no SCC Ann. 44-48-110 Probable Cause / Annual Review Hearing was held. see Transcript of Record Page 1-5 open Court on 2/13/13, Appellant stated he had filed a demand for a SCC Ann. 44-48-110 "Status Review Of Civil Commitment" hearing prior to a Probable Cause Hearing. Tr. 17 Ln. 19-23 / Tr. 21 Ln. 17-19

see Appellant's Record on Appeal, Exhibit B, SC Dept. Mental Health SCC Ann. 44-48-110 Notice of Annual Review, of Jan. 3, 2013 at page 1 of 3, at subsection B states (appellant) "I demand a Status hearing, WD".

b) The Court refused to allow Appellant to challenge the validity of Dr. Domino Annual Evaluation report. Tr. 26 Ln. 1-17, / Ln. 18-19 / Tr. 27 Ln. 4-5, 6-7

c) The Court refused to allow Appellant to present documented evidence that he / the Appellant has so changed to be released from civil commitment. Tr. 10 Ln. / Tr. 11 Ln. 3

d) and, see Appellant's Record on Appeal, Notice Of Right To an SCC Ann. 44-48-110 Annual Review Hearing, Appellant's Exhibit B, page 1, section I , and page 4, specifically see Appellants Notice of Reservation of Rights, putting the State and the Court on Notice pursuant to UCC 1-207. of Appellants right to withdraw his signature upon a dishonor or change in purpose of the Notice by either the State or this Court.

e) Appellant

#1. challenged subject matter and personal jurisdiction,

#2. Appellant demanded a Status of Civil Commitment Hearing.

After the point where Appellant informed the Court, the State / SCDMH were not providing SVP treatment but were instead forcefully interrogating and demanding Appellant admit guilt to out of State dismissed criminal charge and demanding admission of guilt to uncharged allegations, Appellant was not allowed to address any other issues

3. On 2-13-13, Judge Nicholson erred and abused the discretion of the Court by ruling that since SCDMH Annual Review Report, of 2012, Dr. Domino stated Respondant had not so changed to be released at large, (Appellant) must finish the program before being considered for release. See Appellants Record On Appeal, Exhibit E-2, Dr. Domino, at page 7-8 OPINION:

"and that Respondant had not finished the program, that probable cause was denied to substantiate ordering a release trial be scheduled. ie: SCC Ann. 44-48-110.

14th MB

Respondant argued that 44-48-110 required the Court to have a "Status of Civil Commitment", when requested by Appellant before proceeding to a 44-48-110 Annual Review Hearing".

NOTE: The Court refused to have a Status of Civil Commitment hearing and did hear Appellant's complaint of being held for custodial interrogation and then the Court proceeded to rule upon the Dr. Domino, 2012 SCDMH Annual Review Report.

The argument is two fold, being,

[1] the Court refused to have a status of civil commitment hearing (to hear Appellant timely motion for a evidentiary hearing) and [2] giving the SCDMH 2012 Annual Review Report of Dr. Domino absolute full and unchallenged deference. Tr. 4 Ln. 12-18 / Tr. 4 Ln. 16 - Tr. 5 Ln. 7 - Tr. 29 Ln. 11.

Compare Sharp v Weston (No. C94-121WD) Senior District Court Judge William L. Dwyer of the U.S.D.C. for the Western District in Seattle, observed that

"Defendants argued that the deference to be afforded to decisions based upon accepted professional judgment, practice or standards means that there should be virtually no judicial review, stating:

"No one questions that Dr's. Smith and Seling [SCC's superintendent and clinical director] are qualified professionals exercising their discretion.

"The inquiry should end there, 'That is not the law, and such a view would eviscerate any protection of constitutional rights. The Youngberg standard is intended to prevent a judge from using unguided discretion to balance the individual's liberty interest

against the State interest in restraining liberty.' It is not meant to transfer the safeguarding of constitutional rights to mental health professionals.

