THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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

J.C. Nicholson, Circuit Court Judge

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Case No: 2013-00879

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State Of South Carolina.....Respondent,

v.

William Deans.....Appellant.

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# APPELLANT"S REPLY TO INITIAL BRIEF OF RESPONDANT

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# INDEX

## Reply:

**On 8/13/204 Appellant received Initial Brief of Respondent, which appears from the irreverent ranting does not address sufficiently the reserved issues in appeal.**

**Instead Respondent attempts to divert the courts attention by inflicting personal prejudice, political dogma and unprofessional denial of documented fact, specially in this case when caught and proven the state has with held exculpatory evidence essential in raising or lowering Appellants burden of proof under Tucker [sic].**

**The Respondents extreme extravagance of Appellants purported dangerousness fails when put to the test of psychiatric peer review, Appellant was not allowed to challenge the States expert.**

**Herein by reference, Initial Brief Of Respondent"**

**The Statement of Issues on Appeal reads:**

**(1.) Did the Court err by not having a annual review hearing**

**(2.) 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.**

**(2.a) In/Alt / Did the court err in giving the states SCC Ann. 44-48-10 expert witness absolute deference, in denying appellant the right to confront the witness against him.**

**In compressed within these reserved issues on appeal, Appellant asserted the court err denying Appellant a fair hearing by denying motions as issues on appeal is the denial of a South Carolina Code of Law 44-48-10 at 110, Status Review, is**

**(i) Motion For Evidentiary Hearing, and (ii) Status of case review and Annual Review Hearing. Each dependent upon consideration of the prior.**

**The question on Appeal is whether Appellant met his Burden of proof showing he has so changed to be released at large ie: pursuant to: In re Care and Treatment of Tucker 353 SC 466 / 578 SE2d 719, 722 (2003)**

**Appellant has met his burden of proof by two steps.**

**(1) By lowering the burden of proof by illuminating the un-constitutional requirement of the States experts and SVP treatment civil commitment program for Appellant to admit guilt to dismissed out of state charges.**

**see Respondants Designation of Matter To Be Included In The Record On Appeal, at section 2., Petition dated Oct 21, 2002 With Exhibits, page 3, subsection 6 (b)(B)(-3)**

**States Petition subsection (1.) "The bases of the abuse conviction were repeated acts of penile penetration, Cunnilingus and fellatio of a six year old girl and fondling a six year old boy an unknown number of times."**
**States Petition subsection (2>**
**"The Respondant also molested another girl from age five to her being fourteen, Acts included sexual intercourse, foundling and oral sex."**

**States Petition subsection (3.)**
**"The Respondant has refused sexual offender treatment."**

**In reply: At the Feb. 2013 hearing, subject of this appeal, Judge Nicholson enjoined the parties from speaking of / or requiring Appellant to admit guilt / or be interrogated of the above referenced (States Petition subsection) (2).**

**Reply: The Respondant is attempting to re-argue against Judge Nicholson's injunction by claiming / stating the (states) claimed expert Dr. Crawford testified she confirmed by interviewing the step daughter (subject of dismissed out of state charges) see Initial Brief of Respondant at page 3-4, last paragraph, "The state called Deans step-daughter in rebuttal".**

The legal issue is the Respondant is attempting to booster the testimony of two discredited (witness) #1. Dr. Crawford through through third level hearsay, and #2. the step-daughter was discredited and admitted lying to out of state authorities which in turn caused the charges to be dismissed in May 2000, a full four years prior to the civil commitment hearing of June 2004.

The state would argue that testimony / records of dismissed out of state charges can be allowed pursuant to "In re Care and Treatment of James Ettel (SC Court of Appeal) OP. No. 4364 April 1, 2008.

