

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Aiken County
The Honorable Tanya A. Gee, Circuit Court Judge
Appellate Case No. 2015-001939

IN THE MATTER OF THE CARE AND TREATMENT OF
ROY LEE WADE,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

All of Appellant's arguments allege ineffective assistance of counsel which were not preserved and are not properly before the appellate court pursuant to recent case law from the South Carolina Supreme Court. (Appellant's Issues I, II, III and IV).

STATEMENT OF THE CASE

The State concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In 1988, Appellant Roy Lee Wade was convicted of two counts of first degree criminal sexual conduct with a minor, which are defined as sexually violent offenses under the South Carolina Sexually Violent Predator Act (SVPA), and was sentenced to consecutive prison terms of twenty and thirty years incarceration. Prior to Appellant's release from prison, the State commenced a civil proceeding pursuant to the SVPA, seeking his commitment for long term control, care and treatment as a sexually violent predator. (Petition Pursuant to the Sexually Violent Predator Act [SVPA Petition], with Exhibits, filed April 27, 2012; Record on Appeal [R.], pp. _____).

The court appointed expert concluded Appellant had pedophilia, but did not recommend commitment. The State retained an expert to provide a second opinion, and that expert concluded Appellant did meet the criteria for commitment as a sexually violent predator. The case was called for a jury trial on August 31, 2015, before the Honorable Tanya A. Gee, Circuit Court Judge.

After hearing testimony from the two experts and Appellant's sister, the jury found beyond a reasonable doubt Appellant is a sexually violent predator, and the circuit court committed him to the South Carolina Department of Mental Health for long term control, care and treatment. (Order of Commitment filed September 3, 2015; R., pp. _____). This appeal followed.

ARGUMENT

All of Appellant's arguments allege ineffective assistance of counsel which were not preserved and are not properly before the appellate court pursuant to recent case law from the South Carolina Supreme Court. (Appellant's Issues I, II, III and IV).

Appellant raises four issues contending his trial counsel was ineffective for failing to object to certain evidence and offer other evidence at trial. None of these issues are preserved for appellate review, and therefore, are not properly before the Court.

The South Carolina Supreme Court recently held ineffective assistance of counsel claims in SVPA proceedings are not reviewable in a direct appeal from the person's commitment absent an objection at trial, but should be asserted in a petition for common law habeas corpus relief. *See In the Matter of the Care & Treatment of Jeffrey Allen Chapman*, No. 2014-001181, 2017 WL 606506, at *6 (S.C. Sup. Ct., Feb. 15, 2017). "Because there is no existing statutory procedure providing for [an evidentiary hearing similar to a post-conviction relief hearing], we find Chapman's claims regarding ineffective assistance of counsel akin to other habeas claims, in that the existing relief for the claims is either inadequate (due to the lack of a fully developed record) or unavailable (due to the absence of a specified procedure in which to assert the claims). Thus, we agree with the State that persons committed under the Act may pursue their unlawful custody claims, including ineffective assistance of counsel claims, in habeas proceedings." *Id.* at *5.

As in *Chapman*, none of the alleged ineffective assistance of counsel claims were raised in the circuit court, and are not preserved for appellate review. Appellant may seek relief in the circuit court pursuant to an appropriately filed habeas corpus petition. Therefore, the jury verdict finding Appellant is a sexually violent predator should be affirmed.

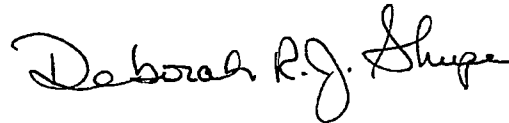
CONCLUSION

Based on the foregoing reasons, the State respectfully submits the judgment of the lower court should be affirmed.

Respectfully submitted,

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