

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Horry County

Honorable Brian M. Gibbons, Circuit Court Judge

RECEIVED

IN THE MATTER OF THE CARE AND
TREATMENT OF ROBBIE CARROLL COLLINS,

AUG 22 2018

SC Court of Appeals
APPELLANT

APPELLATE CASE NO. 2017-002287

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

In this SVP case, appellant was entitled to a directed verdict pursuant to *In re Taft*, 413 S.C. 16, 774 S.E.2d 462 (2015) because the Attorney General relied on a stale opinion from its expert witness who rendered her opinion two years before trial and performed no work thereafter.4

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL8

TABLE OF AUTHORITIES

Cases

In re Matthews, 345 S.C. 638, 550 S.E.2d 311 (2001) 3

In re Taft, 413 S.C. 16, 774 S.E.2d 462 (2015) 1, 4, 5, 6

STATEMENT OF ISSUE ON APPEAL

In this SVP case, whether appellant was entitled to a directed verdict pursuant to In re Taft, 413 S.C. 16, 774 S.E.2d 462 (2015) because the Attorney General relied on a stale opinion from its expert witness who rendered her opinion two years before trial and performed no work thereafter?

STATEMENT OF THE CASE

The Attorney General filed a petition seeking appellant Robbie Collins' commitment as a sexually violent predator and on October 2, 2017, the Honorable Brian Gibbons presided over a jury trial in Horry County. R. 1. Christopher A. Morrow represented the Attorney General and James K. Falk represented appellant. R. 1. The jury found appellant was an SVP. R. 296, ll. 4 – 16. This appeal follows.

STANDARD OF REVIEW

The appellate court must reverse the denial of a directed verdict motion if there is no evidence to support the trial court's ruling. In re Matthews, 345 S.C. 638, 646, 550 S.E.2d 311, 315 (2001).

ARGUMENT

In this SVP case, appellant was entitled to a directed verdict pursuant to *In re Taft*, 413 S.C. 16, 774 S.E.2d 462 (2015) because the Attorney General relied on a stale opinion from its expert witness who rendered her opinion two years before trial and performed no work thereafter.

Dr. Amy Swan, a forensic psychologist from Florida, was the Attorney General's only witness. R. 67, l. 10 – 71, l. 25. Appellant's trial began October 2, 2017. R. 1. Over two years earlier, Dr. Swan met with appellant for a total of four hours. R. 77, ll. 4 – 8.

Dr. Swan testified about appellant's two convictions for sexual offenses. R. 79, ll. 4 – 6. Based solely on appellant's conviction from a 1984 indictment for lewd act on a child under fourteen, Dr. Swan diagnosed appellant with pedophilia. R. 331 – 332. R. 96, l. 4 – 98, l. 6. R. 152, ll. 7 – 13. Appellant was in his early twenties at the time of this offense. R. 152, ll. 9 – 13.

Dr. Swan agreed with defense counsel that she failed to uncover even a "whisper" of an allegation that appellant abused a child since the incidents in the mid-1980s. R. 152, ll. 18 – 21. Dr. Swan was also forced to admit that appellant was out of prison and in the community for fifteen years without committing any crimes against children. R. 153, l. 11 – 155, l. 16. Even though Dr. Swan previously testified "the best predictor of future behavior is past behavior," she claimed that the time appellant spent in the community without abusing children was "nullified and "completely makes no difference" because he later committed a sexual offense against an elderly woman. R. 153, ll. 6 – 10. R. 155, ll. 9 – 13. R. 87, l. 19 – 91, l. 20.

Dr. Swan also diagnosed appellant as having "other specified personality disorder with antisocial features." R. 96, ll. 4 – 12. She could not diagnose appellant with antisocial personality disorder ("ASPD") because no evidence of conduct disorder prior to age 15 existed,

so she gave him the “other” diagnosis. R. 98, ll. 15 – 22. She described this disorder as “a criminal lifestyle.” R. 98, ll. 15 – 22. On cross-examination, she admitted that “75 to 80 percent of individuals in prison could be diagnosed with” ASPD. R. 175, ll. 14 – 20.

Dr. Swan admitted that the last time she spoke with appellant was at the four-hour interview in 2015, two years before the trial. R. 172, ll. 1 – 3. She reviewed no documentation other than notes sent by defense counsel during those two years. R. 172, ll. 4 – 7. On re-direct, Dr. Swan explained the delay was caused by her fracturing her pelvis. R. 180, ll. 18 – 24.

The Attorney General rested its case after Dr. Swan’s testimony and appellant moved for a directed verdict. R. 181, l. 9 – 187, l. 5. Citing In re Taft, 413 S.C. 16, 774 S.E.2d 462 (2015), appellant argued that the State was required to prove that appellant was currently an SVP, not whether he was an SVP in 2017. R. 182, l. 20 – 184, l. 11. Appellant argued Dr. Swan did nothing to update her opinion and the Attorney General chose to go “forward on a jury trial with a two-year-old opinion.” R. 182, l. 20 – 184, l. 11. The trial court found Taft distinguishable and denied appellant’s motion. R. 184, ll. 12 – 15.