This is per-requisate on the truthful reliability of the evidence relied upon by the States SCC Ann. 44-48-90/ 100 evaluator. In Appellants case

Dr Crawford relied upon bogus information. The simple fact is subject matter of this appeal, Judge Nicoholson barred the State / Respondant from referencing the out of state dismissed charges, which would include discrediting the testimony and submissions of Dr. Crawford and the "step daughter,

The failure of Ettel, is the SC Court Of Appeal were unaware the SVP treatment program would require (appellants) for at that time, eight years of requiring Appellant to admit guilt to dismissed and out of state charges.

Judge Nicholson realized this dilemma, for like wise the State is with out the subject matter jurisdiction to civilly committee appellant for an out of state matter and then hold appellant indefinitely interrogating Appellant until appellant admitted guilt to the out of state matter, and then face criminal charges for possible life sentence in NC.

For treatment purposes, the discussion of charged and un-charged crimes may and may not be beneficial in treatment, / but it must be understood that at no time during theses discussions in treatment is the Appellant or any patient afforded immunity.
note: This is the exact chain of evens that caused x-patient James Dickerson to receive two life sentences in an out of state conviction, based upon Dickerson admitting during therapy to SCDMH therapist Fredrick Pauers who testified at trial of Dickerson molesting a step daughter.

It is the same Respondant who claims to have no interest in procuring a NC against this Appellant that in fact aided in the state of Louisiana's conviction of James Dickerson. And to quot Dr. Domino, to predict the future , one must look to the past behavior, ie; the Respondant aided the Louisiana Court, so what would keep SC from aiding NC.

Due the Respondants / SVP Program being enjoined from discussing / interrogating, in turn makes the States Petition subsection (2.) has now been completely illuminated.

See Initial Brief Of Respondant, at page 7-9, 1st paragraph, Respondant claims Appellants assertion to three hearings is patently wrong.

Reply: Appellant argues the South Carolina Legislatures Intent is #(1) the Act $$ 44-48-10/170 is civil in nature, see In re: Care and Treatment of Luckabaugh 351 SC 122 (2002)

As such Appellant has the rights afforded him through the South Carolina Rules Of Civil Procedure and Rules of Evidence, to which Appellant did timely file Motion For Evidentiary Hearing be Scheduled a full year prior to the Feb. 2013 hearing, and did give notice and make request for a Status of case Review Hearing be scheduled prior to any pending $$ 44-48-110 Annual Review Hearing.

See SCC Ann. 44-48- at 110 line 6 "The court must conduct an annual hearing to review the status of the committed person."

SCC Ann. 44-48-110 does not say that a annual review hearing is only to be conscrewed as a petition for release hearing or the like.

Appellant was denied the right to challenge the process and evidence being used against him prior to any annual review hearing; In this case Appellant was not allowed to challenge the States continued use of old, out dated, proven after the fact, and hearsay evidence being used to continue holding Appellant civilly committed.

The court denied the per-annual review motions, which in turn denied Appellant a fair hearing, which in this case the court denied even having a annual review hearing.

see Initial Brief of Respondant, Through out the Initial Brief of Respondant claims Appellant was re-litigating , see page 9, 2nd paragraph

"The circuit court declined to re-litigate the validity of
Appellants criminal conviction and original commitment at the annual review hearing",

Reply: Appellant had the right to challenge and raised for example the Respondant provided a SCC Ann. 44-48-90/100 at 150 sealed document being Appellants 44-48-90/100 defense expert report of Dr. Berg to Dr. Domino.

Dr. Domino turned around and used the sealed Dr. Berg report in part in her annual review report of Dec 13, 2012, to deny recommending Appellant to be released.

see Appellants Amended ROA, pages 84-91 at 86 paragraph 2, "Mr. Deans admitted to molesting his step daughter".

Reply: this has been proven as a false statement but yet the State of SC continues to use discredited information, Which in turn has been / is being used to continue civil commitment.

And, see Appellants Amended ROA, pages 84-91 at 87, "Previous Evaluation And Diagnosis. States "Mr. Deans under went a independent evaluation.

Further proving extreme prosecution 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.

