

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Anderson County
The Honorable J. C. Nicholson, Circuit Court Judge
Appellate Case No. 2013-000879

IN THE MATTER OF THE CARE AND TREATMENT OF
WILLIAM DEANS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

RECEIVED

JAN 27 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Anderson County
The Honorable J. C. Nicholson, Circuit Court Judge
Appellate Case No. 2013-000879

IN THE MATTER OF THE CARE AND TREATMENT OF
WILLIAM DEANS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

ARGUMENT7

 The circuit court conducted an appropriate annual review hearing
 under S.C. Code §44-48-110 to determine if there was probable
 cause to believe Appellant’s mental status had so changed he is
 safe to be at large, and properly declined to re-litigate issues
 previously litigated and determined adversely to Appellant.
 (Appellant’s Issues I, II and III).....7

CONCLUSION.....11

TABLE OF AUTHORITIES

Cases:

<u>Catawba Indian Nation v. State</u> , 407 S.C. 526, 756 S.E.2d 900 (2014)	8
<u>In the Matter of the Care and Treatment of William O. Deans</u> , 2007-UP-162 (S.C. Ct. App., filed April 5, 2007).....	4, 9
<u>In re Care and Treatment of Tucker</u> , 353 S.C. 466, 578 S.E.2d 719 (2003)	7
<u>Johnson v. Greenwood Mills, Inc.</u> , 317 S.C. 248, 452 S.E.2d 832 (1994)	8

Statutes:

S.C. Code §44-48-110 (Supp. 2013).....	7
S.C. Code Ann. §44-48-130 (Supp. 2013).....	7

STATEMENT OF ISSUE ON APPEAL

The circuit court conducted an appropriate annual review hearing under S.C. Code §44-48-110 to determine if there was probable cause to believe Appellant's mental status had so changed he is safe to be at large, and properly declined to re-litigate issues previously litigated and determined adversely to Appellant. (Appellant's Issues I, II and III).

STATEMENT OF THE CASE

Appellant was civilly committed pursuant to the Sexually Violent Predator Act, S.C Code Ann §44-48-10 through -170 (Supp. 2013), on July 13, 2004, after a bench trial before the Honorable J. Cordell Maddox, Jr., Circuit Court Judge. His commitment was affirmed by the South Carolina Court of Appeals by unpublished opinion filed April 5, 2007, and the South Carolina Supreme Court denied his Petition for Writ of Certiorari on September 19, 2007.

Pursuant to statute, Appellant's mental status was reviewed annually after his commitment. On December 18, 2012, Dr. Marla Domino, Ph.D., issued a report concluding Appellant's mental status had not so changed he is safe to be a large. Appellant requested a hearing to determine if there was probable cause to believe his mental status had so changed he is safe to be at large. After a hearing on February 13, 2013, the Honorable J.C. Buddy Nicholson, Jr., Circuit Court Judge, found no probable cause, and ordered Appellant's continued confinement under the statute. This appeal followed.

STATEMENT OF FACTS

Prior to Appellant William Deans' release from prison on convictions for molesting his prepubescent niece and nephew, Respondent State of South Carolina ("the State") filed a Petition Pursuant to the Sexually Violent Predator Act (the "SVPA"), seeking Appellant's civil commitment for long term control, care and treatment as a sexually violent predator. (Petition dated October 21, 2002; Record on Appeal [R]., pp. 6-9). The matter was called for a bench trial on June 28, 2004, before the Honorable J. Cordell Maddox, Jr., Circuit Court Judge.

Pamela Crawford, M.D., a forensic psychiatrist for the South Carolina Department of Mental Health ("SCDMH"), was qualified as an expert in forensic psychiatry, and testified to a reasonable degree of medical certainty Appellant suffers from pedophilia, which is a sexual disorder involving intense recurrent fantasies and/or sexual behaviors toward children, and a personality disorder not otherwise specified with prominent narcissistic and antisocial features. Appellant's molestation of his niece and nephew, and allegations he sexually molested his prepubescent step-daughter, which Dr. Crawford testified she confirmed by interviewing the step-daughter, were significant factors in Dr. Crawford's conclusions. She further testified Appellant's mental abnormalities predispose him to commit sexually violent offenses against children, he met the standards for commitment under the SVPA, and should be confined for long term control, care and treatment. (In Re: William O. Deans, Record on Appeal filed October 2005 [2005 ROA] pp.13-26).

Deans testified he was not guilty of the underlying sex offenses, and alleged the State withheld exculpatory evidence during the criminal proceeding. He specifically denied molesting his step-daughter, which was a factor considered by Dr. Crawford in

her evaluation. (2005 ROA, pp. 49-63).

The State called Deans' step-daughter in rebuttal, who testified Deans sexually molested her on a frequent basis from 1980, when she was five years old until she was eleven. The molestation, which included oral and vaginal sex, ceased for approximately a year, but then resumed when she was twelve and continued until she was fourteen. (2005 ROA, pp. TT, pp. 64-80).

