

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

Appellate Case No: 2014-000449

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

INITIAL BRIEF OF APPELLANT MICHAEL LAWYER

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NOV 17 2014

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 probable 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 probable 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).

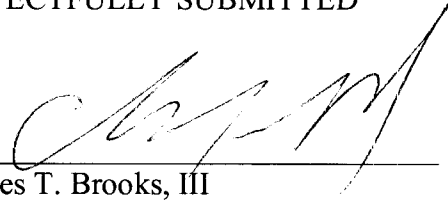
In this matter, the Appellant is already committed and comes before the Court on an Annual Review. A qualified expert rendered an opinion that the Appellant's condition has so changed that he is less likely to commit future acts of sexual violence (see Transcript, pg 11). Thus, evidence exists of probably 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 probable 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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10/31, 2014

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In the Court of Appeals

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

CERTIFICATE OF COUNSEL

The undersigned certified that this Initial Brief and Designation complies
with Rule 208 and Rule 228, SCRAP.

11/5, 2014



Charles T. Brooks III

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

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 12th day of November, 2014, I served the foregoing Initial Brief of Appellant, Designation of Matter to Be Included on Record on Appeal and Certificate of Counsel in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on November 12, 2014, addressed to the following as indicated below:

South Carolina Court of Appeals
Attn: Clerk of Court
Post Office Box 11629
Columbia, South Carolina, 29211

Office of Attorney General
Attn: Deborah R.J. Shupe
Post Office Box 11549
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November 12, 2014



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November 12, 2014

The South Carolina Court of Appeals
Attn: Jenny A. Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina 29211

RE: In the Matter of the Care and Treatment of Michael Lawyer
Appellate Case No. 2014-000449

Dear Ms. Kitchings:

Please find enclosed herewith the following documents for filing in the above matter;

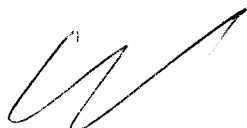
1. Initial Brief of Appellant
2. Designation of Matter to be Included on Record on Appeal
3. Certificate of Counsel and
4. Proof of Service

Please file these documents and return any additional copies to my offices for my records. By copy of this letter and the enclosed documents I am notifying all interested parties of the filing of these documents, as appropriate.

Please advise if you need anything further in this matter.

With kindest regards, I am

Sincerely,



Charles T. Brooks, III
CTB,III/jlm

cc: Michael Lawyer
South Carolina Attorney General

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