

22742

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas
Honorable Markley Dennis, Jr. Circuit Judge

Appellate Case No.: 2014-002351
In the Matter of the Care and Treatment of Alton Chisolm

RECORD ON APPEAL

RECEIVED

MAY 11 2016

SC Court of Appeals

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State of South Carolina Department of Mental Health

MENTAL HEALTH COMMISSION:

Alison Y. Evans, PsyD, Chair
Joan Moore, Vice Chair
Jane B. Jones
Everard Rutledge, PhD
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STATE DIRECTOR
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Division of Inpatient Services
Sexually Violent Predator Treatment Program
7901 Farrow Road, Building #3
Columbia, SC 29203
Information: (803) 935-5751

November 12, 2013

The Honorable Roger M. Young, Sr.
Chief Administrative Judge
Ninth Judicial Circuit
100 Broad St., Suite 368
Charleston, SC 29401

Re: Chisolm, Alton
Case No: 2006-CP-10-2715

Dear Judge Young:

RECEIVED
NOV 15 2013
ATTORNEY GENERALS
OFFICE

Mr. Alton Chisolm was committed to the South Carolina Department of Mental Health, Sexually Violent Predator Program, on February 10, 2009, pursuant to SC Code of Laws §44-48-100, Sexually Violent Predator Act.

Pursuant to SC Code of Laws §44-48-110, "The court shall conduct an annual hearing to review the status of the committed person." Therefore, please find enclosed the required documents in order to conduct such a hearing:

1. Annual Examination and Review Hearing, Annual Notice of Right to Petition for Release and Elections to Waive or Exercise Rights form.
2. Annual Treatment Review Summary, dated November 7, 2013.

MISSION STATEMENT
To support the recovery of people with mental illnesses.

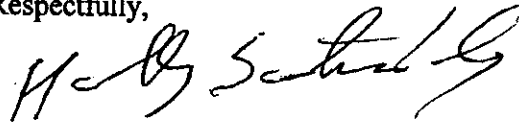


Based on our re-evaluation of Mr. Chisolm, it is our recommendation, to the Courts, that Mr. Chisolm remain in inpatient treatment in the South Carolina Department of Mental Health, Sexually Violent Predator Program.

The Attorney General's Office will contact you if a hearing needs to be scheduled to address Mr. Chisolm's review hearing.

If I can be of further assistance to the Court, please feel free to contact me or Ms. Cathy B. Garner, Paralegal, (803) 935-5540.

Respectfully,



Holly Scaturro
Director
Sexually Violent Predator Treatment Program
(803) 935-5530

- c James Bogle, Assistant Attorney General
Scarlett Wilson, Solicitor, Ninth Judicial Circuit
Charles Brooks, Attorney at Law
Julie J. Armstrong, Clerk of Court, Charleston County
Jeffrey E. Musick, Ph.D., Multidisciplinary Team
Alton Chisolm, Resident, SVPP

**ANNUAL NOTICE OF RIGHT TO PETITION FOR RELEASE
ELECTIONS TO WAIVE OR EXERCISE RIGHTS**

TO: Alton Chisolm
Name of Resident
FROM: Carolyn Sutton, Case Manager
DATE: Nov. 12th, 2013

II. ANNUAL NOTICE OF RIGHT TO PETITION FOR RELEASE

Pursuant to Section 44-48-110 and 130, South Carolina Code of Laws,

A. You have the right to petition the Court for release at any time, with or without the approval of the Department of Mental Health. However, it is important that you understand that if you do petition the Court for release without the approval of the Director of the Department of Mental Health, and the Court finds that either: (1) the petition was frivolous or (2) your condition has not changed so that you (the petitioner) are now safe to be at large, then the Court may deny any subsequent petitions without a hearing unless the petition contains facts upon which a Court could find your condition has so changed as to warrant a hearing.

Please initial and check the box below:

A.C. I am aware of the fact that I have the right to petition the Court for release at any time and I am aware that this document does not constitute a "Petition for Release."

III. ACKNOWLEDGMENT

I have received and reviewed the foregoing ANNUAL NOTICE OF RIGHT TO PETITION FOR RELEASE form.

Alton M. Chisolm
Resident: PRINT Name

Alton M. Chisolm 11/12/13
Resident: SIGN Name Date

[Signature] 11-12-13
Witness Date

Or, resident refused to sign.

Witness Date

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
SEXUALLY VIOLENT PREDATOR PROGRAM

ANNUAL EXAMINATION AND REVIEW HEARING NOTICE

TO: Alton Chisolm
Name of Resident

FROM: Carolyn Sutton, Case Manager

DATE: Nov. 12th, 2013

I. ANNUAL EXAMINATION AND REVIEW HEARING

Pursuant to Section 44-48-110, South Carolina Code of Laws,

A. You are entitled to an annual re-examination of your condition. A report of such examination is attached and will be furnished to the Court which committed you, the Attorney General, the Solicitor in the Circuit you were convicted of the qualifying offense(s), your attorney (unless you do not have one), and the multi-disciplinary team.

B. The Court conducts an annual hearing to review your status.

Please initial and check one (1) box below:

I am aware that I have the right to an annual hearing to review the status of my case.

I choose to waive my right to an annual hearing. Do NOT complete I. C. or D.

A.C. I do not waive my right to an annual hearing.

C. You have the right to have an attorney represent you at the hearing, but you are not entitled to be present at the hearing. If you do not have an attorney and are indigent, you may request the Court to appoint an attorney to represent you at the review hearing.

Please initial and check one (1) box below:

I am aware that I have the right to be represented by an attorney at the annual hearing to review the status of my case.

I choose to waive my right to representation by an attorney.

I will exercise my right to counsel by hiring an attorney to represent me.

I want to exercise that right, do not have an attorney, I am indigent, and request the Court to appoint an attorney for me.

A.C. Charles Brooks is my Court appointed attorney.

D. You may retain or, if you are indigent and so request, the Court may appoint a qualified expert to examine you, and the expert shall have access to all your medical, psychological, criminal offense and disciplinary records and reports.

Please initial and check one (1) box below:

I am aware that I have the right to have a qualified expert examine me and that I may present the results of that examination to the Court at the annual review hearing.

I choose not to exercise that right at this time.

I choose to exercise that right and will hire a qualified expert to examine me.

A.C. I am indigent and I wish to have the Court appoint a qualified expert to examine me. I understand that the appointment of an expert is discretionary with the Court.

III. ACKNOWLEDGMENT

I have received and reviewed the foregoing ANNUAL EXAMINATION AND REVIEW HEARING form.

Alton M. Chisolm
Resident: PRINT Name

Alton M. Chisolm 11/12/13
Resident: SIGN Name Date

[Signature] 11-12-13
Witness Date

Or, resident refused to sign.

