ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

APR 14 2016

SC SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT OF JEFFREY ALLEN CHAPMAN,

APPELLANT

APPELLATE CASE NO. 2014-001181

FINAL REPLY BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Constitutional Provisions

ARGUMENT IN REPLY

The State wants to litigate the important issues presented in this appeal against a pro se litigant facing an insurmountable legal standard in a common law habeas proceeding. The State even leaves the door open to argue in such a proceeding that no right to the effective assistance of counsel exists. Making these arguments in circuit court against an unrepresented person—who would be additionally hobbled because of confinement in the SVP program—would be like shooting fish in a barrel. This Court should decide whether a statutory and constitutional right to the effective assistance of counsel exists and not allow the State to name its own battlefield and its own opponent.

The State is careful in its brief not to concede that citizens prosecuted under the SVP Act have the right to effective assistance of counsel. In its issue statement, the State does concede that a statutory right to counsel exists, but then states "**assuming** [the statutory right] requires effective assistance of counsel," such claims should be litigated in a state common law habeas proceeding. Brief of Resp. at 1 (emphasis added). The State carefully frames the issue as "whether the statutory right under the SVPA encompasses the right to 'effective' assistance of counsel. The statute does not afford that right, normally arising from the Sixth, Fifth, and Fourteenth Amendments, which do not apply to civil cases under the SVPA." Brief of Resp. at 12. The State explicitly argues that no constitutional right to effective assistance of counsel exists. Brief of Resp. at 11-12. Having never conceded that SVP defendants have the right to the effective assistance of counsel (from any source), the State would not be estopped from claiming in a habeas proceeding that the statutory right to counsel is empty and meaningless.

The State claims in a footnote that "the real reason" Chapman does not "want" to use common law habeas is because the legal standard in habeas proceedings is even higher than the difficult standard imposed by Strickland v. Washington, 466 U.S. 668 (1984). Brief of Resp. at 18, n.6. Far from being a revelation, Chapman expressly argued this point in his initial brief. Brief of App. at 19-20 ("This remedy is not an adequate safeguard for Chapman's constitutional claims because the legal standard for such claims is too high.") The standard in state habeas proceedings is so high because it presumes that other procedures exist for the protection of defendants' rights—such as PCR in criminal cases. Furthermore, state habeas proceedings do not require the appointment of counsel.

Accepting the State's argument would mean that a person committed indefinitely—and perhaps for the rest of his life—in the SVP program would face a higher standard than an applicant in a PCR case and without benefit of appointed counsel. The State holds up Florida as an example for the Court. Brief of Resp. at 17. In both of the Florida cases cited by the State, the court acknowledges that ineffective assistance of counsel claims **can be raised on direct appeal** when the deficiency is apparent from the face of the record. Manning v. State, 913 So.2d 37, 38 (Fla. Dist. Ct. App. 2005) ("Other than the rare case where counsel's ineffectiveness can be discerned from the face of the record, claims of ineffective assistance of counsel need to be raised in some type of collateral proceeding where fact finding can take place."); Bohner v. State, 157 So.3d 526, 527 (Fla. Dist. Ct. App. 2015) (declining to decide whether the adoption of rules allowing ineffective assistance of counsel claims in SVP cases precluded raising such claims on direct appeal).

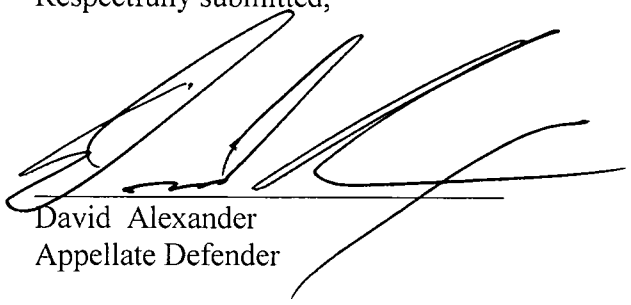
As noted in Bohner, Florida has specific rules of civil procedure that apply to SVP cases. Bohner, 157 So.3d at 528 (citing Rule 4.460, Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators). This rule references a criminal procedure rule, which allows for the appointment of counsel in certain cases. See Rule 4.460, Fla. R. Civ. P. Inv. Comm. Sex. Violent. Predators; Fla. R. Crim. P. 3.850(f)(7) ("The court may appoint counsel to represent the defendant under this rule."). South Carolina has no such mechanism, unless this Court chooses to create one in this case under the common law. However, as argued in Issue 8, the Court could also decide that this is a task better left to the Legislature and that the failure of the SVP Act to create a procedure for raising ineffective assistance claims renders it unconstitutional.

Appellant has a statutory and due process right to the effective assistance of counsel, but presently lacks any constitutionally valid means to assert that right in South Carolina. As shown by the cases cited in appellant's brief, the courts addressing this issue have overwhelmingly concluded that the right to effective assistance of counsel exists in an SVP proceeding. Brief of App. at 11-13. The State has all but denied that such a right exists and has, in the alternative, suggested a procedure that does not comport with due process. It is within this Court's power to consider the claims raised in this appeal and remedy the lack of due process inherent in the SVP Act.

CONCLUSION

For the foregoing reasons, Chapman's commitment must be reversed and this case remanded for a new trial, or, alternatively, Chapman must be released because he is being detained pursuant to an unconstitutional statute.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT.

This 14th day of April, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Reply Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 14, 2016

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JEFFREY ALLEN CHAPMAN,

APPELLANT

APPELLATE CASE NO. 2014-001181

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Deborah R. J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 14th day of April, 2016.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 14th day of April, 2016.

Christian Ford (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1,2026.