The circuit court took the matter under advisement, including several pre-trial motions Appellant filed *pro se*. By Order filed July 14, 2004, the court denied Appellant's motion for dismissal, motion to require the State to prove the prior conviction beyond a reasonable doubt, motion requesting a motion hearing, and motion for default. The court then found the State had proven beyond a reasonable doubt Appellant is a sexually violent predator as defined in the SVPA, and ordered his commitment to SCDMH for long term control, care and treatment. (Order of Commitment filed July 14, 2004; R., pp. 190-191).

Appellant appealed his commitment to the South Carolina Court of Appeals. During that appeal, Appellant filed several *pro se* pleadings, challenging the circuit court's subject matter jurisdiction, the denial of his pre-trial motions, and alleging prosecutorial misconduct involving withholding evidence during his criminal proceeding, as well as collusion between the State and his attorney in the commitment proceedings. (Appellant's Pro-Se Brief with Exhibits, dated April 17, 2006; R., pp. 109-120).

On April 5, 2007, the Court of Appeals affirmed Appellant's commitment, specifically indicating the Court considered the entire record, including Appellant's *pro se* submissions. In the Matter of the Care and Treatment of William O. Deans, 2007-UP-162 (S.C. Ct. App., filed April 5, 2007). Appellant petitioned for rehearing

based on the issues raised in his *pro se* pleadings, which the Court of Appeals denied by Order dated May 17, 2007. Appellant then petitioned to the South Carolina Supreme Court for a writ of certiorari based on the issues he raised *pro se*, which the Supreme Court denied on September 19, 2007.

As required by statute, SCDMH reviewed Appellant's mental status annually between 2006 and 2011, and concluded his pedophilia and personality disorder had not so changed he is safe to be at large. Marla L. Domino, Ph.D, issued an annual review report dated December 18, 2012, noting Appellant was not cooperative in treatment and professed his innocence as to all criminal charges, including those to which he pled guilty, and concluding Appellant's mental status had not so change he is safe to be at large. (Annual Review dated December 18, 2012; R., pp. 84-91). Appellant requested an annual review hearing and an independent evaluation. (Annual Review Documents dated January 3, 2013; R., pp. 92-101).

The matter was called for an annual review hearing on February 13, 2013, before the Honorable J.C. Buddy Nicholson, Jr., Circuit Court Judge. Appellant appeared *pro se*, with appointed stand-by counsel. At the beginning of the hearing, the court reviewed the annual review report, and informed Appellant he had the burden to show probable cause to believe his mental status had so changed he is safe to be at large. (Hearing Transcript [HT], pp. 1-7, 10; R., pp. 34-40, 43).

Appellant stated he was not there for a probable cause hearing, but "came for a status of civil commitment" hearing. He stated: 1) he had the right to cross-examine Dr. Domino, who he did not subpoena for the hearing; 2) "ninety-nine percent of what they originally petitioned for . . . is false;" 3) the experts gave him a score indicating a low risk to re-offend; and 4) the treatment providers wanted him to admit guilt to the allegations

regarding his step-daughter, which he denied ever occurred. As to his South Carolina convictions, Appellant accepted “legal guilt,” not “actual guilt,” again claiming evidence was withheld. He also challenged the circuit court’s subject matter jurisdiction. (HT, pp. 15-27; R., pp. 48-60).

The court denied Appellant’s request for an independent expert, finding Appellant had not participated in the treatment program enough for the expert to give a valid opinion. The court also found no probable cause to believe Appellant’s mental status had so changed he is safe to be at large, and then enjoined SCDMH from discussing the step-daughter’s allegations with Appellant as part of his treatment program. (HT, pp. 37-49, Order filed February 26, 2013; R., pp. 70-82, 3-5). Appellant filed a Rule 59 Motion for Rehearing, which the circuit court denied by order filed April 3, 2013. (Order filed April 3, 2013; R., pp. Supp. ROA p. 258). This appeal followed.

ARGUMENT

The circuit court conducted an appropriate annual review hearing under S.C. Code §44-48-110 to determine if there was probable cause to believe Appellant's mental status had so changed he is safe to be at large, and properly declined to re-litigate issues previously litigated and determined adversely to Appellant. (Appellant's Issues I, II and III).

Appellant contends the circuit court erred in denying his requests for a "Status of Case Review" hearing and an "Evidentiary Hearing," which prevented him from having a proper annual review hearing. Contrary to this contention, the February 13, 2013, hearing complied with applicable statutory requirements, and afforded Appellant an opportunity to submit evidence on his behalf.

South Carolina Code Ann. §44-48-110 (Supp. 2013) provides for an annual examination of a committed person's mental condition, and unless waived by the person, the circuit court must conduct an annual review hearing to review the person's status.¹ The person has a right to counsel at the hearing, and the court must determine whether probable cause exists to believe the person is mental abnormality and/or personality disorder has so changed the person's is safe to be at large. In a §44-48-110 hearing, the committed person has the burden to show probable cause exists to believe his mental condition has so changed he is safe to be released. In re Care and Treatment of Tucker, 353 S.C. 466, 578 S.E.2d 719, 722 (2003).