Witness Date

**SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
SEXUALLY VIOLENT PREDATOR PROGRAM**

ANNUAL REVIEW
Pursuant to §44-48-110

Name: CHISOLM, Alton M.
SCDMH #: 1017-6645
SCDC #: 241794
Date of Birth: [REDACTED] [56 years old]
Date of Commitment: 02/07/09
Date of Admission: 02/11/09
County: Charleston
Review Period: 10/23/12 – 10/09/13
Date of Evaluation: 10/09/13
Date of Report: 11/07/13
Evaluator: Marla L. Domino, Ph.D.

Referral Information:

Alton M. Chisolm was committed to the Sexually Violent Predator Program (SVPP) of the South Carolina Department of Mental Health (SCDMH) after adjudication as a Sexually Violent Predator, pursuant to statute. In accordance with §44-48-110, the purpose of the current exam is to assess whether Mr. Chisolm's "*mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence.*"

Notification:

At the outset of this evaluation, Mr. Chisolm was notified of this examiner's role, the purpose of this evaluation, and the limits on confidentiality. He was specifically informed that anything he disclosed could be included in a report to his lawyer, the Attorney General's office, the Court, and the SVPP treatment team. He voiced an understanding of this information and indicated a willingness to proceed.

Sources of Information:

1. Interview with Mr. Chisolm on 10/09/13 for approximately 40 minutes.
2. Completion of the Static-99R.
3. Review of Mr. Chisolm's current documentation from the Sexually Violent Predator Program (e.g., progress notes, homework assignments).
4. State of South Carolina, County of Charleston, Petition Pursuant to the Sexually Violent Predator Act.
5. Documentation regarding Mr. Chisolm's legal history (e.g., arrest warrants, victim statements, incident reports).
6. Sexually Violent Predator Program Commitment Evaluations by Donna Schwartz-Watts, M.D. (date of report: 05/06/08) and Pamela Crawford, M.D. (date of exams: 12/29/06 and

10/18/06).

7. Memorandum to Brandy Duncan, Esq., Assistant Attorney General, from Latoshia Spearing, LPC, of the Family Violence Treatment Centre (dated 06/18/06).
8. Psychological evaluation conducted by Tora Brawley, Ph.D. (date of exam: 04/01/08).
9. Annual Reviews authored by Peggy Wadman (January 2010) and Marla Domino, Ph.D. (dates of exams: 10/10/11 and 10/22/12).

Brief Personal History:

Available records indicate Mr. Chisolm was raised in the Charleston, South Carolina, area by his biological parents. There is no indication of a history of abuse. He completed high school and has been employed as a carpenter, painter, and auto mechanic.

A report by Dr. Donna Schwartz-Watts indicates Mr. Chisolm reported a history of mental health treatment in the community, although few specifics are provided. He reported to her a prescription of Prozac (antidepressant) while incarcerated.

Per available records, Mr. Chisolm was in a coma for three days secondary to a motor vehicle accident in 1980. He then suffered a closed head injury in 1996 after he was struck by a car while riding his bicycle. Since that time, per his report to Dr. Brawley in April 2008, he has experienced diminished ability to concentrate, deficits in his capacity to retain new information, memory problems, headaches, dizziness, irritability, and increased frustration. Neuropsychological testing conducted by Dr. Brawley resulted in a diagnosis of dementia, revealing IQ scores in the borderline and mild mental retardation ranges, among other cognitive deficits.

During today's exam, Mr. Chisolm reported current medication for high blood pressure and surgery for hernia repair two months ago. During the current review period, his chart reflects prescriptions of Trazodone (mood stabilizer) for insomnia, Aricept for dementia, and Benadryl for anxiety/insomnia. A prescription of Invega (antipsychotic) was discontinued due to repeated refusal.

Legal History:

Sexual Offenses

According to available records, in June 1997, Mr. Chisolm pleaded guilty to Lewd Act Upon a Minor stemming from allegations he repeatedly fondled the vagina of his 13-year-old daughter and rubbed his penis on her genitals until he ejaculated; she also reported to police that he unsuccessfully attempted to penetrate her vagina with his penis and at least one time digitally penetrated her. Mr. Chisolm reported to police that he was under the influence of alcohol and crack-cocaine at the time. His probation for this offense was revoked due to subsequent convictions for sex offenses (see below). Mr. Chisolm's initial recommendation for commitment to the SVPP was made towards the completion of his sentence for this charge but was dismissed by the presiding judge in September 1999. In December 2000, Mr. Chisolm was arrested for Failure to Re-Register as a Sex Offender.

During a previous exam with the undersigned, when asked about these offenses, Mr. Chisolm: ... admitted to sexually assaulting his 13-year-old daughter in 1996; he stated he later discovered she was not his biological child. Per his report, prior to the offense, he was informed by a family member that his daughter was having sex with older men. Mr. Chisolm stated he wanted to determine that for himself and so attempted to have sexual intercourse with her reasoning that, if she was sexually active, her vagina would have 'expanded.' He admitted to being sexually aroused by his daughter during the incident and, unsuccessfully, attempted to penetrate her (therefore, in Mr. Chisolm's mind, establishing her virginity); he reportedly ejaculated near her ... [he noted] being intoxicated on alcohol and marijuana at the time, a recent history of sexual fantasies about the victim, and 'brain damage' from a motor vehicle accident, led to the offense(s).

When read the above during today's exam, Mr. Chisolm added that he did not raise this child and only intermittently lived with her; after he was convicted of this offense, he learned that he was not her biological father. He also stated that "I was going to talk to her" about information provided to him by a family member that his daughter was sexually active; this is in contrast to information Mr. Chisolm provided to the undersigned in previous exams that he had not considered alternatives to determining if she was sexually active before assaulting her.

In July 2002, per records, Mr. Chisolm was charged with three counts of Lewd Act on a Minor and Criminal Sexual Conduct - 2nd Degree, stemming from allegations that he sexually assaulted two, 11-year-old girls in a public swimming pool. Records regarding these charges provide varying accounts of the alleged acts including anal rape of one or both victims, attempted (but unsuccessful) anal and vaginal penetration of one or both victims, rubbing of his erect penis against the anus of one victim (over or under her bathing suit), and/or fondling the vagina of at least one victim. The victims alerted a camp counselor at which time Mr. Chisolm was asked to exit the pool; he did so with a visibly erect penis, per records. At that time, a 13-year-old girl at the scene reported to police that Mr. Chisolm had offered her swimming lessons several weeks earlier at that same pool when he rubbed his penis against her; she declined to file a report. During the investigation of these offenses, police obtained information about a possible fourth victim (a 12-year-old female) who reported to a third party that Mr. Chisolm attempted to "rape" her. When apprehended, Mr. Chisolm stated, "My hands may have touched some areas inappropriate by mistake." Upon execution of a search warrant in the investigation of these charges, police discovered a revolver, pornography, 16 photos of female juveniles, and a large sword in Mr. Chisolm's home.