The trial court erred and Taft controls. In Taft, the SVP defendant was originally evaluated by the court’s expert who concluded he did not meet the criteria for commitment. Taft at 19, 774 S.E.2d at 464. The State sought a second opinion, but their chosen expert had trouble meeting the deadline to evaluate the defendant. Id. at 19-20, 774 S.E.2d at 464-65. The court continued the case to allow the doctor to evaluate the defendant. Id. The report, however, was issued by both the doctor in the court’s order and another doctor and the court excluded the report. Id.

Without this report to use at trial, the State presented the testimony of a Dr. McKee, who examined the defendant “nearly two years earlier” during a criminal investigation. Id. Like Dr.

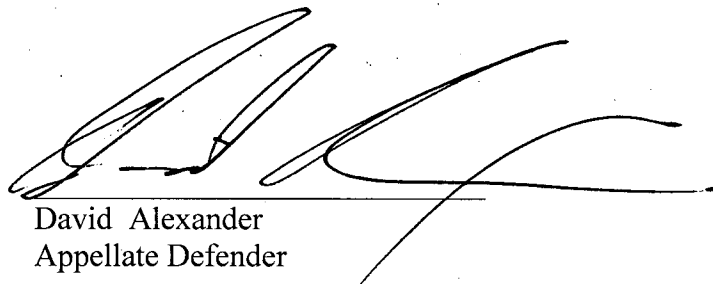
Swan's opinions here, Dr. McKee opined that Taft suffered from pedophilia and concluded Taft was an SVP . Id.

The Supreme Court held Taft was entitled to a directed verdict. Id. at 21-24, 774 S.E.2d at 465-66. The Court stated, "We find the State's evidence devoid of proof Taft has a present risk to reoffend." Id. The Court stressed the statutory language that the State must prove the defendant "*currently*" had the required mental abnormality and likelihood to reoffend. Id. The Court wrote that the prior evaluation was legally insufficient because it would "obviate any possibility of rehabilitation during incarceration" and that it violated the statutory requirement of presenting "current evidence" of the requirements for commitment. Id.

Exactly like Taft, Dr. Swan's opinion was two years old. She did nothing to update her opinion and performed no additional investigation. Her only evidence supporting her diagnosis of pedophilia was over thirty years old. The State utterly failed to provide the "current evidence" the Court stressed in Taft. The trial judge erred in not directing a verdict and this Court should reverse.

CONCLUSION

For the foregoing reasons, the trial court's order of commitment should be reversed and appellant immediately released from custody.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of August, 2018.

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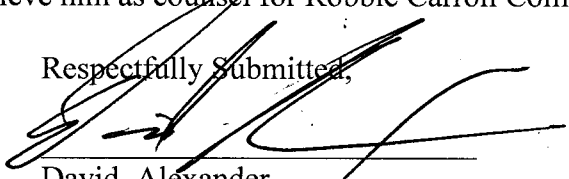
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Robbie Carroll Collins states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Brian M. Gibbons, which was held on October 4, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, He asks the Court to relieve him as counsel for Robbie Carroll Collins.

Respectfully Submitted,


David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 22nd day of August, 2018.

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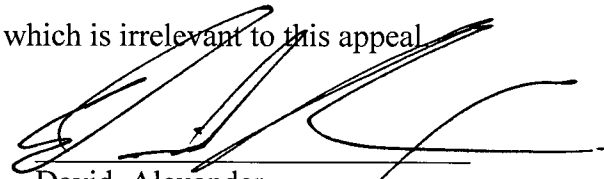
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial transcript dated October 2-4, 2017
- (2) Defendant's Exhibit #1 (Appendix Dr. Swan's Report)
- (3) Defendant's Exhibit #2 (Treatment Records)
- (4) State's Exhibit #1 (Indictment)
- (5) State's Exhibit #2 (Indictment)

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

August 22, 2018



David Alexander
Appellate Defender

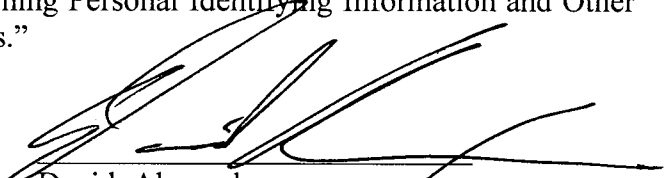
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CERTIFICATE OF COUNSEL

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."

August 22, 2018.



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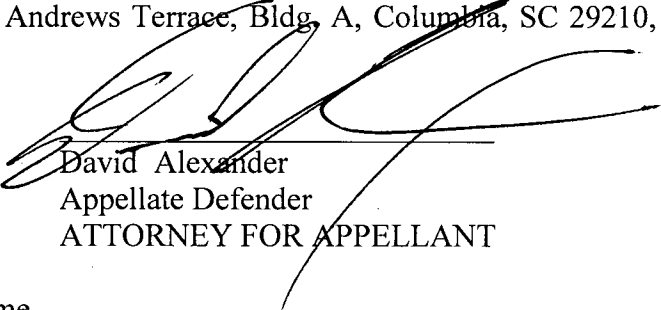
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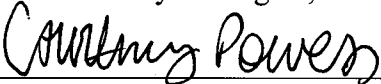
CERTIFICATE OF SERVICE

The undersigned 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 have been served on Robbie Collins, at Correct Care, 1700 St. Andrews Terrace, Bldg. A, Columbia, SC 29210, this 22nd day of August, 2018.



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of August, 2018.



Notary Public for South Carolina
My Commission Expires: May 2, 2027.