"If mere expression of opinion by a State-employed superintendent or psychologist were deemed conclusive, the constitutional standard would vanish; conditions of confinement would be upheld without scrutiny, and the outcome would depend on who happened to be in charge of a particular program, with no consistency from State to State or even from one institution to another within a State".

(ends)

Quoting: Youngberg vs. Romeo 457 U.S. 307, 102 SCT 2452 (1982)

a) the foregoing quote (Youngberg standard) case is controlling authority and is used to demonstrate the near identical issue has been raised in other courts and that court did accordingly denied granting expert testimony absolute deference over at least 3 other contradicting experts that Appellant was not allowed to argue what was in the courts own records, which Judge Nickolson refused to reference. TR. 10 Ln. 11 - Tr. 11 Ln. 13 and Tr. 18 Ln. 23 - Tr. 19 Ln. 8

see Appellant Record On Appeal, Exhibit E 1-3 Experts testimony of

Exhibit D-1, Dr. Watson, 6-1-05, page 3-4, [test] Static-99, "Low Risk", RRASOR "Low Risk", MnSoST-R "Low Risk"

Exhibit D-2, Dr. Mckee 4/2/07 page 4 (.3) (.4) and page 5 (.3) (.4) "Low Risk"

Exhibit D-3, Dr Harrison, 10/21/10, page 2, Static-99 "Low Risk" rated at 1.6.

Exhibit E-1, Dr. Domino, 11/2/11, page 3 Static 99R "0" "Low Risk". equals a high risk ?

Exhibit E-2, Dr. Domino, 12/18/12 "High Risk".

16^{no} WD

3. Appellant raised Dr. Domino committed two documented acts of professional misconducts. Which Appellant brought to the Courts attention. see Appellant Record On Appeal, Exhibit E-2, SCDMH Annual Review of 12/18/2012, Dr. Domino at page 4, 4th topic Previous Evaluation and Diagnosis

see Appellant Record On Appeal, Exhibit E-2 pages 4.

a) Dr. Domino references an evaluation (by Appellants original 2004 civil commitment defense expert) Appellants Exhibit 1, 2004 TTr. 52/ (46) at Ln. 1-11, TTr. 8/(2) shows said evaluation was not allowed / or entered into the record at the original June 2004 civil commitment trail by the Court, State or this Appellant. (by ref: Dr. Berg. 2004 Evaluation)

Dr. Berg bogus evaluation was ordered sealed by the Court, and no order has been issued since June 2004 un-sealing the Dr. Berg report. SCC ann. 44-48-170. TR. 19 Ln. 1-10 and Tr. 21 Ln. 9-16.

In 2007 Dr. Berg did not deny she had lied / fixed (appellants) SCC Ann. 44-48-100 defense experts evaluation. ie: Deans vs Berg 2007-CP-40-5501

The State , ie: Assistant Attorney General Mr. Flores un-lawfully and with out a Court order un-sealing the records Berg evaluation which was not part of the (Deans) record and deliberately committed a violation of SCACR, Rules 407, by providing the Berg report to Dr. Domino. See Appellants Record On Appeal, Exhibit ^{E-2} page 4

b) On Dec. 2, 2011 the Honorable Judge R. Lawton McIntosh, signed and duly filed an order, commanding that Appellant shall be allowed to purchase [his] recording devise and to electronically record all mental examinations. (by the State) of Appellant.

17 ^{MD}

see Appellant Record on Appeal, Exhibit F Order of Dec. 2, 2011, page 1 subject 1. and see Appellants Exhibit E-2 page 1 at Notification Ln. 5 "per Court Order, Mr. Deans audio taped the present interview"

i) On 12/10/ 2012, immediately after Appellant did cassette Tape record, SCC Ann. 44-48-110 evaluation by Dr. Domino of Appellant, Assistant Attorney General Flores by/through PSO Capt Abney did confiscate said cassette tape of this 2012 evaluation and have since refused Appellant access to the tape for transcription for referencing at the 2-13-^{wo}2013 claimed Annual Review Hearing, subject of this appeal.