Mr. Chisolm denied wanting to make editions to the following account of the above incident(s) he provided to the undersigned in a previous exam:

... Mr. Chisolm denied the accusations of sexual assault against the two, 11-year-old girls in the public swimming pool. As before, he acknowledged being in the pool at the time and stated one of the victims asked him for swimming lessons; he indicated that her buttocks rubbed against his genitals by accident at which point, 'I backed away and said 'let's do something else.' Per his account, the lifeguard requested that he exit the

pool and he was subsequently apprehended by police. He acknowledged that one or two additional victims accused him of sexually assault in the same pool, but he denied these accusations. Mr. Chisolm spent a substantial amount of time during today's exam explaining why he was innocent of these charges and that he was pressured by his public defender and family to 'take a plea.'

About these offenses, Mr. Chisolm did comment today that, "There was a choice that was made – wrong place at the wrong time ... inappropriate in the pool, some things happen like that."

According to records, Mr. Chisolm submitted an Alford plea in August 2003 to two counts of Lewd Act Upon a Minor; the other charges were nolle prossed. During today's exam, Mr. Chisolm explained that that plea was to the charges in the pool, above. Around that time, Mr. Chisolm was also convicted and sentenced for failure to change his address in the sex offender registry. As noted, he was on probation for a previous sexual offense (see above) at the time of these incidents; he was also participating in outpatient sex offender therapy at the time. Mr. Chisolm denied having any undetected/off-the-record victims.

Non-sexual Offenses

Per available records, Mr. Chisolm has convictions for Disorderly Conduct, Open Container (two), Possession of Marijuana, Driving Under Suspension, and Blocking a Traffic Lane. Records also note that in 1980 and 1986, he was convicted of Burglary after entering the homes of females during the night; in neither case did Mr. Chisolm make physical contact with the victims. In May 1995, Mr. Chisolm was arrested for Contempt of Court for failure to pay, although further specifics and disposition of this charge is unknown.

Institutional Infractions

While in the South Carolina Department of Corrections (SCDC), Mr. Chisolm received two Sexual Misconduct convictions based on allegations he was fondling his penis through his pants (2004) and placed his erect penis on the leg of a female SCDC officer (1998).

Previous Sex Offender Treatment:

While on probation for the July 1997 conviction involving his daughter, Mr. Chisolm attended outpatient sex offender therapy at the Family Violence Treatment Center; a memo from a staff member at that facility indicates he appeared for his first group session under the influence of alcohol and sporadically attended subsequent treatment for which he was infrequently prepared. Per records, Mr. Chisolm completed Phase I of SCDC's sex offender treatment program.

Previous Evaluations and Diagnoses:

Mr. Chisolm initially participated in an independent evaluation to determine whether he met criteria for commitment under the Sexually Violent Predator Act in October 2006 and January 2007 with Pamela M. Crawford, M.D.; he refused to participate in both evaluations. He was seen by Donna Schwartz-Watts, M.D. in January 2008 for this same purpose, when it was

opined that he met criteria for commitment due to symptoms of dementia due to closed head injury and sexual disorder, not otherwise specified (nos). An annual review conducted by Dr. Peggy Wadman in January 2010 lists diagnoses of personality change due to head injury, disinhibited type; somatization disorder; and post-concussive syndrome. The two past annual reviews, conducted by the undersigned, offered diagnoses of paraphilia, not otherwise specified (nos), and dementia due to head trauma. His SVPP chart lists current psychiatric diagnoses of paraphilia, nos, and dementia due to closed head injury.

Actuarial Risk Assessment:

The Static-99R is an instrument designed to assist in assessing the risk of sexual recidivism. The Static-99R's recidivism estimates were derived from rates of charges and reconvictions of groups of offenders and do not directly correspond to the recidivism risk of one, specific individual. Because of his adjudication as a sexually violent predator who is currently under indefinite civil confinement, Mr. Chisolm's score was compared to a reference group identified as "high-risk/need." On average, 25.2% of sex offenders from this high-risk/need group with a score similar to Mr. Chisolm's sexually recidivated within five years, and 35.5% sexually recidivated within ten years.

Resident's Recent Functioning in the SVPP & Treatment Progress:

In his most recent Master Treatment Plan (dated 11/01/12), Mr. Chisolm's strengths were listed as "creative and artistic, good reading and writing skills." His liabilities were noted to be "multiple head injuries, persistent feelings of persecution." That treatment plan indicated Mr. Chisolm has difficulty regulating his mood and he becomes upset in group "which escalates to anger within a very short timeframe. Attempts at discussion are ineffective and met with resistance. Mr. Chisolm frequently must be calmed down through distraction." That treatment plan also notes that Mr. Chisolm has a "poor understanding of the factors that contributed to his offending ... resident shows a lack of comprehension about being sexually attracted to young and non-consenting females." In addition it is stated that, "Mr. Chisolm feels that he is being 'stalked' by staff and residents, which distracts from focusing on treatment goals. He has difficulty understanding the purpose of treatment and practical applications to daily behavior." Mr. Chisolm was reported to not be involved in daily activity therapy events but when he does interact with peers, uses "appropriate pro social skills." That treatment plan indicates that Mr. Chisolm does not have a job because of his behavioral dysregulation. Mr. Chisolm apparently wrote a response to this treatment plan which is difficult to follow but suggests he disagreed with the above feedback and believes he should not be in the SVPP.

A Quarterly Progress Report (for review period 02/01/15 to 05/01/13) reflects little if any progress in the above goals. Furthermore, it is noted that Mr. Chisolm has had a number of difficulties in group to include calling peers derogatory names (e.g., "drag queen" and "mentally disturbed"); being disrespectful; aggressive behavior; interrupting; immaturity (e.g., rolling his eyes, pointing his finger); and poor hygiene. He was suspended from group during that review period and was given individual assignments due to his behaviors, with minimal benefit. That report also notes that he continued to exhibit a poor understanding of the factors

that contributed to his offending and continued to place blame on the victim(s).

In addition, per that quarterly report, Mr. Chisolm continued to have difficulty with having erections in public (e.g., in group, in the milieu) and apparently goes to great lengths to conceal them (e.g., wears excessive large pants, wears two pairs of pants). When confronted about his behavior in group, per that report, he "appeared aggressive, agitated, paranoid, and disruptive. These behaviors continued in the following group, despite continued re-direction ... Mr. Chisolm continues to justify these behaviors by insisting that he needs larger pants because he is too 'big' (referring to his penis size) ... Mr. Chisolm does not understand how these behaviors relate to his offense cycle and chooses to blame others for 'staring' at him." Regarding his participation in Activity Therapy, it is noted, "Mr. Chisolm is often non-participatory or uncooperative with activities targeting the specific treatment need and makes minimal effort to demonstrate skills associated with this treatment need. Mr. Chisolm rarely participates in any [activity therapy] activities or events. Mr. Chisolm [often] sits alone on the milieu." Since his Master Treatment Plan was completed, Mr. Chisolm obtained a unit job in which it was recommended that he "work on coping skills to help control his behavior, which will help him keep his job."

