

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Clifton Newman, Circuit Court Judge

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SC Court of Appeals

IN THE MATTER OF THE CARE
AND TREATMENT OF TIMOTHY GETER,

APPELLANT

APPELLATE CASE NO. 2013-000695

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant's motion for a directed verdict when the state did not prove beyond a reasonable doubt that he was likely to re-offend because the only evidence was that 37.2 percent of the people with the same score as appellant reoffended within five years?

STATEMENT OF THE CASE

In January 1987, the Spartanburg County Grand Jury indicted Timothy Geter on the charges of criminal sexual conduct (CSC) with a minor first degree and criminal sexual conduct with a minor second degree; CSC with a minor first degree; committing a lewd act on a child under the age of fourteen; assault with intent to commit a sexual battery on a child under the age of eleven; committing a lewd act on a child under the age of fourteen. On March 4, 1987, Geter pled guilty to one CSC first degree with a minor; assault with intent to commit a sexual battery; and two counts of committing a lewd act. He received twenty-five years each on the CSC and the assault with intent to commit CSC, and received ten years on each lewd act charge with one of them running consecutively to the other sentences. On April 17, 1987, Geter pled guilty to two counts of CSC with a minor second degree and received a sentence of 20 years to run concurrently the prior convictions in March.

Prior to his release from the Department of Corrections (DOC), Geter was evaluated for the Sexually Violent Predator Program (SVP). The mental evaluation performed by the court appointed forensic psychiatrist indicated that he did not meet the criteria to be a sexually violent predator pursuant to S.C. Code Section 44-48-30. He was released from DOC.

On March 15, 2006, the Richland County Grand Jury indicted Geter on the charges of contributing to the delinquency of a minor by serving alcohol to the minors; assault with intent to commit CSC on a minor second degree; CSC second degree with a minor; CSC third degree; committing a lewd act on a child. In June 2006, Geter waived presentment to the grand jury on the charge of attempting to commit a lewd act upon a child under sixteen. On June 28, 2006, Geter pled guilty to two counts of ABHAN; CSC 3rd degree; two counts

of committing a lewd act on a minor. He received concurrent sentences of fifteen years on each lewd act, and ten years on the two ABHANS and CSC 3rd degree.

Prior to Geter's release from DOC, he was evaluated for the SVP Program a second time. The court appointed psychologist, Dr. Marie Gehle, found that Geter did have two mental abnormalities and met the criteria to be a sexually violent predator. Tr. 75, ll. 1 – Tr. 76, ll. 19; Tr. 80, ll. 5 – Tr. 81, ll. 1.

On April 1-2, 2013, Geter proceeded to trial before the Honorable Clifton Newman and a jury. Geter was represented by David Belding, and the state was represented by Jim Bogle. The jury found that Geter was a sexually violent predator pursuant to the SVP Act. Tr. 199, ll. 10 – 25. Judge Newman signed an order committing Geter to the SVP program within the Department of Mental Health for long term control, care and treatment. Geter's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying Appellant's motion for a directed verdict when the state did not prove beyond a reasonable doubt that he was likely to re-offend because the only evidence was that 37.2 percent of the people with the same score as appellant reoffended within five years.

Dr. Marie Gehle, the chief psychologist with the Department of Mental Health (DMH), testified as an expert for the state as she was appointed by the court to conduct an evaluation of Geter. She described the records she relied on as well as the interview she had with Geter. Tr. 40, ll. 1 – Tr. 44, ll. 22.

Dr. Gehle described the sexual offenses for which Geter had been convicted. In 1987, he pled guilty to having had sexual intercourse with a thirteen year old girl as she slept on the couch. Then he was convicted of performing anal intercourse on an eight year old boy. Both of these incidents occurred in April 1986. Tr. 45, ll. 6 – Tr. 46, ll. 12.