See Appellants Record On appeal, Exhibit 1, page 4 and see Appellants Exhibit (2), Motion To Find Capt. Abney In Contempt Of Court"

ii) At the 2-13-13 hearing before Judge Nickolson, subject of this present appeal, Appellant was unable to present evidence from the cassette tape to dispute Dr. Domino's 2012 evaluation mof Appellant. see Transcript of Record pages 1-50

Appellants argued the Dr. Domino 2012 report should be disqualified for prosecutorial misconduct / where the Attorney Generals Office confiscated the Court ordered Appellant's cassette tape recording of the Dr. Domino evaluation, which denied Appellant that taped evaluation as evidence at the 2-10-13 Annual Review Hearing. See Appellants Record On Appeal, Exhibit L, page 3

4. As reserved for appeal, the Court refused to have a Status of Case Hearing, where Appellant had timely filed for a Evidentiary Hearing be scheduled prior to a Annual Review Hearing b see Appellants Record on Appeal, Exhibit M

18^{wo} WD

Appellant did argue in Court, Tr. 28 Ln. 1-25, showing In support of the foregoing, The State has continually with held until this hearing the following evidence showing the State has no reason to hold this Appellant other then for custodial interrogation, which is the subject of this Court's Order Enjoining the State from questioning Respondant of out of State dismissed and un-charged alleged crimes.. *see Record on Appeal, Appellants Exhibit H, and* ¹⁰ see Record on Appeal, Appellant's Exhibit G-1, section One, "SCDMH, SVPTP Master "Treatment Plan". dated 10/15/12, at page 2, Clinical Goals Clinical I: History, Measurable Treatment Objections 1,2,3

This treatment plan documents the State requiring Appellant to admit guilt ie: in treatment terms, means "Appellant is required to take responsibility for all allegations" being, hearsay, un-charged, dismissed, bogus allegations, and those brought against other persons with similar names.

See Appellants Record on Appeal, Exhibit G-2, section Two, is Appellant's "Input", of 1/13/12, page 1 of 3 and G 3, is Appellants Notice Of 5th Amendment Rights Being Exercised.

Note: On 10-15-12, Appellant attended a "Master Treatment Plan" "treatment team interview. This is where a Dr. Gothard advised Appellant to admit guilt to the out of State dismissed charges and un-charged allegations, being it would make Appellant feel better and she did not think the State would bring criminal charges since Appellant was in the SVPTP.

Appellant raised this matter to the court, which in turn enjoined the State / SCDMH from interrogating Respondant (Appellant) any further.
Tr. 38 Ln. 7 through Tr. 41. Ln. 10

19th WJ

5. Judge Nickolson erred in making a conclusionary presumption by stating that since Appellant had not finished the SVPT Program, that Appellant must stay civilly committed until [he] has finished the program. Tr. 17 Ln. 4-6 and Tr. 25 Ln. 4-10

SCC Ann. 44-48-110 states a finding of "being safe to be released at large", not whether Appellant has finished any given treatment regiment,

The Court erred by raising the Appellant's burden of proof by requiring Appellant to finish a treatment program not the Court nor the State have any knowledge of because there is no such thing as finishing the present SVPTP Rockwood Model Program which effectively gives Appellant a life sentence, Tr. Tr. 16 Ln. 22 -- Tr. 17 Ln. 2-17
Note: Appellant was civilly committed to treatment type (1) to receive therapy with a finalizing 12 step program and near automatically recommended for release, whereby, the de-facto Rockwood Model is a observational reward / punishment ordinated program has no real beginning nor end, which ironically was approved and implemented under the direction of the Attorney General Office, Attorney Flores:

Tr. 30. Ln 4-5 (Flores) who claimed ""[we] "I hate to stand here before the court and tell you. I'm not exactly sure what the treatment program is" (Rock Wood Model)

6. The Court erred in not applying the States evidence that was submitted to the Court challenging the denial of relief and injunction issued upon the 2/13/13 hearing, (Appellants Record On

Appeal, Exhibit H) which were it applied by the court, would vacate the order of civil commitment and deny further civil commitment. see Appellants Record On Appeal, Exhibits H and I.