A more recent Quarterly Review Report (for 05/01/13 – 08/01/13) notes that Mr. Chisolm has "started using coping skills to manage his moods" and has "attempted to overcome his tendency to be isolated and distressed." However, it is also indicated that Mr. Chisolm continues to present with a poor understanding of the factors that led to his offenses and continues to maintain that one of his victims (from 2002) lied about the offense. While it is indicated that he has improved in terms of behaviors associated with erections in group and the milieu, per that quarterly report, he continues to assert that staff are "targeting" him in regard to repeated disciplinary infractions associated with this behavior and denies any wrongdoing. That report notes that Mr. Chisolm continues to choose not to participate in unit activities. In a meeting with his treatment team during that review period (on 07/11/13), it was noted that Mr. Chisolm was calm and fairly receptive to feedback, took "some" responsibility for the offense against his daughter, but "largely denied and minimized" his involvement in his other offenses. It is noted that "he acknowledged sexual attraction to young girls 'in the past' but denied that this was a current concern." In a treatment assignment in July 2013, of five thinking errors he uses in treatment, he blamed others in four.

During the current review period, Mr. Chisolm has received multiple behavioral observation notes ("BONs"). In October 2012 (a week after his previous annual review with this examiner), he received disciplinary action for masturbating in public and insolence (calling a female officer a "girl"). When confronted by staff, he denied the accusations, stated the staff was "out to get him," required redirection, and expressed frustration regarding the outcome of that meeting. In February 2013, Mr. Chisolm received disciplinary action for having an erection in the milieu; he reportedly was redirected successfully and so received no consequences. In April 2013, he was accused of possession of alcohol (buck) which he denied and violation of a previous room restriction by speaking to a peer through his door flap which he admitted to. In May 2013, he

reportedly violated another previous restriction by having food in his room. In July 2013, he was placed on "sexual behavior precautions" for masturbating in public.

Group progress notes from the current review period describe Mr. Chisolm as inattentive; unengaged and non-participatory; providing no, limited, or inappropriate feedback; resistant to sharing his notes with the case manager; engaging in distracting activities (e.g., shuffling papers); becoming angry and aggressive when confronted by a peer regarding his (Mr. Chisolm's) hygiene; being "extremely resistant" and unresponsive to feedback; appearing angry and aggressive; accusing others of lying about him; sarcastic and immature (e.g., sighing when redirected); loud; and overly dramatic (e.g., shuffling his papers, rolling his eyes). At one point (February 2013) it was noted that Mr. Chisolm was suspended in group due to his distracting behavior.

Furthermore, group progress notes indicate Mr. Chisolm has reported a lack of understanding regarding how a peer's touching of a victim's buttocks constitutes a crime and also voiced a request to limit check-in at the beginning of group, despite his monopolization of the previous group's check in. In April 2013, it was noted that he had been engaging in "sexual behaviors in group" such as staring at his case manager, repositioning his pants, moving in his chair, and presenting with a visible erection.

It is noted that Mr. Chisolm again presented a disclosure assignment during the current review period which was the "same as last time" and Mr. Chisolm maintained that he was "falsely charged" in both offenses; regarding the charge against his daughter, he reported that he attempted to wake her but, when unsuccessful, decided to "check" her [virginity status]. Regarding the offense in the public pool, Mr. Chisolm reiterated that he was innocent. When discussing an off-the-record victim, Mr. Chisolm reported having sexual intercourse with a 16-year-old female at the age of 27 years; per progress notes, he became "aggressive" when provided feedback about this incident from peers, called the victims "liars," and insulted group members. In a recent (October 2013) homework assignment, he reported to "wrongly touching" women on their buttocks in a club, in his car, in their cars, and at his house. As noted below, Mr. Chisolm denied to this examiner that he had any off-the-record victims.

In addition to the above, progress notes from the current review period indicate Mr. Chisolm can be attentive, apologetic, and occasionally responds well to redirection. His presentation of his autobiography in January 2013 was criticized for lacking details but it is noted that Mr. Chisolm was receptive to feedback about it. During the current review period, a number of groups were cancelled due to facilitators' absences and/or illness.

Resident's Responses:

According to Mr. Chisolm, he was moved into a single room three weeks ago due to his multiple Behavioral Observation Notes. He reported positive relationship with other residents but noted, "I just don't like anybody bothering me – nagging, drama ... pick on you for nothing, lie on you, drama about you just to get you in trouble." He did state, "I may flare up just to

protect my own self" if bothered by others. He noted that his peers would describe him as "trustworthy, honest, caring, nice, dependable sometimes." He described positive relationships with staff as well but then noted that staff and officers "lie" on him. He guessed that staff would describe him as "kind, caring, trustworthy, sometimes not honest." Mr. Chisolm reported that he has been accused of sexual misconduct multiple times. When asked if any of those accusations have been true, he answered in the negative barring one incident in which "I wasn't really masturbating, just cleaning myself up."

Mr. Chisolm rated his likelihood of future sexual offending on a scale from 0 (not likely) to 10 (very likely) as a "10" [sic], explaining there is "I'll put it up to 10. A 9 to a 10 chance I wouldn't get into any trouble. Not a 10 because anything can happen," referring to the possibility he will be falsely accused. He denied having any risk factors explaining that if ever in the vicinity of a child, he would leave. When asked how he has changed during the current review period, Mr. Chisolm stated "I changed a lot. I learned a lot of stuff about my behavior on the street - being so nice to people, being around kids." He denied there to be anything he continues to need to work on but noted, "I can always keep learning." He stated he recently completed assignments addressing self-esteem, disclosure, and his autobiography, and is currently working on victim diary, letters to and from the victim, distressing experience, anger and coping skills.

In the future, Mr. Chisolm stated he would like to be married, father another child, be involved in multiple churches, volunteer, travel and visit with family. He denied there to be obstacles to attaining these goals. He identified his family, his children, his church communities, and friends as being on his support team if released.

Mental Status Examination:

A mental status examination performed today revealed a 56-year-old, African-American male who presented with adequate, personal hygiene and clean attire. No auditory or motor abnormalities were noted, although Mr. Chisolm wore eyeglasses. He exhibited poor eye contact and his use of mannerisms and gestures was within normal limits. He was cooperative with the evaluation.

Mr. Chisolm did not exhibit significant deficits in his recent memory, concentration, attention or fund of knowledge. He recalled only one of three words after a brief delay, and recalled the remaining two with multiple cues, suggesting memory deficits. While he identified the current U.S. President, he had difficulty recalling additional prior presidents which may suggest deficits in his long-term memory. His identification of the similarities between objects suggested mild deficits in his ability to think in the abstract.

