

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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DEC 12 2014

Appeal from Fairfield County

SC Court of Appeals

R. Knox McMahon, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT
OF LARRY EDWARD HENDRICKS

APPELLANT.

ANDERS BRIEF OF APPELLANT

CARMEN V. GANJEHSANI
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The Trial Court erred in denying Appellant's motion to dismiss where the State filed its petition against Appellant under the Sexually Violent Predator Act in Fairfield County even though Appellant had not been convicted in Fairfield County of a "sexually violent offense" as defined in the Act.

STATEMENT OF THE CASE

In January 1998, the Fairfield County Grand Jury indicted Larry Edward Hendricks for one count of lewd act upon a child in violation of S.C. CODE ANN. § 16-15-140. Hendricks was again indicted by the Fairfield County Grand Jury for another count of lewd act upon a child in August 1998. He was convicted of both offenses and received a fifteen year sentence on each with the sentences ordered to run consecutively. R. 189-200.

Prior to his max out date of April 19, 2013 and his release from the Department of Corrections (“DOC”), Hendricks was referred to the Multi-Disciplinary Team to determine if there was probable cause to believe that he was a sexually violent predator according to the Sexually Violent Predator Act (“SVP”), S.C. CODE ANN. § 44-48-10 et al. The Team found probable cause existed. Hendricks was then evaluated by the Prosecutor’s Review Committee who also determined there was probable cause. Hendricks was then evaluated by the Chief Psychologist for the Department of Mental Health. R. 51, l. 11 – 55, l. 15.

On January 27, 2014, Hendricks proceeded to trial in Fairfield County before the Honorable R. Knox McMahon and a jury. Hendricks was represented by Ernest M. Spong, III, and the State was represented by Assistant Attorney General James G. Bogle, Jr. R. 1. The jury found that Hendricks was a sexually violent predator according to the SVP Act. R. 180, ll. 11-12. Judge McMahon issued an order committing Hendricks to the Department of Mental Health for long term, control, care, and treatment. R. 234.

Hendricks timely filed and served a Notice of Appeal. This appeal follows.

ARGUMENT

The Trial Court erred in denying Appellant's motion to dismiss where the State filed its petition against Appellant under the Sexually Violent Predator Act in Fairfield County even though Appellant had not been convicted in Fairfield County of a "sexually violent offense" as defined in the Act.

Hendricks made several pre-trial motions to the Trial Court. R. 18, ll. 3-11. Hendricks moved to dismiss the case on the ground that the predicate offense for which he was convicted in Fairfield County was not an offense designated as a "sexually violent offense" under S.C. CODE ANN. § 44-48-30(2) and therefore, the Trial Court in Fairfield County lacked jurisdiction to hear the case. The Trial Court denied the motion. R. 20, l. 6 – 22, l. 17. The Trial Court's denial of the motion to dismiss was in error.

Hendricks was convicted in Fairfield County for two counts of lewd act upon a child in violation of S.C. CODE ANN. § 16-15-140. R. 189-200. This statute for which Hendricks was convicted of violating was repealed on June 18, 2012.

A sexually violent predator is a person who has been convicted of a "sexually violent offense" and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. S.C. CODE ANN. § 44-48-30(1). If a person has been convicted of a "sexually violent offense," after a determination by the prosecutor's review committee that probable cause exists to support the allegation that the person is a sexually violent predator, the Attorney General must file a petition with the court in the jurisdiction where the person committed the offense. S.C. CODE ANN. § 44-48-70.

The SVP Act defines "sexually violent offense" and lists numerous statutory violations which constitute "sexually violent offenses." §. 44-48-30(2). The offense of

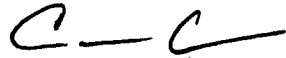
lewd act upon a child in violation of § 16-15-140 is not included in the definition of a “sexually violent offense.” Section 16-15-140 in fact no longer exists.

Accordingly, Hendricks has never been convicted of a “sexually violent offense” in Fairfield County. The Attorney General may only file a petition with the court in the jurisdiction in which the person has committed a “sexually violent offense,” and in this case, Fairfield County was without jurisdiction over the petition filed against Hendricks under the SVP Act as Hendricks was not convicted of a “sexually violent offense” in Fairfield County as defined in the SVP Act. The Trial Court therefore erred in denying Hendricks’ motion to dismiss.

CONCLUSION

Based on the foregoing reasons, the Order of Commitment should be vacated and Hendricks should be released.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of December, 2014.

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Counsel for Larry Edward Hendricks states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on January 27, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Larry Edward Hendricks.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of December, 2014.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) January 27, 2014 Trial Transcript;
- (2) State's Exhibits 1-9;
- (3) Defendant's Exhibits 1-6; and
- (4) Order of Commitment.

I certify that this designation contains no matter which is irrelevant to this appeal.

December 12th, 2014.



Carmen V. Ganjehsani
Appellate Defender

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

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

December 12, 2014.



Carmen V. Ganjehsani
Appellate Defender

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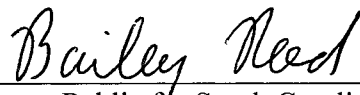
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter 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; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Larry Edward Hendricks, at 7901 Farrow Road, Bldg #3, 3rd Floor, Columbia, S.C. 29203 this 12th day of December, 2014.


Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of December, 2014.


Bailey Reed (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021