The testimony given by the State Tr. 1-50, Mr. Flores is reputed by SCDMH General Counsel, attorney Mr. Carter, who stated in see Record on Appeal, Exhibit H, "SCDMH Motion For Relief From And Stay Of Order. see page 2, paragraph 2, entitled RULE 62(b), STAY OF PROCEEDINGS, 7-9,

"Finally, although this form of order (injunction) is capable of repetition in this and other proceedings purportedly arising under the Sexually Violent Predator Act, this particular case may arguably be rendered moot if not immediately stayed." Mr. Carter's testimony discredited both Dr. Domino's evaluational and Mr. Flores claim that Appellant has not so changed to be released.

Appellant argues the States witness Attorney Mr. Carter testified that with out being able to continue criminal type interrogating of Appellant about dismissed (out of State) charges and un-charged allegations, the State had no more reason to hold Appellant civilly committed.

Either the Court allows the State to continue to violate Appellants 5th Amendment Rights against self incrimination by forced interrogative detention or make this case moot.

see Appellants Record on Appeal, Exhibit J, original SCC Ann. 44-48-100 order of Civil Commitment, page 2
see Appellant's Record On Appeal, Exhibit J

Note: The State made three claims,

- #1. that Appellant had been convicted of a sexual offense.
- #2. that in the commission of the sexual offense, Appellant committed cunnilingus, penetration, folaico, upon a minor child.

#3. that Appellant committed sexual offenses against another child.

History note: ,

(1) yes, Appellant was convicted, and proving it is true that the State could convict a ham sandwich if it wanted to.

(2) that irrefutable evidence which was with held by the State in 1993, was discovered in 2000, medical reports proving it was an impossibility for Appellant to have committed the alleged crimes to which he was convicted of. And, that submitted police reports of said crimes were falsified claims. Especially to have not committed the alleged acts of cunnilingus, penetration, folaico, upon a minor child.

(3) (out of State) charges were dismissed, and all other allegations dismissed as not creditable, due to (other child) admitting she lied. And, (out of State) investigation proves the charging officer, Anderson County SC Sheriff Deputy Gene Sutton falsified her police report.

Again, it is what it is, which is Mr. Carter just admitted the only reason for civil commitment is to interrogate this Appellant.

The SCDMH, Mr. Carter claims they have an invested interest in continuing the civil commitment of Appellant.

What invested interest it is, Mr. Carter does not say, Appellant would say Mr. Carter is attempting to cover the States rear end after taking 10 years to finally come out and admit the State had no case from day one.

Mr. Carter Mr. Flores, the SCDMH, SVPTP, the Judge Nicholson Court of 2/13/13 failed to understand that this case was moot on Nov. 13, 2002, and nothing can be said or done to change that fact.

The Court erred in not granting Appellants request for relief, when Appellant gave Notice Of Violation Of Court Order. see Appellants Record On Appeal, Exhibit I "Respondants Motion To Deny The State (SCDMH) To Intervene".

Conclusion:

1. Appellant is with reasonable belief when challenged, the burden is upon the Court / the State to prove [it] is with both subject matter jurisdiction and jurisdiction over this person.

Appellant has demanded to be released or for the State to prove it is with the jurisdiction to continue holding Appellant in ex-post facto incarceration.

2. Appellant has shown he was not afforded a 44-48-110 Annual Review Hearing by not being allowed to speak in objection to the States evidence and or in behalf of himself proving he has so changed to be released into society.