Mr. Chisolm correctly identified the date, day of the week, location, approximate time, and situation. In general, his speech was clear, of somewhat low volume, and of average rate. At times he provided excessive, irrelevant details but was amenable to redirection. He appeared to be spending a significant amount of energy trying to impress upon this examiner his positive attributes.

When asked, Mr. Chisolm described his current mood as "good" and typical mood as "very good." He denied current thoughts of wanting to hurt himself or others. He described his sleep, energy, and appetite in positive terms. During today's exam, Mr. Chisolm's affect [observed emotional expression] appeared consistent and within normal limits. He did not endorse current symptoms of significant mood disturbance (e.g., depression) or psychosis (e.g., hearing voices) and no overt signs of such were observed.

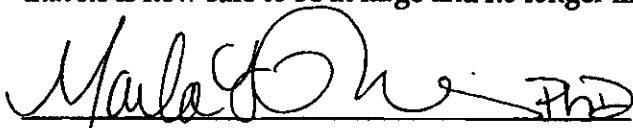
Diagnostic Impressions:

Based on the available data, it appears Mr. Chisolm's symptoms are best characterized by a diagnosis of *paraphilia, not otherwise specified*. According to the Diagnostic and Statistical Manual-Fourth Edition-Text Revision (DSM-IV-TR), a paraphilia describes an individual who experiences "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving 1) nonhuman objects, 2) the suffering or humiliation of oneself or one's partner, or 3) children or other nonconsenting persons that occur over a period of a least 6 months." The "not otherwise specified" subtype indicates that the symptoms do not meet criteria for any specific paraphilia (e.g., pedophilia, fetishism). This diagnosis is based on data indicating a history of longer than six months in which Mr. Chisolm has experienced sexual arousal involving nonconsenting individuals (e.g., 11 - 13 year old girls).

In addition, Mr. Chisolm's memory deficits and other cognitive difficulties (e.g., executive functioning, ability to think in the abstract) meet criteria for *dementia due to head trauma*. Dementia describes an individual who suffers from memory impairment and other cognitive disturbances (e.g., language disturbance, problems with executive functioning), that often represent a significant decline from previous functioning and cause substantial impairment in the ability to function in the social and occupational realms.

Opinion:

Based on evidence that Mr. Chisolm has a mental abnormality or personality disorder and is likely to sexually reoffend, the Court previously determined that he met the criteria as an SVP and he was subsequently committed to the SVPP. His diagnoses of paraphilia, not otherwise specified, and dementia due to head trauma are generally chronic. He has not adequately addressed relevant dynamic risk factors for sexual recidivism (e.g., self-regulation difficulties, poor problem-solving, resistance to rules and supervision, hostility). As such, at this time, there is insufficient basis to opine that his mental abnormality or personality disorder has so changed that he is now safe to be at large and no longer likely to engage in acts of sexual violence.



Maria L. Domino, Ph.D.
Licensed Clinical Psychologist

11/07/13
Date

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	
v.)	Case No. 06-CP-10-2715
)	
ALTON CHISHOLM,)	
)	
Defendant.)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on October 21, 2014, before The Honorable R. Markley Dennis, Jr. in Courtroom 3E of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Jim Bogel, Esq.
Appearing for State of South Carolina

Charles Brooks, Esq.
Appearing for Alton Chisholm

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

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THE COURT: Good morning.

MR. BOGEL: Was there a message from Mr. Brooks?

CLERK: He's on his way.

THE COURT: There was an accident on I-26 this morning, a fender bender. That stops everybody.

(DEFENDANT PRESENT)

(MR. BROOKS PRESENT)

THE COURT: Please be seated. This is in the matter of care and treatment of Alton Simmons (sic) -- excuse me, Chisholm. Alton Chisholm.

The Respondent is present. Mr. Chisholm, good morning.

MR. CHISHOLM: Good morning.

THE COURT: All right. This is your Motion?

MR. BROOKS: It is, Judge.

THE COURT: All right.

MR. BROOKS: Basically in this situation, Judge, I've got to tell you that we don't have an expert in this case.

THE COURT: That's what I was going to ask you, whether there was anything

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1 to contradict or to create an issue with the
2 report that has been submitted or attached to
3 your Motion?

4 MR. BROOKS: There is not, Judge.

5 THE COURT: Okay.

6 MR. BROOKS: Which is different
7 than the other cases that I've had before
8 you.

9 THE COURT: Absolutely.

10 MR. BROOKS: In this situation,
11 Judge, my argument on behalf of my client is
12 just that, you know, the State is delaying
13 his annual review. Bogel's report comes from
14 a year ago. He's been waiting for an annual
15 review.

16 It's our position that the delay --
17 not getting an annual review, sometimes that
18 is common for some of the residents in the
19 facility. My client should, obviously,
20 should be able to bypass and have a trial.
21 That's the argument that we would present to
22 the court today.

23 THE COURT: Okay.

24 MR. BROOKS: I just didn't want to
25 weigh you down with ---

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THE COURT: Oh, I understand. I don't fault him for that.

MR. BROOKS: Yes, sir.

THE COURT: Mr. Bogel.

MR. BOGEL: Thank you, Your Honor, may it please the court?

THE COURT: Yes, sir.

MR. BOGEL: The records we have show that Your Honor, and Your Honor has ---

THE COURT: I do.

MR. BOGEL: The chief administrative judge at the time, Judge Young, was notified of this annual review situation by letter dated November 12, 2013.

We received an Order filed on November 25, 2013, from an independent expert on behalf of the defense to do an independent examination of ---

THE COURT: Which was part of the reason for the delay?

MR. BOGEL: Right. For some reason -- and I can't explain it, but for some reason he did not see that document until April 22, 2014, about five months later.

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There was a transport Order that I got on April 9th. I then received a phone call from Mr. Brooks on April 22 that their guy could not help but their man didn't want to waive the hearing.

So the next step was to try to schedule a hearing. I e-mailed Mr. Michelle. We tried for June 18th, but the State's expert doctor, Dr. Domino, was not available on that date. So then it got set for today.

THE COURT: Okay.

MR. BOGEL: The State is prepared to go forward. We've got Dr. Marla Domino up here to testify. She did his last two annual reviews, including the one that we are here for today. If the court please, I can call her as a witness and put her under ---

THE COURT: Well, let me ask a question because it unusual -- not unusual but -- I've noticed that you've submitted a report.

MR. BOGEL: (Affirmative nod).

THE COURT: The report is part of the file. He's submitted a report, as well. Are you relying on -- do you challenge the

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1 report?

2 MR. BROOKS: In all candor, Judge,
3 I don't have anything to challenge ---

4 THE COURT: Yeah. We appointed an
5 independent. While certainly -- and I'm now
6 the fact finder and the judge of the law,
7 clearly an independent witness was -- we
8 appointed, allowed you to have that, and that
9 was retained. Obviously there -- the court
10 could easily infer from that a negative
11 result insofar as negative to this position.