The next incident involved a five year old girl whom Geter took to his mother's house on two occasions and sexually assaulted. He pled guilty in March 1987. He was out on bond from the first offenses in April 1986 when he committed these offenses. Tr. 46, ll. 13 – Tr. 48, ll. 9.

The next incident occurred on October 28, 1986 when several young girls around the age of five were having a sleep over. One of them was the daughter of someone Geter was dating, and the others were neighborhood kids. Geter sexually assaulted the girls in front of each other. Tr. 48, ll. 10 – Tr. 52, ll. 24.

After he served eighteen and one-half years of his sentence, Geter was released from prison in May 2004. He had been evaluated for the SVP Program and was found not to

need commitment. He moved to Richland County and did well for about eleven months. Tr. 124, ll. 1 – Tr. 125, ll. 17; Tr. 58, ll. 1 – 25.

He was convicted of contributing to the delinquency of a minor where he served alcohol to teenage boys. Tr. 53, ll. 3 – Tr. 54, ll. 24.

In June 2005, he was charged with performing oral sex on a fourteen year old boy having a sleep over at Geter's house along with the boy's seventeen year old mentally handicapped brother. Tr. 55, ll. 1 – Tr. 58, ll. 25. Geter was also charged later with sexually assaulting the seventeen year old brother. Tr. 60, ll. – Tr. 61, ll. 20. Geter was also charged with committing a lewd act on a fifteen year old boy he was working with at a local night club. Tr. 63, ll. 3 – Tr. 64, ll. 15. Geter pled guilty to these Richland County charges on June 28, 2006. Tr. 61, ll. 11 – 20.

Dr. Gehle diagnosed Geter as having two mental abnormalities: pedophilia and paraphilia not otherwise specified due to the sexual assault on the thirteen year old girl. Tr. 75, ll. 3 – Tr. 77, ll. 2. She also diagnosed Geter as having a personality disorder of antisocial personality disorder. Tr. 77, ll. 3 – Tr. 78, ll. 15.

Dr. Gehle's opinion was that Geter has a propensity to be dangerous and was likely to commit future sexually violent offenses as he has trouble controlling his behavior. Her opinion was that he needed long term care, control and treatment to prevent committing future offenses. Tr. 80, ll. 1 - Tr. 82, ll. 9.

Dr. Gehle administered the test known as the Static 99-R to Geter during her evaluation. This is "an actuarial measure" meaning that the testor looks at certain factors related to groups of people who have reoffended. It was the most commonly used risk assessment tool. Geter's score was eight on a range of minus three to twelve. Eight was

considered high risk. Thirty-seven percent of the sample reoffended within five years of those with a score of eight. Tr. 71, ll.1 – Tr.73, ll. 20.

On cross examination, Dr. Gehle admitted that the term “mental abnormality” was not included in the Diagnostic and Statistical Manual (DSM) which is the resource used by psychiatrists and psychologists to determine diagnoses. Tr. 85, ll. 1 – Tr. 87, ll. 24.

Respondent’s counsel went through the questions on the Static 99-R which the doctor admitted was the only objective risk assessment tool used to evaluate Geter. Counsel asked the doctor if she were aware of the article written by Hanson and Thornton who were the authors of the Static 99-R, last year where the two authors admitted that much of their statistical recidivism rates were overstated. Dr. Gehle admitted that she saw the article but did not read it thoroughly. Counsel explained that the authors admitted that they had some scores of eight that had a recidivism rate of 15%. Dr. Gehle then said there were four groups that the person’s score could be compared to, and the recidivism rates varied depending on the group chosen. Tr. 90, ll 7- Tr. 98, ll. 23.

At the close of the state’s case, Geter’s counsel made a motion for a directed verdict arguing that there was not enough science behind Dr. Gehle’s testimony for the jury to conclude beyond a reasonable doubt that Geter was a sexually violent predator. Counsel argued that the only objective information indicated that people with Geter’s score re-offended only 37.5 percent of the time within five years which was not enough to be “likely.” The judge denied the motion. Tr. 120, ll. 12 – Tr. 122, ll. 15.

