

RECEIVED

MAR 10 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF CLARENDON ) CASE NO. 2008-CP-14-183  
 )  
IN THE MATTER OF THE CARE ) **ORDER DENYING TRIAL AFTER ANNUAL**  
AND TREATMENT OF ) **REVIEW HEARING PURSUANT TO THE**  
MICHAEL LAWYER, ) **SEXUALLY VIOLENT PREDATOR ACT**  
RESPONDENT. )  
\_\_\_\_\_ )

This matter comes before the Court on annual review of Michael Lawyer's status as a Sexually Violent Predator pursuant to South Carolina Code Section 44-48-110. A hearing was held pursuant to Section 44-48-110 on January 22, 2014. Mr. Lawyer was represented by his appointed attorney Charles Brooks, Esquire. The State was represented by Assistant Attorney General Nicole T. Wetherton.

Mr. Lawyer was committed to the Sexually Violent Predator Treatment Program on or about April 6, 2009. The Court received a letter from the Department of Mental Health dated May 3, 2013, indicating Mr. Lawyer was exercising his right to a hearing. The Department also sent an Annual Review Packet to the Court, including an Annual Review Treatment Summary dated April 17, 2013.

The purpose of an annual review hearing held pursuant to South Carolina Code Section 44-48-110 is for the court to determine whether probable cause exists to believe that "the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence." S.C. Code Ann. Section 44-48-110 (Supp. 2008). At the hearing, the committed person bears the burden of showing that probable cause exists to believe his mental condition has so changed that he is safe to be released. *In re Care and Treatment of Tucker*, 353 S.C. 466, 578 S.E.2d 719 (2003). In the context of Sexually Violent Predator cases, a party establishes probable cause when he presents evidence that "would lead a reasonable person to believe and conscientiously entertain" the proposition set forth at the hearing. See *In re the Care and Treatment of Brown*, 372 S.C. 611, 643 S.E.2d 118 (Ct. App. 2007) (establishing this standard for hearings held pursuant to South Carolina Code Section 44-48-80).

At the hearing, Petitioner offered testimony from Thomas V. Martin, MD, and the State presented testimony of Kimberly Harrison, Ph.D., Chief Psychologist at the Department of Mental Health. Both Dr. Martin and Dr. Harrison testified that Mr. Smith suffers from Paraphilia, Not Otherwise Specified, has progressed in treatment, and requires continued treatment. However, Dr. Martin testified that Mr. Lawyer is now able to receive this treatment in an outpatient setting, and Dr. Harrison believes that Mr. Lawyer needs continued confinement to get the treatment he needs.

In the *Tucker* case, Appellant appealed the Circuit Court's finding of no probable cause from his annual review hearing. In that case, Dr. Martin testified that since Appellant took responsibility for his sexual offending and was "capable and motivated towards continuing sex offender treatment,

that [Appellant] should continue his treatment in an outpatient setting.” However, it was the Department of Mental Health’s position that although Appellant had progressed in treatment, Appellant had additional treatment goals that had to be met before he could be eligible for release. The Supreme Court upheld the denial of probable cause stating while evidence exists that Appellant could be released to an outpatient setting, Appellant must still show his condition has so changed he is safe to be at large, and if released, unlikely to commit sexually violent acts. Therefore, since Appellant failed to meet this burden, denial was proper.

Similar to *Tucker*, Mr. Lawyer has progressed in treatment and has additional treatment goals that need to be met before the Department of Mental Health will consider him eligible for release. Whether Mr. Lawyer could continue his treatment in an outpatient setting is not relevant, because he has failed to prove that his mental abnormality or personality disorder has so changed that he is safe to be at large and, if released, is not likely to commit acts of sexual violence.

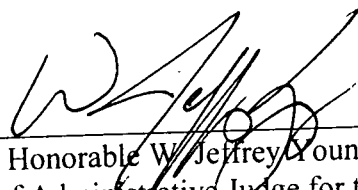
Based on the testimony offered at the hearing, the report provided to the Court, and the arguments of counsel, the Court hereby finds and concludes that, at this time, Mr. Lawyer’s mental abnormality or personality disorder has not so changed that he is safe to be at large, and, if released, not likely to commit acts of sexual violence. Therefore, Mr. Lawyer has failed to meet his burden, and the Court does not find probable cause in this matter.

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that Michael Lawyer shall continue to be confined in a secure facility of the Department of Mental Health for long term control, care and treatment pursuant to the Sexually Violent Predator Act, Code of Laws of South Carolina, 1976, as amended, Sections 44-48-10 et seq.

IT IS FURTHER ORDERED that Mr. Smith continues under the jurisdiction of this Court.

AND IT IS SO ORDERED.

26 Feb, 2014  
Sumter, South Carolina

  
The Honorable W. Jeffrey Young,  
Chief Administrative Judge for the  
Third Judicial Circuit Court of Common Pleas