12 MR. BROOKS: In all candor to the
13 court, Judge, you know the only expert that I
14 use is Thomas Martin.

15 THE COURT: I do.

16 MR. BROOKS: He's testified before.

17 THE COURT: He has.

18 MR. BROOKS: That's ---

19 THE COURT: And he was unable to
20 provide any assistance in this case?

21 MR. BROOKS: Unfortunately,
22 (affirmative nod), Judge.

23 THE COURT: I will leave it to
24 you. From the standpoint of appeal, if you
25 feel you -- I think the report is a part of

1 the record, and the court can rely on the
2 report. There is nothing to challenge the
3 report. But if you want to have live
4 testimony, please feel free to call ---

5 MR. BOGEL: The only thing --
6 excuse me. The only thing that we could
7 provide the Court that you haven't already
8 got is -- since the report was almost a year
9 ago and a lot of time has passed, what these
10 doctors always do is they check these guys'
11 files since the report to see if there's any
12 behavioral problems, changes or anything like
13 that. She's prepared to testify about that,
14 if Your Honor thinks it's necessary.

15 I mean, she's here if we need her.
16 But given the posture of the case, I think
17 it's set for a denial of annual review.

18 THE COURT: Well, if we had not
19 had an independent evaluation then I would be
20 incline to -- that's the time to get some
21 follow up. But the fact of the matter is
22 that we did have.

23 MR. BOGEL: Yes, sir.

24 THE COURT: The report indicates
25 significant differences but -- why don't we

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do this? Let's put her on just for the sake of -- to talk about the submission of the report. Why don't we do that?

MR. BOGEL: All right. Thank you, Your Honor. Dr. Domino, would you step forward, please?

MR. BROOKS: Your Honor, before we do ---

THE COURT: Yes, sir?

MR. BROOKS: My client is itching to address the Court.

THE COURT: Well, I will be happy to let him address the Court after we take the testimony so that this witness can be released to return to her work. Okay?

MR. BROOKS: Thank you, Judge.

(WITNESS TAKES STAND)

MARLA DOMINO, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. BOGEL:

Q. Just very briefly, Dr. Domino, are you the chief psychologist employed by the Department of Mental Health?

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A. Yes, I am.

Q. And has one of your responsibilities been doing annual reviews of people that have been committed under the sexually violent predator Act?

A. That's correct.

Q. Having previously testified and having been recognized as an expert witness in the field of Psychology and Forensic Psychology with regard to sexually-violent predator cases such as the one that we are here for today?

A. Yes, I have.

Q. About how many times?

A. Approximately sixty times.

Q. Okay. And are you licensed to practiced psychology in the state of South Carolina?

A. Yes, I am.

MR. BOGEL: Your Honor, with that preliminary, we would like to offer her as an expert witness in those fields.

THE COURT: Do you care to examine her as to her qualifications?

MR. BROOKS: No, sir.

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THE COURT: She will be permitted to render opinions in that area.

DIRECT EXAMINATION CONTINUED

BY MR. BOGEL:

Q. Dr. Domino, we have seen a copy of your report dated November 7, 2013; is that right?

A. Yes.

Q. Now, at the time that you wrote that report, what did -- did you have an opinion, to a reasonable degree of psychological certainty, as to whether or not Mr. Chisholm's mental abnormality had so changed that he was safe to be at-large and, if released, was not likely to commit acts of sexual violence?

A. Yes.

Q. And what is your opinion that you wrote in your report as far as that question goes?

A. That it was my opinion, that his mental abnormality had not so changed as to render him safe to be at-large in the community.

Q. Okay. What was the mental

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1 abnormality that was diagnosed by you on Mr.
2 Chisholm?

3 A. Paraphilia not otherwise specified.

4 Q. Was there any other condition that
5 he has, regarding a head injury or anything
6 like that, that also factored into your
7 findings?

8 A. Yes, I also diagnosed his symptoms
9 of dementia to be due to head trauma.

10 Q. Okay. Now, have you -- in
11 preparation for today's testimony, have you
12 gone back and looked over his treatment
13 reports and treatment records since the time
14 that you last interviewed him for your report
15 dated November of last year?

16 A. I did. It's not as thorough a
17 review as I did for my report, but I do look
18 to see if there have been any significant
19 behavioral infractions or positive reports.
20 I look at the latest quarterly or annual
21 treatment plan.

22 Q. Okay. There is something called a
23 BON, stands for Behavior Observation Note.
24 What is a BON in the parlance of the
25 Department of Mental Health?

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1 A. Basically it's when a resident
2 violates any rule of the program, they're
3 given a behavioral observation note. They
4 then go in front of the BMC, the Behavioral
5 Management Committee, and they're able to
6 either argue why they shouldn't have
7 disciplinary action and, uh, -- they have
8 conversation with the committee and
9 ultimately the committee decides whether or
10 not there should be any kind of room
11 restriction or any kind of privileges taken
12 away.

13 Q. All right. Dr. Domino, in
14 preparation for this hearing today, in
15 reviewing Mr. Chisholm's records since the
16 time that you did your report, what did you
17 review and what have you found; as far as his
18 activities, treatment, his behavior -- as far
19 as behavior observation notes and things like
20 that. What have you found since -- if you
21 could update us, if you would, since the date
22 of the report which was November of last
23 year.

24 A. Well, again, I just want to
25 emphasize that it was a fairly cursory review

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1 of the records. What I did learn was that
2 since seeing him last October, he has
3 committed quite a number of violations in
4 the program. I wish that I could give you a
5 number. It's been at least twenty. It's
6 difficult to discern from the records because
7 there were multiple violations on the same
8 day or the Behavioral Management Committee
9 would address multiple violations in the past
10 week on one day.

11 But there were things as minor as feeding
12 the birds and as major as Mr. Chisholm was
13 accused of having an erection in treatment
14 group, standing naked at his cell door, being
15 hostile to peers and staff. There was also,
16 this past September they accused him of
17 having, uh, fermenting juice in his room.

18 Q. What -- permitting?

19 A. Fermenting juice in his room.

20 Q. Oh, fermenting.

21 A. Yes. And one of the staff actually
22 commented in the behavioral observation note
23 that "this may explain why resident Chisholm
24 has been more aggressive and violent lately."

25 Q. Is aggression and anger a fact that

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1 you are picking up on as you review, not just
2 the stuff in your report from November of
3 last year but the stuff you're looking at
4 since then?

5 A. Yes, this seems to be a very
6 consistent theme with Mr. Chisholm, that he
7 has a lot of aggression, a lot of hostility.
8 He tends to blame others. And a reason that
9 is important from my perspective is that
10 research shows that the antisocial traits and
11 hostility, blaming others, is significantly
12 correlated with recidivating, uh, and sexual
13 offenses in the future.

14 Q. Is blaming others, such as his
15 victims, is that also a factor that you
16 discovered in your report that was dated
17 November '13?