And, the State violated a Court Order granting Appellant the right to electronically record any 44-48-110 evaluations and access 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.

The Respondant turned around and claimed that Appellant is arguing under res-judicator the Dr. Berg report stems from the 2004 civil commitment trial and thus can not be used by Appellant.

This is pure and simple double talk causing Appellant to be prejudiced by not being able to challenge the use of sealed documents. SCC Ann. 44-48-140 does not permit the Attorney Generals Office to circumvent the protections of 44-48-150 without a court order to do so.

Respondants assertion that Appellant keeps raising the old issues to which. Appellant has been justified in pursuing major violations of the original civil commitment orders for the last ten years, who's justification came in the form of Judge Nicholson ordered the Respondants enjoined from referencing the out of state dismissed charges, which has caused Appellant to be denied SVP treatment for which he was committed.

see Initial Brief Of Respondant at page 9, Respondant further rands on that Appellants purpose is to district the courts from the real issue, (sic] is Appellants refusal to cooperate with treatment necessary to address his pedophilia and personality disorders, the record clearly reveals Appellant continues to focus on legal issue"

Respondant deviation fails to mention the State up until Feb. 2013 had been continuing interrogating and requiring Appellant admit guilt to the out of state dismissed charges. The Respondant fails to mention that up until the time of the Feb. 2013 hearing, Appellant had in fact susses fully completed 88 SVP therapeutic groups, comprising of over 220 hours and 1000 hours of personality behavioral modification.

Another years to have had a Evidentiary Hearing Status Hearing was to address prior to the Annual Review hearing Dr. Domino's report conflicts with itself by saying Appellant was not cooperative to treatment being that according to SVP Treatment Policy, Appellant would not have been allowed to receive SVP Treatment groups unless he was advancing / one group to the next.

88 is a substantial amount when considering that the same treatment regiment / for sex offenders, who's crimes far exceed that of Appellant, is considered completed on the street in 26 / 2 hour sessions.

see Initial Brief Of Respondant at page 9 at (2) states....These contentions are ludicrous

Reply: The Respondants ranting should be considered ludicrous considering the documented facts:

"

see Appellants Amended ROA Designation of Matter To Be Included In The Record page 12-14, section #2, Notice of And Motion For Relief From And Stay of Order' dated March 7, 2013, signed SCDMH Attorney Kimble Carter , see page 13 section Rule 62(b) Stay of Proceedings last 2 lines,

"finally although the form of order is complete of repetition in this and other proceedings purportedly arising under the SVP Act, this particular case may be arguably be rendered moot if not immediately stayed."

Judge Nicholson denied the above referenced motion, making it res-judicator and substantiates Appellant continued focus on legal issues.

Respondant lost credibility by asserting that "moot" does not pertain to the States present reason to hold Appellant civilly committed.

"Moot" in this text as attested to by attorney Carter is that since the SCDMH can no longer interrogate and require Appellant to admit guilt to out of state dismissed charges / that civil commitment is a moot issue.

Attorney Carter said it / not this Appellant, as claimed by Respondant.

## Summary:

Over and over again in the forgoing text Appellant has repeated saying out of state.../ Appellant did so in replying to Respondants continued rant on the subject.

The documented evidence shows the criteria and claims to hold Appellant committed has changed in the last 8-10 years, / 8 at the time of the hearing / subject of appeal.

States Petition items #(2)(3) no longer apply, Which in turn leaves Item #(1) of which after the fact of the under lying conviction, the assertions Appellant performed Cunnilingus. penetration, and or oral sex upon the victim / for the purpose of civil commitment has been disproved through documented medical evidence.

As such, compare In re the detention of Bradley D. Ward (No. 54080-7-1 Wa. App I, 1/18/2005 a Washington Court Of Appeals held that new diagnostic practices can be the basis for change under the SVP law., The this case, Bradly Ward petitioned the trail court for release from commitment as a SVP. At the hearing to determine whether probable cause existed to warrant a full trial on the issue, Ward presented a report from an expert who opined that he was no longer a SVP.