In support of this allegation, Appellant would show the lower court cut (Respondant) off from speaking at least thirteen (13) ^{Times} ~~times~~ out of the times Appellant spoke see Tr. 9, 16, 20, 21, 24, 25, 26, 27, 29

3. Appellant has shown the Court erred by giving absolute deference to the States expert Dr. Domino, who the Court did not even bother to qualify, or to objectively question the experts un-founded conclusions. especially when a major portion of Dr. Domino's evaluation had been enjoined from any further use.

Appellant was not allowed to challenge the States expert reliance upon false, misleading, bogus, information, which included extremely prejudicial information of out of State dismissed charges that the Court after the fact of the State's expert examination was enjoined from referencing that information ever again.

4. Further proving extreme prosecutorial misconduct, that the State violated Court ordered 44-48-150, sealed documents by deliberately providing the States present 44-48-110 expert (Dr. Domino 2012) with what has been admitted to by the 2004 44-48-100 Dr. Berg, as falsified 44-48-100 defense experts evaluation of Respondant in 2004.

a) And, the State violated a Court Order granting Appellant the right to electronically record any 44-48-110 evaluations and to transcribe the recording by confiscating the tape recording made of the Dr. Domino evaluation, by reference being the 2012 evaluation.

b) By confiscating the said Dr. Domino 2012 evaluation tape recording, denied Appellant the right to use the tape recording to re-butt the testimony of Dr. Domino before judge Nicholson on 2-13-13.

c) by with holding exculpatory evidence and then the State bare faced false statements in open Court, when the State refused to produce said evidence when ordered to do so by way of Court, ordered Subpoena.

5. Appellant argues that he was denied a SCC Ann. 44-48-110 "Status Of Civil Commitment Hearing", and he was denied a "Annual Review Hearing",

6. Appellant has shown by documented evidence that the SCDMH admits that the only reason [they] are holding Appellant incarcerated past his criminal sentence release from prison date in August 2003, is so that the SCDMH can continue to interrogate Appellant, and demanding that he admit guilt to out of State dismissed charges and un-charged bogus allegations.

24th W.D.

note: which continues even to today, see Appellants SCACR, Rule 221 Motion For Rehearing Of Motion To Lift Stay of case / ie: Supersedes.

7. Appellant argues the Court abused it's discretion by concluding that since Appellant had not finished the program, this constitutes the Courts denial of probable cause for release.

The problem with this ruling is it violates 44-48-110, legislatures intent was that the person should expect to be released if he has so changed to not be a danger to society / ie: through\ either a recommendation from the State and SCDMH or through a jury trial. ie: SCC Ann. 44-48-110

The Court enjoined The State and it's examiners from using a full one half of the States reasoning (claimed evidence) in it's petition to civilly commit Appellant, ie: Petition at page 3, subsection 6.--(a) (2.) (B) (2.) *Appellant Record on Appeal, Exhibit J*

And, in 2007 The States own expert, Dr. McKee evaluated and then testified in open court that Appellant was of the lowest risk to include the applied testing of a comprehensive Static R99 score of ¹⁰-0- of ever re-offending. See Appellants Record On Appeal, Exhibit D 2, page 2,

The standard today is at least requires a 4 on the Static R99 to even qualify for SVP civil commitment,

This raises a paradox, if you can not civilly commit Appellant with these extremely low diagnosis in the first place, Then how could the Court find it reasonable to continue holding Appellant.

25 ^{up}

The other half of the States case has been admitted to as being moot by no other than the SCDMH General Counsel, Attorney Carter.

That leaves about zero reasoning other than for interrogation to continue holding Appellant in civil commitment, who's United States Dept. of Justice guild lines as referenced by all the named states experts, is Appellants average Static R99 is -2. which is admitted to by the Dr. Domino as a extremely low risk but some how which is unexplained a high risk ??

This alone should be enough to apply to this case the jury charge of reasonable doubt as in SC vs Manning, -SC-, being, "Reasonable Doubt is a reason which causes a reasonable person to hesitate. Removing 99% of the States case should cause hesitation.