18 A. Yes. The incident that occurred in
19 the public swimming pool, Mr. Chisholm has
20 consistently typified that as an accident,
21 basically said the victim -- that the victims
22 were brushing up against his genitals while
23 he was teaching them to swim.

24 Q. These were young girls, preteen
25 girls?

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1 A. They were, (affirmative nod) around
2 eleven years old.

3 Q. Based on your review of his records
4 since the date of your report, has anything
5 occurred that would change your ultimate
6 opinion on whether or not his mental
7 abnormality has so changed that he is safe to
8 be at-large; and, if released, would not
9 likely to engage in acts of sexual violence?

10 A. No.

11 Q. Is it still your opinion that he
12 should remain in treatment right now?

13 A. Yes.

14 MR. BOGEL: Thank you. Please
15 answer any questions that Mr. Brooks may have
16 or that the judge may have.

17 THE COURT: Mr. Brooks?

18 MR. BROOKS: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. BROOKS:

21 Q. You said that for the past year that
22 Mr. Chisholm has gotten additional write-ups
23 for bad ---

24 A. Yes.

25 Q. --- behavior or violating rules?

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1 A. Yes. Correct.

2 Q. Is that correct?

3 A. That is correct.

4 Q. All right. And did I hear you give
5 a number?

6 A. I did not. It's at least about --
7 it seems to be about twenty. It could be a
8 little more, a little less. It's difficult
9 to discern the way that the minutes are
10 written up and the way that they are dated.
11 It's sort of difficult to follow the paper
12 trail but that is my best estimate.

13 Q. I know that it's in your report that
14 you talk about the onset or problems with
15 dementia as a result of head trauma.

16 A. Yes.

17 Q. That's been a significant factor
18 with Mr. Chisholm?

19 A. That was -- yes, one of the
20 diagnosis that I gave.

21 Q. He's fifty-six, fifty-seven now?

22 A. Yes, I believe so.

23 Q. And I guess my question would be --
24 he's been in the program for, what? I want
25 to say five or six years now?

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1 A. Since February of 2009.

2 Q. Okay. Five years, going on six
3 years?

4 A. (No verbal response).

5 Q. What would he have to do, in your
6 opinion, in order to get out? What would he
7 have to do in order to change your opinion
8 that he would be safe to let go?

9 A. Well, there are a number of factors,
10 some of which I have already discussed which
11 are related to recidivating in the future.
12 So I would like to see Mr. Chisholm improve
13 dramatically on these factors.

14 Some of them have been poor self-
15 management strategies. For example, poor
16 coping, mood swings with self-regulation.
17 These are things that are in his treatment
18 plan, including the latest one that they have
19 indicated as a goal for Mr. Chisholm: to
20 regulate his moods, more to not use emotion
21 to deal with things when he is upset. He is
22 often noted to threaten staff, threaten
23 peers. He's gotten in several physical
24 fights when he has been upset. So these are
25 things that I'd like to see him improve on.

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1 Another factor that has been shown to be
2 related to recidivism is cooperation with
3 supervision. So just to, uh, keeping
4 consistent with the rules of the program.

5 Even though feeding the birds seems so
6 minor to us -- and it is, in and of itself.
7 It is minor but one of the factors that we
8 look at is, can this individual keep the
9 rules that are imposed on them? That says
10 something about whether they're able to keep
11 the rules that society imposes on them when
12 they are released in the community. So I
13 would like to see much fewer observation
14 notes for Mr. Chisholm.

15 He often demonstrates what is called
16 aggravance hostility attitude in that the
17 behavioral management committee has noted,
18 when they meet with him about his infractions
19 that it is very rare that he accepts
20 responsibility for what he did and he often
21 blames whoever else was involved: a peer, a
22 staff member, or he makes excuses for his
23 behavior.

24 So these are things that I would like to
25 see Mr. Chisholm improve upon before I would

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1 change my opinion.

2 Q. A question, Doctor, is dementia --
3 is his dementia a significant factor in his
4 not conforming to the rules? Not doing what
5 he is supposed to do per the program?

6 A. Not at this point, from my reading
7 of the records. From what I can tell, he is
8 still able to understand the rules. He knows
9 what is expected of him. In the future, I
10 would expect -- dementia is a progressive
11 disorder, so I would guess in the future --
12 and I can't tell you -- you know, five, ten,
13 fifteen years, it would be a factor. But
14 from what I glean from the records, right now
15 it is not a significant factor to adhering to
16 those rules.

17 Q. If the dementia progresses, as you
18 anticipate that it would, would that put him
19 in a position to where he could never
20 conform, change his behavior?

21 A. I suppose. I mean, I can think of a
22 scenario where somebody is so incredibly
23 demented that they cannot control their own
24 behavior. But Mr. Chisholm, from my clinical
25 perspective, is nowhere near that.

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1 MR. BROOKS: Beg the court's
2 indulgence.

3 THE COURT: Certainly.

4 MR. BROOKS: (Sidebar with Mr.
5 Chisholm) -- thank you. No other questions.

6 THE COURT: Redirect, Mr. Bogel?

7 MR. BOGEL: I have nothing
8 further. Thank you.

9 THE COURT: Thank you, Doctor.
10 You may step down.

11 (WITNESS STEPS DOWN)

12 MR. BOGEL: With the court's
13 permission, may she be excused?

14 THE COURT: Any objection?

15 MR. BROOKS: No objection.

16 THE COURT: You are also free to
17 leave. Thank you so much.

18 MR. BROOKS: Your Honor, back to
19 the fact ---

20 THE COURT: Yes, sir?

21 MR. BROOKS: --- that my client
22 wants to address the court, he wants me to
23 put him on the stand. May I?

24 THE COURT: Sure.

25 MR. BROOKS: We call Alton

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1 Chisholm.

2 (WITNESS TAKES STAND)

3 ALTON CHISHOLM, having been sworn to
4 tell the truth, and nothing but the truth,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BROOKS:

8 Q. All right. Alton, you said you
9 wanted to tell the court some things about
10 this annual review, for me to put you on the
11 stand. What is it that you want to tell the
12 court?

13 A. What I want to tell the court about
14 the annual review was that, uh, uh, -- for
15 one, the reason why I'm here, and some other
16 situations that Ms. Domino said that, uh, --
17 it's a bunch of lies. And I can prove that
18 with evidence and stuff, you know.
19 Especially about me being buck-naked in my
20 room and stuff like that. And one day if I
21 could address that, I could prove that all of
22 that is lies, even with a bunch of situations
23 that she said ---

24 Q. What proof do you have that that is
25 a lie?

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1 A. What proof do I have?

2 Q. (Affirmative nod).

3 A. That no one ever seen me in my room
4 buck-naked. The officer was lying on me
5 because -- that just happened recently and
6 all, by the officer driving -- choking me
7 outside my -- choked me on September 24th.

