

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 KEVIN LAMAR WRIGHT,)
)
 _____)
 RESPONDENT.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO: 2012-CP-10-01719

**ORDER DENYING ANNUAL REVIEW TRIAL
 FOR 2018-2019 AND 2019-2020**

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 JULIE J. ARMSTRONG
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 SC Court of Appeals
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This matter comes before the Court on an Annual Review Hearing to determine whether there is probable cause to believe Respondent's mental abnormality or personality disorder has changed he is safe to be at large and, if released, is not likely to commit acts of sexual violence and for an order requiring a jury trial on the issue, pursuant to S.C. Code Ann. Section 44-48-11. Respondent is represented by James K. Falk, Esquire. The State of South Carolina is represented by Deborah R.J. Shupe, Senior Assistant Deputy Attorney General.

Following a jury trial in Charleston County, Respondent was committed to the Sexually Violent Predator Treatment Program ("SVPTP") on or about June 19, 2013. As required under the statute, Respondent's mental status was periodically reviewed. During the 2018-2019 review period, Respondent sought an independent evaluation of his mental status. The independent evaluation was not completed until August 20, 2020. In the interim, Respondent's annual review for the 2019-2020 period was completed.

The Court received a letter from DMH for the 2019-2020 review period dated July 24, 2020, indicating Respondent was seeking an Annual Review hearing at which he seeks his release from the SVPTP, without approval of the DMH Director. Accompanying the letter was an Annual Examination and Review Hearing Notice dated July 22, 2020, an Annual Notice of Right to Petition for Release dated July 22, 2020, and an Annual Review Treatment Report, dated July 21, 2020, prepared by Dr. Christopher Gillen, Ph.D., on behalf of DMH.

An Annual Review hearing was held via video/WebEx on October 2, 2020. The Respondent was present by video/audioconferencing from WellPath Recovery Solutions where he is currently in-treatment. Respondent presented E. Selma Watson, Ph.D., as an expert witness, and the State presented Christopher Gillen, Ph.D., as an expert witness. The Court qualified both Dr. Watson and Dr. Gillen as experts in the field of forensic psychology, leaving the Court to weigh the credibility and presentation of two qualified experts. Both experts diagnosed Respondent with Pedophilic Disorder.

Dr. Watson testified he did not believe Respondent ever met the criteria for commitment to the SVPTP, and he believes Respondent was inappropriately committed, but he went on to opine Respondent's condition has so changed he is safe to be at large, and if released, not likely to commit future acts of sexual violence. Dr. Watson testified, in his opinion, Respondent was not a risk to reoffend if released because he has strong family support, is aware of cognitive and emotional triggers, has progressed in treatment by completing assignments, attending group sessions, and was committed to continuing treatment in an outpatient setting. Dr. Watson's opinion

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is largely based on interviews of Respondent and information provided by Respondent. Neither Dr. Watson's testimony on direct examination, nor his report discuss Respondent's dynamic risk factors or how Respondent has worked to address these factors in treatment.

Dr. Gillen testified Respondent has made some progress in areas of his treatment, but there were still issues remaining, and his mental abnormality and personality disorder had not so changed he was safe to be at large, and, if released, not likely to commit acts of sexual violence. Dr. Gillen stated Respondent has multiple dynamic risk factors which contribute to sexual recidivism including, sexual preference for prepubescent children, sexual preoccupation, a lack of intimate relationships with adults and emotional congruence with children, dysfunctional and sexualized coping, resistance to rules and supervision, and offense-supportive attitudes. Dr. Gillen opined Respondent has not satisfactorily addressed his dynamic risk factors through treatment, and noted particularly, his concern of Respondent's lack of sufficient progress in mitigating his sexual arousal and attraction to prepubescent children.

The purpose of an annual review hearing held pursuant to S.C. Code Section 44-48-110 is for the court to determine whether probable cause exists to believe "the person'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." See S.C. Code Ann. § 44-48-110. At the hearing, the committed person bears the burden of showing probable cause exists to believe his mental condition has so changed he is safe to be released. See In re Care and Treatment of Tucker, 353 S.C. 466, 578 S.E.2d 719 (2003). In the context of Sexually Violent Predator cases, a party establishes probable cause when he presents evidence which "would lead a reasonable person to believe and conscientiously entertain" the proposition set forth at the hearing. See Care & Treatment of Chandler v. State, 382 S.C. 250, 257, 676 S.E.2d 676, 680 (2009) (quoting In re the Care and Treatment of Brown, 372 S.C. 611, 643 S.E.2d 118 (Ct. App. 2007) (establishing this standard for hearings held pursuant to South Carolina Code § 44-48-80).

In the Tucker case, Tucker appealed the Circuit Court's finding of no probable cause from his annual review hearing. In that case, Tucker's expert testified that since Tucker took responsibility for his sexual offending and was "capable and motivated towards continuing sex offender treatment", that Tucker should continue his treatment in an outpatient setting. Tucker, 353 S.C. 466, 470, 578 S.E.2d 719, 721 (2003). However, DMH's expert testified that although Tucker had progressed in treatment, he had additional treatment goals that had to be met before he could be eligible for release. Id., 353 S.C. at 471, 578 S.E.2d at 722. The Supreme Court upheld the denial of probable cause stating while evidence exists Tucker could be released to an outpatient setting, he must still show his condition has so changed he is safe to be at large, and if released, unlikely to commit sexually violent acts. Id. Therefore, since Tucker failed to meet this burden, denial was proper.

As in Tucker, Respondent has shown some progress in treatment; however, he has additional treatment goals that need to be met before DMH will consider him eligible for release, specifically his dynamic risk factors discussed above. While Respondent has shown some evidence of progress, he failed to establish probable cause to believe his condition has so changed he is safe to be at large and, if released, is not likely to commit acts of sexual violence.

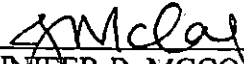
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After weighing the expert testimony offered at the hearing, the Court finds the testimony of the State's expert, Dr. Gillen, to be more credible. In addition, the Court carefully considered the documents received into the record, and the arguments of counsel. Based on this review, the Court finds the Respondent failed to meet his burden, and concludes, at this time, there is no probable cause to believe Respondent's mental abnormality or personality disorder has so changed he is safe to be at large, and, if released, not likely to commit acts of sexual violence.

THEREFORE IT IS ORDERED the Respondent shall continue to be confined in a secure facility of the Department of Mental Health for long term control, care and treatment pursuant to the Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

IT IS FURTHER ORDERED the Respondent continues under the jurisdiction of this Court.

AND IT IS SO ORDERED.



JENNIFER B. MCCOY,
Chief Administrative Judge
Ninth Judicial Circuit
Court of Common Pleas

October 28, 2020
Charleston, South Carolina

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