Th trial court concluded that Ward did not establish -probable cause, inter alia the expert relied on changes in the diagnostic practices to conclude that Ward has "so changed: under RCW 7.09.090. The appellate court said that new diagnostic practices can be bases for change under RCW 7.09.090 and that Mr. Ward had, therefore, established probable cause."

Appellant does not challenge the original conviction as claimed to by the Respondant. The fact of conviction is res-adjudicator for the purpose of punishment and in turn the claimed evidence in the conviction is subject to be challenged since it is the same claimed evidence that still holds Appellant civilly committed.

For the (then) 8 years the Respondant made assertions, the SVP treatment team, 16 SVP case managers, Therapist, all 2004-2013, SCC Ann. 44-48-90/100/110 annual review examiners have mentioned and requird Appellant to admit guilt to both the original and out of state dismissed charges in order to advance in treatment.

#1. pursuant to the DSM 4th and 5th, Chief Psychiatrist Allen Francs PhD., admitted guilt has no probative value in SVP treatment.

#2. Appellant did not attempt to re-litigate the validity of the underlying conviction or original civil commitment at the 2012/13 annual review hearing.

Appellant at the hearing asserted to the court it would be a waste of money and time to appoint a defense expert for Appellant when that person would in-turn be given the (report) which contained false, twisted, out of date, sealed, corrupted information, the same that was provided to Dr. Domino.

That for the court err in refusing to hold a evidentiary hearing, prejudiced Appellant from providing verified documentation to a (expert) whether being for the State or for Appellant. Appellant was not allowed to cross examine the Dr. Domino or the 2012 Dr. Domino Annual review Examination report.
The Court admonished Appellant for not subpoenaing Dr. Domino, Appellant conceded that fact, But yet again the Court refused to allow Appellant to challenge the Dr. Domino report, which on it's face value admittedly is based on 20 layers of conjecture rather than scientific validity

Appellant did raise as referenced by the Respondant, a challenge against the States lack of subject matter jurisdiction stemming from procuring civil commitment based upon a court order reinstating the case through [a] statutory of limitations violation. ie: a SCRCP, Rule 58(a) (2)and Rule 59(d) the order being filed

Appellant raised the violation up on a Appellant reply brief in Objection to Appellant counsels Anders Brief, and this Court Of Appeals denied the appeal in (2007) , but did not directly address the jurisdictional challenge.

Appellant accordingly submitted a SCACR, Rule 217 Petition to Argue Against Precedence and was denied.

The matter was raised and is reserved as a conditions present issue and is not at issue here, / even thou stricken as an issue from this appeal, Respondant mentioned the challenge / Appellant commented.

Summary: No where does Respondant support or explain the lack of proof on the part of the State in which Appellant is to over come his burden of proof. ie: the Dr. Domino 2012 report.

The issue reserved on appeal and not validated / is Appellant challenge that the evidence relied upon by the circuit court was insufficient as a matter of law to prove the likelihood of future dangerousness.

Assuming without conceding the existence of evidence of pedophilia, the State failed to prove that pedophilia made the Appellant "Likely to engage in acts of future sexual violence if not continued confinement in a secure facility for long term control, care and treatment, SC Code Ann. 44-48-30(1)(b). To establish the likelihood of future sexual violence, a necessary component of the statutory definition of SVP, "there must be proof of serious difficulty in controlling behavior" in order to satisfy the requirements of due-process Kansas v. Crane 122 SCT at 870.

Like the Kansas Act, 521 U.S. 346 (1997) the SC SVP Act requires a finding of dangerousness in tandem with a mental disorder, in addition to having a prior conviction.