The original States petition to civilly committed (appellant) was a score of (10) out of ten high risk in 2002 / is not so today, which appears to why and how Dr. Domino reached her flawed evaluation report, Dr. Domino admits in her examination that she relied almost entirely on 99% dismissed, bogus, discredited, enjoined /un-founded 10-20 year old 20th level hearsay information. Judge Nicholson relied on Dr. Domino,

example: Dr. McKee gave Appellant a Static R99 score of -0-, Dr. Domino gave Appellant a 2, which Dr. Domino obtained from the examination of Appellant by Dr. Harrison, who relied upon the examination of Dr. McKee, who relied upon the examination of Dr. Watson who relied upon the examination of a Dr. Crawford, who relied upon the 99% information that the State is now enjoined by Judge Nickolson from using.

If that doesn't sound confusing enough, one half of Dr. Crawford's (personality disorder) diagnosis of Appellant relied upon an examination from an out of State, of someone proven not to have been this Appellant. Other problems include two examinations were produced by Dr. Harrison and Dr. Domino who had not even met Appellant at the time when they produced their diagnosis. That's ambiguous at the least.

8. The key factor causing Appellant not to have received a fair Status or Annual Review hearing^w is the Court had refused to have a Evidentiary Hearing before the State / Dr. Domino produced (her) examination and Annual Review Report which was relied upon by the Court.

see Appellant Record On Appeal, Exhibit M 1-2,

Exhibit M-1, "Respondants Motion For Evidentiary Hearing, filed Feb. 27, 2012. a full 361^{days} prior to the Feb. 13, 2013 annual review hearing.

Exhibit M-2, Respondants Motion For Prior Motions Be Moved TO The Hearing Docket For 2/13/13^w."

The Court refused to schedule or hear (Respondants) motion for a Evidentiary Hearing / to which Appellant argued through out the 2/13/13 hearing that the evidence being relied upon by the Court produced by^w the State and Dr. Domino was bogus / false/ discredited, not allowed.

The Court inturn failed to understand the implications of it's own ruling enjoining the State / SCDMH from discussing or using the out of State / un-charged allegations,

27^w M)

The Courts injunction in turn canceled out the States/Dr. Domino Annual Review Report used by the court to deny relief at the Feb. 13, 2013 hearing, which is subject to this appeal.

Appellate would reserve with leave of court to amend this initial brief.

PRAYER

For the reasons stated, this court should reverse the judgment of the circuit court, and Order Appellate to be released.

Respectfully Submitted By,

2-4-14

William Deans
William Deans
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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM ANDERSON COUNTY
Court Of Common Pleas, 04th Judicial Circuit

RECEIVED

J.C. Nicholson, Circuit Court Judge

FEB 07 2014

SC Court of Appeals

Case No: 2013-00879

State Of South
Carolina.....Respondent,

v.

William
Deans.....Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record On Appeal.

- 1) A. Transcript of Proceedings pp. 2-50. (by reference herein Tr.) *pp 4,5, 9, 10, 11, 16-18, 20-21, 24, 25-29, 38 wd*
- 2) A-1. Order Of Dismissal 2002
- 3) A-2. Order Of With-Drawl of Order Of Dismissal 2002
- 4) B. Notice Of Right To Petition For Release and Notice Of Annual Review.
- 5) C. Order Of Denial Of Annual Review / Injunction
- 6) D-1. Dr. Watson, 6/1/05, SCC Ann. 44-48-110 Annual Review Report
- 7) D-2. Dr. McKee, 4/2/07, SCC Ann. 44-48-110 Annual Review Report
- 9) D-3. Dr. Harrison, 10/21/10 SCC Ann. 44-48-110 Annual Review Report
- 10) E-1. Dr. Domino, 11/2/11, SCC Ann. 44-48-110 Annual Review Report
- 11) E-2. Dr. Domino, 12/18/12, SCC Ann. 44-48-110 Annual Review Report
- 12) F. Order 12/2/11 To Record SCC Ann. 44-48-110 Annual Review Report.
- 13) G-1. SCDMH SVPTP 10/15/12 Master Treatment Plan.
- 14) G-1. Appellants Reply To SCDMH SVPTP 10/15/12 Master Treatment Plan.
- 15) H. SCDMH Motion To Intervene, Attorney Carter.

