

# FALK LAW FIRM, LLC.

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March 2, 2020

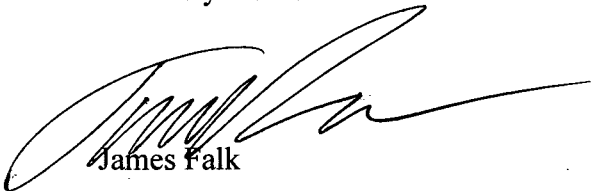
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: In the Matter of Brian Valbert 2020-000353

Dear Clerk of Court

I enclosed an Amended Order Denying Annual Review in the above case. You will note that this amended order correctly identifies respondent/ appellant's name as Brian Valbert.

Sincerely Yours



James Falk

Cc: James Bogle, Jr Esquire  
Brian Valbert

**RECEIVED**  
MAR 04 2020  
SC Court of Appeals

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
  
IN THE MATTER OF THE )  
CARE AND TREATMENT OF )  
BRIAN VALBERT, )  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE #: 2007-CP-08-03079

AMENDED  
ORDER DENYING ANNUAL REVIEW

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SC Court of Appeals

This matter came before the Court for an Annual Review hearing, pursuant to S.C. Code Ann. Section 44-48-110 of the Sexually Violent Predator Act, on January 16, 2020. The Respondent was personally present along with his attorney, James K. Falk, of Charleston. The State was represented by Senior Assistant Attorney General James G. Bogle, Jr.

The hearing covered all pending annual reviews through 2019. Testimony was received from Mr. Valbert on his own behalf, and from Chief Psychologist Dr. Kelsey Laxton and Dr. Rozanna Tross, both of the South Carolina Department of Mental Health. The Respondent was committed to the Department of Mental Health, Sexually Violent Predator Treatment Program, on or about November 6, 2008.

The issue at a hearing like this is whether or not Respondent's mental abnormality or personality disorder has so changed that he is safe to be at large and, if released, is not likely to commit acts of sexual violence. The burden is upon the Respondent to show probable cause that this has occurred.

The following procedural history lead to this hearing. In 2016, Respondent had a pending annual review where his attorney had obtained the services of Dr. Thomas V. Martin, who was prepared to testify Respondent was safe to be released. The Department of Mental Health evaluation at that time, by Dr. Amy C. Swan had found progress, and it was expected that Dr. Swan, upon seeing Respondent again and finding the same level of progress, would also recommend release. As a result, a September 7, 2016 hearing was continued by Order filed September 27, 2016, with the expectation that in the future there would be either a release hearing or an annual review trial.

It turned out that Dr. Swan did evaluate Respondent again, and recommended he be released. As part of the procedure at the Department, Respondent and Dr. Swan (by telephone) appear before the Discharge Review Board. However, after hearing from both of them, the Board declined to approve Respondent's release; thereafter, the Board had a follow-up meeting to hear more from Dr. Swan, and again denied Respondent's release. Dr. Swan's next annual review evaluation concluded Respondent's condition had not so changed to make him safe to be at large. This conclusion was reflected in annual reviews after that, including the most recent by Drs. Laxton and Tross.

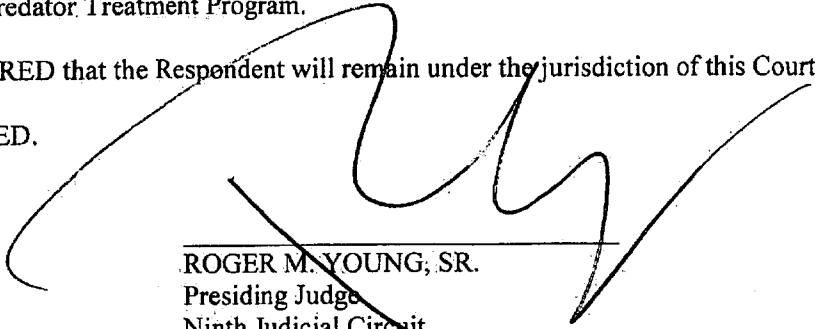
Careful consideration was given to the testimony presented, to include the difficulties and changes in Respondent and his progress in treatment over the times indicated above. While his risk to reoffend on the actuarial risk assessments is only in the average risk category, he has demonstrated a number of static risk factors, including a sexual preference for prepubescent children, lack of emotionally intimate relationships with adults, dysfunctional coping and grievance thinking. His diagnoses are Anti-Social Personality Disorder and Pedophilic Disorder, Sexually Attracted to Females, Non-Exclusive Type. I find that Respondent has not met the probable cause burden under Section 44-48-110.

*B*

IT IS HEREBY ORDERED that Respondent's annual review be and is hereby denied. He is to remain at the Sexually Violent Predator Treatment Program.

IT IS FURTHER ORDERED that the Respondent will remain under the jurisdiction of this Court.

AND IT IS SO ORDERED.



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ROGER M. YOUNG, SR.  
Presiding Judge  
Ninth Judicial Circuit  
Court of Common Pleas

February 26, 2020  
Charleston, South Carolina

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SC Court of Appeals  
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