Kansas v Hendricks 521 U.S. at ~~870~~ 346 "In order to "distinguish the dangerous sexual offender whose serious mental illness, abnormality or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case, "there must be evidence of a "special and serious lack of ability to control behavior"

Reply:No where in the Dr. Domino 2012 report does it report a degree of dangerousness, only that based upon the conviction, Appellant is a pedophile. And for being a pedophile Appellant is therefore to dangerous to release.

This analogy is fictitious and the circuit court is in err for accepting such a bogus report.

## Conclusion:

In corporated herein as if fully reproduced is (2nd) wrongly entitled 3d Amended Initial Brief Of Appellant.

A long story made short apart from the foregoing reply to Respondants ranting.

Reply: No where in the self styled brief does the Respondants address, mention, argue or even rant about Appellant three issues on appeal.

Pursuant to SCRCP, Rule 8(d) "Avertaments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in he responsive pleading.

As such, the Initial Brief Of Respondant should be stricken in due course.

Based on the foregoing, Appellant submits the Court should deny the circuit court's finding of no probable cause to believe Appellant's mental status has so changed he is safe to be at large.

Why: No where in the Dr. Domino 2012 report as relied upon by the circuit court does Dr. Domino
purport in any manner why or how she reached her conclusion about future dangerousness of Appellant, only that she relied on and simply reiterated and imitated past records, 20 times over hear say and discredited information.

The circuit court in turn erred by assuming [it] is qualified to interpret presto-psychological reports that malinger.

The circuit court so much as admitted it's own inadequacies by when stating,see Appellants Amended ROA, page 68 at Tr. ln. 21-23.

""Y'all are just sort of wasting your time and mine too, without having somebody here that's got some knowledge to answer questions.."

In essences, no annual review could have been conducted with out someone there qualified to interpret the alleged pertinent information for the court.

Appellant was admonished for not subpoenaing the States expert, but upon information not allowed to be presented, it was an impossibility for Appellant to have filed and served a subpoena with the given short notice of the hearing, being about 6 days.

The fact of the matter is no where at the hearing was it known even to the court what level of "Burden" of proof that Appellant was to over come; were it more likely then not, / the Respondant failed to have a burden to over come, for the only bar was based upon the Dr. Domino report, which only says that since Appellant was convicted / he is therefore a pedophile.

Tucker does not say it could not be done nor was the Respondant or court expecting Appellant to lower [his] burden of proof by illuminating 2/3 of the States purpose of civilly commitment.

More likely then not appears to be a 50/50 degree similar to a SC Manning (cite omitted) Charge on Reasonable doubt.

Surely, removing 2/3 of the purpose to commit is far below the more likely then not requirement and on the other end, the Respondant own representative Attorney Carter attested to the mootness of this case, add in that even Dr. Domino asserts that Appellant is a -3 on the Static 99R test, when it takes a plus 4 to even qualify for civilly committing a person today.

**For the foregoing reasons this court should order that the circuit court was in err,and that Appellant had met his burden of proof.**

**Respectfully submitted by,**

**August 26, 2014**

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J.C. Nicholson, Circuit Court Judge

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PROOF OF SERVICE

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I, William Deans, certify that I have served a "Appellant's Reply To Initial Brief Of Respondant," on Alan Wilson / Assist AG Mrs. Shupe , PO Box 11549, Columbia, SC 29211, by depositing a copy thereof into the United States Mail, with postage prepaid by Appellant, as addressed on Feb. , 2014

August 21 2014

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August 21 2014

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Honorable Mrs. Kitching,
Clerk, South Carolina Court Of Appeals
PO Box 11629
Columbia, SC 29211

Ref: In The Matter Of Care And Treatment Of
William Deans, Appellant Case No: 2013-000879

Dear, Mrs. Kitching,

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Respectfully,

William Deans

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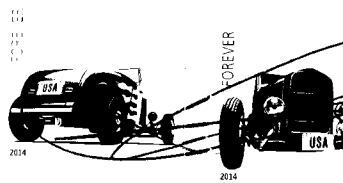


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