

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
Honorable W. Jeffrey Young, Circuit Court Judge

Case No: 2008-CP-14-183

In The Matter of the Care and Treatment of
Michael Lawyer, Appellant

INITIAL BRIEF OF APPELLANT MICHAEL LAWYER

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Attorney for Appellant

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SC Court of Appeals

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TABLE OF AUTHORITIES

STATUTES:

§44-48-80 South Carolina Code of Laws
§44-48-110 South Carolina Code of Laws

CASE LAW:

In the Matter of the Care and Treatment of Brown, 643 S.E. 2d 118) (SC Ct. App. 2007) 372 S.C. 611

In the Matter of the Care and Treatment of Chandler, 676 S.E.2d 676 (SC 2009), 382 S.C. 250

In the Matter of the Care and Treatment of Tucker, 578 S.E. 2d 719 (2003) 353 S.C. 466

STATEMENT OF ISSUE ON APPEAL

- I. Did the trial court err by not finding probable cause and in denying the Appellant's a Post Commitment Trial by Jury?

STATEMENT OF THE CASE

Michael Lawyer (hereinafter referred to as Appellant) is a patient of the South Carolina Department of Mental Health (SCDMH) and housed in their Sexually Violent Predator (SVP) Program. Appellant was charged with Criminal Sexual Conduct with a Minor and plead guilty in October 2006 to a charge of Lewd Act on a Minor and was subsequently sentenced to 5 years incarceration with the South Carolina Department of Corrections (SCDC). On April 6, 2009 the Appellant was committed by Jury Trial to the custody of SCDMH and their SVP Program. On January 22, 2014 a review hearing in the Appellant's case was held before the Honorable W. Jeffrey Young. At this hearing the Appellant provided expert testimony that the Appellant's condition had so changed that the Appellant was not likely to re-offend or commit further acts of sexual violence. The State had expert testimony to the contrary. At the conclusion of the Annual Review Hearing the Judge ruled that the Appellant did not meet the burden of probable cause and denied the Appellant's right to trial by Jury to determine this matter.

ARGUMENTS OF THE CASE

The Judge erred by determining that there existed no probably cause in this matter when testimony had been provided showing that the Appellant's condition had so changed that the Appellant is less likely to commit acts of sexual violence and/or re-offend.

In the Annual Review hearing, the burden is on the Appellant to submit evidence that probably cause does exist that his condition is so changed, pursuant to SC Code of Laws §44-48-110. If such evidence is provided then the offender, Appellant, is entitled to a trial by jury to determine if he/she should be released from the custody of SCDMH.

The Court defines probable cause as it relates to the Sexual Violent Predator Act. In re The Care and Treatment of Brown, 372 S.C. 611, 643 S.E. 2d 118 (Ct. App. 2007), The Care and Treatment of Chandler, 678 S.E.2d 676, 382 S.C. 250 (SC 2009) "Probable cause does not demand any showing that such a belief is correct or more likely true than false", Chandler. Further the Court in Chandler indicates that the Appellate Court will not disturb the trial court's findings on probably cause unless found to be without evidence that reasonably supports the trial courts findings citing In the Matter of the Care and Treatment of Tucker, 353 S.C. 466, 470, 578 S.E.2d, 719, 721 (2003).

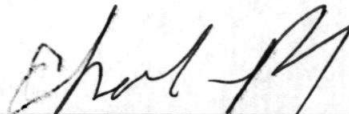
In this matter, the Appellant is already committed and comes before the Court on an Annual Review. A qualified expert rendered an opinion that the Appellant's condition has so changed that he is less likely to commit future acts of sexual violence (see Transcript, pg 11). Thus, evidence exists of probably cause pursuant to the statute. Once the Appellant has done this,

then he should have been granted an Order permitting a trial to determine if his release was warranted. While the above cases cited are matters where the Court was determining probably cause existed for the State's benefit in the commitment proceedings, the Appellant herein would submit that this standard of probable cause is applicable for his own Post Commitment proceeding.

CONCLUSION

The trial Court should have determined probable cause did exist of the Appellant's condition having changed and this change in the Appellant's status should have entitled him to a Post Commitment trial by jury. After reviewing the transcript, the Appellate Court should so reverse the trial court's denial and set this matter for trial immediately.

RESPECTFULLY SUBMITTED



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7/14, 2014

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

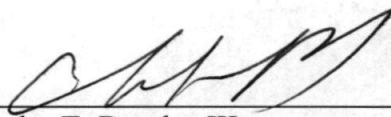
Appellant, Michael Lawyer, proposes the following documents and orders from the case to be included in the Record on Appeal;

- a. Commitment Order
- b. Order Denying Annual Review Hearing
- c. Transcript from Hearing date January 22, 2014
- d. Report from SCDMH issued in 2013
- e. Notice of Appeal

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PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 14th day of July, 2014, I served the foregoing Initial Brief of Appellant and Designation of Matter to be Included in Record on Appeal as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on July 14, 2014, addressed to the following as indicated below:

South Carolina Court of Appeals
Attn: Jeanette F. Barber
Post Office Box 11629
Columbia, South Carolina, 29211

Office of Attorney General
Attn: Nicole T. Wetherton
Post Office Box 11549
Columbia, South Carolina, 29211

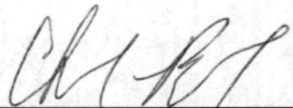
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July 14, 2014

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SC Court of Appeals


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July 14, 2014

South Carolina Court of Appeals
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State of South Carolina
P.O. Box 11629
Columbia, South Carolina 29211

RE: In the Matter of the Care and Treatment of
Michael T. Lawyer
Case No. 2008-CP-14-183

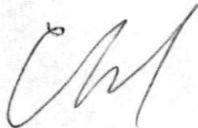
Dear Ms. Barber:

Enclosed herewith you will find the Initial Brief of Appellant and Designation of Matter to be Included in Record on Appeal, along with the Proof of Service for filing in reference to the above matter.

If you have any questions or concerns, please contact my office at the number listed above.

With kindest regards, I remain,

Sincerely Yours,



Charles T. Brooks, III
CTB,III/jlm
Enclosed as stated

cc: Nicole T. Wetherton, Asst. Attorney General
Michael Lawyer

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