

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 IN THE MATTER OF THE CARE )  
 AND TREATMENT OF )  
 DENNY BATES, )  
 RESPONDENT. )

IN THE COURT OF COMMON PLEAS  
 CASE NO. 2006-CP-18-1800

**RECEIVED**  
 JUL 21 2014  
**SC Court of Appeals**

**ORDER DENYING TRIAL AFTER ANNUAL  
 REVIEW HEARING PURSUANT TO THE  
 SEXUALLY VIOLENT PREDATOR ACT FOR  
 2011 AND 2012.**

This matter comes before the Court on annual review of Denny Bates’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 September 25, 2013 before that Honorable Edgar Dickson. On this date, the hearing was continued in order for Mr. Bates to obtain an independent evaluation. Mr. Bates was represented by his appointed attorney Jeffrey L. Sabel, Esquire, and was not present at the hearing based on Section 44-48-110. The State was represented by Assistant Attorney General Nicole T. Wetherton.

Mr. Bates was committed to the Sexually Violent Predator Treatment Program on or about March 20, 2007. The Court received a letter from the Department of Mental Health dated November 9, 2012 (2011 Annual Review) and July 16, 2013 (2012 Annual Review), indicating Mr. Bates 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 November 2, 2012 (2011 Annual Review) and July 11, 2013 (2012 Annual Review).

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. § 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 September 25, 2013 hearing, Mr. Bates’ counsel moved for the appointment of an independent expert. Section 44-48-110 give the Court the power to appoint an independent expert within the Court’s discretion. Subsequent to this hearing, this request for an independent evaluation was granted by Judge Dickson.

Mr. Bates refused to be transported and cooperate with his independent evaluation that was previously granted by Judge Dickson. The State then submitted a Motion Requesting a Finding of No Probable Cause which included, *inter alia*, a copy of the transcript of Mr. Bates’ September 25,

2013 annual review hearing as an exhibit. Based on the pleading, the State requested a finding of no probable cause based on the testimony of Dr. Domino and the arguments submitted by counsel.

Based on the State's Motion and the transcript of the September 25, 2013 hearing, this Court finds that Mr. Bates has not presented any evidence on his behalf to support a finding of probable cause in this matter. The State, in its motion and at the September 25, 2013 hearing, relies upon the testimony and report submitted by Dr. Marla L. Domino, Ph.D., a Chief Psychologist at the Department of Mental Health, who conducted the annual review for Mr. Bates pursuant to South Carolina Code Section 44-48-110 for both 2011 and 2012. Based on her evaluation of Mr. Bates, she found that "there is insufficient basis to opine that [Mr. Bates's] mental abnormality or personality disorder has so changed that he is safe to be at large and no longer likely to engage in acts of sexual violence."

Based on the testimony presented at the September 25, 2013 hearing, the reports and the arguments of counsel, and the Motion submitted by the State, the Court hereby finds and concludes that a reasonable person would not believe or conscientiously entertain Mr. Bates's 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; therefore, Mr. Bates has failed to meet his burden, and the Court does not find probable cause in this matter.

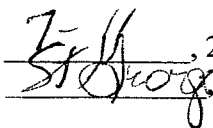
THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that Denny Bates shall continue to be confined in a secure facility of the Department of Mental Health for long-term control, care and treatment pursuant to the Sexually Violent Predator Act, Code of Laws of South Carolina, 1976, as amended, Sections 44-48-10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

Mr. Bates continues under the jurisdiction of this Court.

IT IS SO ORDERED.



The Honorable Diane Shafer Goodstein,  
Chief Administrative Judge for the First Judicial Circuit  
Court of Common Pleas

 2014  
South Carolina