8 I mean, they got all kinds of situations
9 going on in there, which basically I
10 addressed to you a number of times on the
11 telephone, telling you that I'm fearing for
12 my life in that program, how the officers --
13 some officers said, not all of them, that
14 they -- I got about a thousand complaints
15 that I've put in the last five years about
16 what's been going on, about how they have
17 neglected me, denying me. I can prove all of
18 it.

19 I mean, I don't have any way into court
20 to prove the situation but it's how I -- but
21 there's things that I know about what's going
22 on in the program that I can prove all --
23 nobody in that program can tell you that I
24 was standing there buck naked in the room or
25 no sexual acts of what-have-you. They can't

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1 tell you that they've seen me with my penis
2 in my hand or whatever. They might have seen
3 me looking through my window, the one room
4 (sic) that we have in that place. I have
5 heard so many times about so many things
6 about what they tell me about -- and I got so
7 many charges, this and that. I mean, there
8 are about five or six officers that I've been
9 knowing since I've been there, about five or
10 six.

11 They are just shooting at me, left and
12 right, the -- giving me charges because they
13 know that I'm going to annual review. I
14 mean, you know, just lying on me. I've got
15 about -- twenty, thirty or forty charges in
16 the last three months. Like she said, I'm,
17 uh, -- what you call it? They say I'm
18 'disturbed', fussing and carrying on, this,
19 that and the other. The only way that I know
20 I'm fussing is when someone is lying on me
21 and stuff like that. When they lying on me,
22 I try to protect myself, speak up if they're
23 saying the wrong things or doing the wrong
24 things to me. They say I disobey all the
25 rules.

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1 You know, I've got the proof saying -- if
2 you got the proof, you know, that I saying
3 all these things to you, you -- you
4 definitely are worse than me. They keep
5 saying that I be trying to disobey orders and
6 what not, and that's a lie.

7 I got evidence here that I want to speak
8 to the honorable judge about, uh, why I'm --
9 why I shouldn't have been in the program from
10 square one. I don't have any right to be in
11 program.

12 I want to speak to you, The Honorable
13 Judge Dennis, Jr. if you don't mind about
14 some stuff that I've written down. It
15 wouldn't take too long to read it, if you
16 wouldn't mind. I just need to speak to this.

17 Q. Let me stop you. Remember I told
18 you, we're just here for that annual review
19 hearing? You're already in the program.
20 That issue has already been decided.

21 THE COURT: That is the not the
22 issue today. The question is whether or not
23 you should continue in the program, for a
24 later date. This is an annual review and
25 you're not there yet.

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1 MR. CHISHOLM: Yes, I understand
2 that.

3 THE COURT: Because you've got
4 to get to the point of being released, and
5 you're not there yet.

6 MR. CHISHOLM: Yes, sir, I
7 understand that but I'm saying that Judge
8 Williams, Judge, uh, ---

9 MR. BROOKS: He's rehashing ---

10 THE COURT: I understand that and I
11 understand that -- he certainly could have --
12 I don't know whether he could have appealed
13 that or not, but that's a review that could
14 have already -- that is already passed. The
15 only purpose of this is to determine whether
16 or not, based on the annual review, you
17 should continue in the program. I don't have
18 any evidence to the contrary.

19 In fact, you've done nothing but
20 really support what they psychiatrist said
21 this morning, with your testimony. You've
22 really confirmed by your testimony that she
23 is correct in her assessment.

24 I appreciate it, but this is not the
25 time for that hearing.

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1 Let me ask a question since I've not
2 -- since the administrative law judge's
3 appeal now go directly to the Supreme Court,
4 is this not an agency where persons can file
5 matters to be heard by the administrative law
6 judge.

7 MR. BROOKS: As far as the issue
8 that he's talking about?

9 THE COURT: Yeah. I mean, I --
10 it seems to me to be the same availability
11 that they have in prisons. I've never seen
12 one. Certainly this is an executive branch
13 and I would assume that they have access to
14 the administrative law judges. Do they?

15 MR. BOGEL: I've only practiced in
16 that court three times.

17 THE COURT: Yeah, I don't know.

18 MR. BOGEL: From what I've read
19 and from talking to judges that work there,
20 like Judge Anderson, that is kinda what they
21 do, handle ---

22 THE COURT: Yeah.

23 MR. BOGEL: --- grievances from
24 prisoners and ---

25 THE COURT: That is precisely my

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1 point. You keep talking about waiting to get
2 to court, a way to get to court. There is a
3 court. It's the administrative law court.
4 For me to go any further in advising, it
5 would be practicing law and I -- I haven't
6 practiced law in twenty-one years, so it is
7 probably a good idea that I not give any
8 advice in that regard.

9 The court is not concerned about
10 your ability to have your concerns grieved in
11 a proceeding. That is available. That is
12 not what this proceeding is for today. That
13 is the concern that I had.

14 Mine is restricted really to the
15 pleadings that bring me here. The pleadings
16 that bring me here are your Motion to have a
17 trial, basically. But there's no evidence to
18 conflict or challenge the finding which the
19 statute provides. Based on that, I think the
20 statute is pretty clear as to what the
21 recourse is. So mine is a matter of law.

22 Mr. Chisholm, you seem to want to
23 speak some more.

24 MR. CHISHOLM: Yes, sir, I do.
25 I do have evidence. I have a little bit of

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1 evidence, I have a bunch of evidence that I
2 want to speak on.

3 THE COURT: I appreciate that.
4 The evidence that you're wanting to address
5 has nothing to do with the issues that I am
6 handling today.

7 MR. CHISHOLM: Yes, sir, but I
8 just want to speak on the issue of the papers
9 that they gave me today. It says, "Where-
10 fore, the State will present and" -- quote --
11 "grant such other and further relief as is
12 just and proper."

13 THE COURT: Yeah. Well, it's
14 being denied because that's what the law
15 says.

16 MR. CHISHOLM: (Negative
17 gesture).

18 THE COURT: Your Motion is denied.
19 It's that simple.

20 MR. CHISHOLM: But ---

21 THE COURT: There is no evidence
22 to refute the findings by the agency and,
23 therefore, by law it is denied. Thank you.

24 Mr. Bogel, if you would prepare the
25 appropriate Order, please, sir.

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1 MR. BOGEL: Yes, Your Honor, I
2 will.
3 MR. CHISHOLM: I don't ---
4 MR. BOGEL: E-mail a copy to your
5 law clerk?
6 THE COURT: That would be fine.
7 MR. BOGEL: Send a copy to Mr.
8 Brooks?
9 THE COURT: Yes, sir. Copy Mr.
10 Brooks.
11 MR. BOGEL: Thank you, Your Honor.
12 THE COURT: Thank you very much.
13 Thank you, Mr. Chisholm.
14 MR. BROOKS: Thank you, Judge.
15 THE COURT: Thank you, Mr. Brooks.
16 Appreciate it.

17 (HEARING CONCLUDED)
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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Designation of Matter contains all material proposed to be included for review pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967) to the best of my ability with 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."

May 27, 2016



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