Appellant asserts §44-48-110 entitled him to three hearings - an "evidentiary hearing," a "status of case review hearing," and a probable cause hearing. This assertion is patently wrong. The statute requires **one** hearing, at which the person may present

¹Under appropriate circumstances, the circuit court may deny the annual review hearing as frivolous under S.C. Code Ann. §44-48-130 (Supp. 2013).

evidence regarding the current status of his mental health, and the court determines whether there is sufficient evidence of a mental health change to warrant a trial.

The circuit court held the required annual review hearing in this case, and Appellant insisted on representing himself. The court advised Appellant he had the burden of proof, and could present evidence. Rather than present any evidence, documentary or testimonial, regarding his mental status, however, Appellant only argued his criminal conviction and original commitment were premised on falsified information, and the circuit court did not have jurisdiction in the commitment proceedings - issues that were raised and rejected in his appeal from the commitment verdict.

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties, and litigants may not raise any issues adjudicated in the former suit, as well as any issues which might have been raised therein. Catawba Indian Nation v. State, 407 S.C. 526, 756 S.E.2d 900, 906 - 907 (2014). The doctrine “may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction.” *Id.* (citing Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 452 S.E.2d 832 [1994]). It is commonly referred to simply as “claim preclusion,” which bars a litigant from pursuing a later suit where the claim either “(1) was litigated or (2) could have been litigated.” *Id.*

In the civil commitment trial and Appellant’s subsequent appeals, he asserted claims regarding the validity of his criminal convictions, including allegations of withheld evidence, the circuit court’s subject matter jurisdiction in the sexual predator action, and the sufficiency of evidence supporting his civil commitment, all of which the

circuit and appellate courts decided adversely to him. (Appellant's Pro-Se Brief dated April 17, 2006, Petition for Writ of Certiorari dated June 28, 2007; R. pp. 109-189). *See In the Matter of the Care and Treatment of William O. Deans*, 2007-UP-162 (S.C. Ct. App., filed April 5, 2007).

The circuit court properly declined to re-litigate the validity of Appellant's criminal convictions and original civil commitment at the annual review hearing. As provided by statute, the only issue before the court at the hearing was the current status of Appellant's repeatedly diagnosed pedophilia and personality disorder. Appellant has spent ten years raising the same legal issues rather than focusing on treatment, which is the primary reason he is still in the Sexually Violent Predator Treatment Program. (Annual Review dated December 18, 2012, p. 5; R., p. 88) ("Mr. Deans is consumed with legal matters only and not focused on his treatment."). Appellant's purpose is to distract the courts from the real issue: Appellant's refusal to cooperate with treatment necessary to address his pedophilia and personality disorder.

The record clearly reveals Appellant continues to focus on legal issues already decided adversely to him, rather than treatment, while his mental status has not changed at all since his 2004 civil commitment, much less so changed he is safe to be at large.²

²Appellant contends the only purpose of his civil commitment is the State's desire to interrogate him about the molestation of his step-daughter in North Carolina, and a reference to mootness in SCDMH's challenge to the circuit court injunction evidences that fact. These contentions are ludicrous. The State has no incentive to pursue twenty year old criminal charges on behalf of North Carolina, particularly at the expense of providing long term control, care and treatment for a sexual predator. SCDMH's contention that failure to lift the injunction could render the pending matter "moot" relates to the continuing annual review process, which may well render a decision made in one annual review hearing moot for purposes of the next annual review. Indeed, Appellant just received a 2014 annual review, which is now pending before the circuit court. Further, it must be noted Appellant continues to deny guilt on the charges to which he pled guilty in South Carolina, which, standing alone, impedes any progress in

Accordingly, the circuit court's finding of no probable cause is amply supported by the record, and should be affirmed.

treatment for his pedophilia, and his continued insistence on re-litigating issues decided against him indicates lack of progress on his personality disorder.

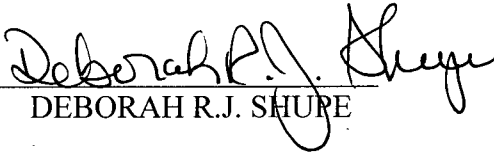
CONCLUSION

Based on the foregoing, Respondent submits the Court should affirm 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.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

BY: 
DEBORAH R.J. SHUPE

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 27, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Anderson County
The Honorable J. C. Nicholson, Circuit Court Judge
Appellate Case No. 2013-000879

IN THE MATTER OF THE CARE AND TREATMENT OF
WILLIAM DEANS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

By: 
DEBORAH R.J. SHUPE

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 27, 2015

RECEIVED
JAN 27 2015
SC Court of Appeals

5

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Anderson County
The Honorable J. C. Nicholson, Circuit Court Judge
Appellate Case No. 2013-000879

IN THE MATTER OF THE CARE AND TREATMENT OF
WILLIAM DEANS,

Appellant.

PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Final Brief of Respondent by depositing 3 copies in the United States mail, postage prepaid, addressed to:

William Deans
SVPTP
S.C. Dept. of Mental Health
Bldg. 3, 3rd Floor
7901 Farrow Road
Columbia, South Carolina 29203

I further certify all parties required by Rule to be served have been served.

This 27th day of January 2015.


SALLY B. ELLISON
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

RECEIVED

JAN 27 2015

SC Court of Appeals