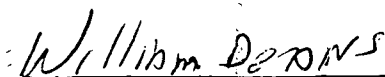
- 16) I. (Appellant's) Motion To Deny Purposed Order Denying Annual Review
- 17) J. 2004 Order Of Civil Commitment.
- 18) K. reserved
- 19) L. reserved
- 20) M-1. (Appellant's) Motion For Evidentiary Hearing Be Scheduled.
- 21) M-2 Request For (Appellant's) Motions Be Moved To Hearing Docket.

Appellant's Exhibits:

1. (Appellants) Motion TO Find Capt. Abney In Contempt Of Court
2. TTr. 2004 Civil Commitment Transcript Of Record, Redacted pages Cover, Index, page 52 and 88

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

Feb. 4 2014



William Deans
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Appealant, pro

In The Court Of Appeals

APPEAL FROM ANDERSON COUNTY
Court Of Common Pleas, 04th Judicial Circuit

J.C. Nicholson, Circuit Court Judge

Appellant Case No: 2013-000879

State Of South
Carolina.....Respondent,

v.

William
Deans.....Appellant.

PROOF OF SERVICE

I certify that I have served "AMEND INITIAL BRIEF OF APPELLANTS and APPELLANTS DESIGNATION bOF MATTER," by depositing a copy of it in the United States Mail, postage prepaid, on Feb. 4, 2014, addressed to attorney of record, SC Attorney Generals Office, Alan Wilson, Asst. Nichole T. Wetherton, PO Box 11549, Columbia, SC 29211

Feb. 4, 2014

William Deans
William Deans
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cc/ SC Court Of Appeals

RECEIVED
FEB 07 2014
SC Court of Appeals

To Mrs Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
PO Box, 11629
Columbia, SC 29211

Cover

William Dennis Appellant Pro Se
7901 FARROW RD Bldg 3, 30 Floor
Columbia, SC 29203

2-4-14

Re: In the matter of Care & Treatment of
William Dennis C/P: 2013-00879

RECEIVED

FEB 07 2014

SC Court of Appeals

To: Mrs Kitchings

Please find enclosed appellants amended initial brief.
I am with the belief I did not need to motion for leave to amend
Due to the Court having ordered the Transcript of Record be provided
by Appellate Defense with instructions for me to provide a
Amended initial brief within 30 days of my receiving the
Transcript which I received on 1-9-14.

Please note that I will have to provide a copy of the
Record on appeal to the Respondent State Dept. They can
produce a initial brief of the Respondent, as noted by the
copy of their enclosed letter.

I did not have enough postage to pay for a complete
copy of my appeal to be returned to me, if possible
Please check stamp the cover sheets and return to me

Because of Transparency
with this Envelope / mail

Respectfully
Wm Dennis

To: SC Attorney General's office
ATT: ASSIST Nichole T. Wetherton
Mrs Shupe
PO Box 11549
Columbia, SC 29211

Copy (Cover)

2-4-14

William Depius
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Columbia, SC 29203

On Appeal in the SC Court of Appeals
in the matter of Care & Treatment of
William Depius
C/A 2013-00879

RECEIVED

FEB 07 2014

SC Court of Appeals

To: Whom IT may Concern

I am aware the AG's office will need a copy of the Record on Appeal
before being able to compile a initial Brief of Respondent.

I will try to have a copy to your office within the next 10 days
barring delays or snafu by the SCDMM who will be making the copies,
also be aware I have no access to computers or printer.

Please address any concerns for an extension if needed to the Court,

and please inform me ASAP as to whether your office needs
or was provided a Transcript of the proceedings

Respectfully Submitted

W Depius

c/c SC Court of Appeals