Geter testified that he was able to control his behavior now. However, he said he did want sex offender treatment but not for the rest of his life. He admitted that he had made

mistakes and was sorry for them. He was sexually abused as a child by the babysitter. Tr. 123, ll. 21 - Tr. 157, ll.25; Tr. 158, ll. 1 – 8.

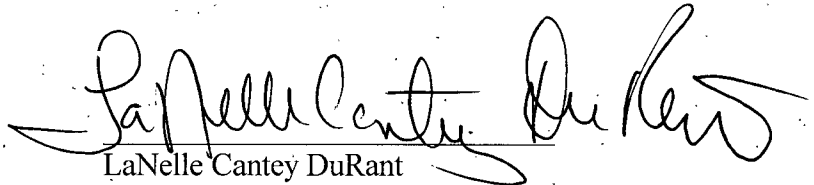
On appeal of a denial of a directed verdict of acquittal, the Supreme Court must look at the evidence in the light most favorable to the state. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). A trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. Id.; State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error. State v. Arnold, *supra*. A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

The Sexually Violent Predator Act provides that a person must have a conviction for a sexually violent offense, and must have a mental abnormality that requires long term control, care, and treatment to prevent the person from committing future sexually violent offenses. The only objective evidence presented was that 37% of people with Geter's score on the Static 99-R would re-offend. Thirty-seven percent is not sufficient to commit a person to DMH for possibly the rest of his life. The trial judge erred in not granting the directed verdict motion.

CONCLUSION

Based on the above, the commitment order of the trial court should be vacated, and Geter should be released.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of November, 2013.

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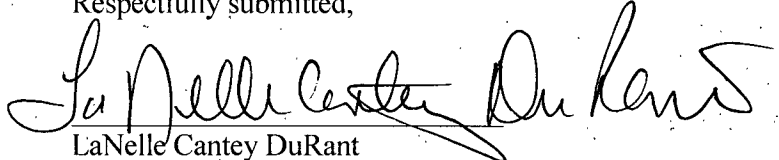
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy Geter 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 Clifton Newman, which was held on April 1, 2013, 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 Timothy Geter.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

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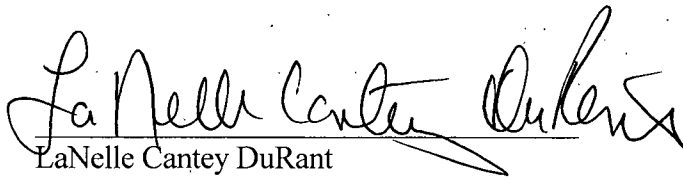
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) April 1-2, 2013 Trial Transcript
- (3) State's Exhibits 1-11;
- (4) Respondent's Exhibit;
- (5) Court's Exhibits 1-3;
- (6) Order of Commitment April 2, 2013.

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

November 4th, 2013


LaNelle Cantey DuRant
Appellate Defender

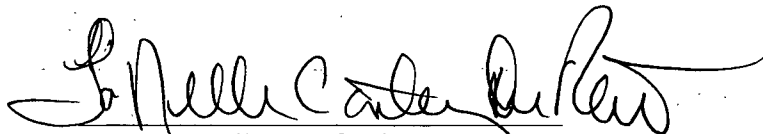
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 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."

November 4th, 2013



(Insert Appellate Defender Name)

Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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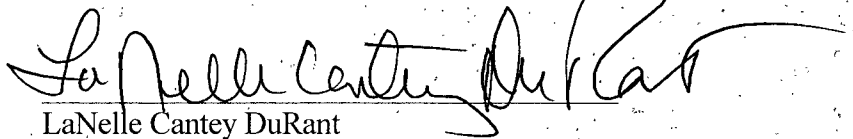
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CERTIFICATE OF SERVICE

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 Timothy Geter, at Sexual Violent Predator Program, 7901 Farrow Road, Columbia, SC 29203, this 4th day of November, 2013.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of November, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.