



RECEIVED
Mar 08 2021
SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

March 8, 2021

VIA AIS ONE DRIVE

The Honorable Jenny A. Kitchings
Clerk of Court, SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: In the Matter of the Care and Treatment of Thomas Griffin
Appellate Case No. 2018-001975

Dear Ms. Kitchings:

After a recent review of the Final Brief of Respondent in the above matter, filed on July 22, 2020, revealed page 22 was missing from the Final Brief. Based on a conversation with the case manager, I have been advised to file page 22 as soon as possible. The Court will determine if further action is needed.

A copy of page 22 will also be served by email today on counsel for the Appellant, Joanna K. Delany, Esquire.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

DRJS/se
Enclosure

cc: Joanna K. Delany, Esquire (w/enclosure by email)

of the statute, which flies in the face of well-established rules of statutory construction. *See Buscemi* (court must avoid interpretation that effectively reads a provision out of the statute).

Taken to its logical conclusion, Appellant's contention would substantially impair the State's substantial interest in protecting the public if an alleged sexual predator can claim he is too incompetent to undergo a sexual predator trial because of his mental disorder. There may well be significant overlaps between mental disorders qualifying someone for commitment as a sexual predator, and those rendering the person unable to comprehend the proceedings or assist in his defense. *See Moore*, 237 P.3d at 544 (potential overlap exists between sexual predator type mental disorders and those making the person incompetent). As discussed above, requiring competency restoration before a sexual predator trial can proceed could indefinitely, or permanently, delay sexual predator proceedings, which weighs "heavily, and in fact dispositively, against recognition of a due process right of this kind." *Id. See also, Morgan*, 330 P.3d at 779 (recognizing negative impact of requiring competency in sexual predator proceedings); *Sykes*, 367 P.3d at 1247-48 (same).

B. Ineffective Assistance of Counsel (Appellant's Issue I)

Appellant makes repeated references to the right to effective assistance of counsel in SVPA proceedings as recognized in *Matter of Chapman*, 419 S.C.172, 796 S.E.2d 843 (2017). *Chapman* held the SVPA's general statutory right to counsel encompassed the constitutional right to effective assistance of counsel, and a person committed pursuant to the SVPA could raise ineffective assistance of counsel claims via a common law petition for habeas relief. *Id.* at 846-847.

Chapman also held, however, that allegations of ineffective assistance of counsel could not be raised on direct appeal. *Id.* at 848 (merits of ineffective assistance of SVPA counsel will not be addressed on direct appeal because such claims may be raised in a habeas proceeding).

Sally Ellison

From: Sally Ellison
Sent: Monday, March 8, 2021 2:25 PM
To: 'jdelany@sccid.sc.gov'; Kasperski, Katriel
Cc: Deborah Shupe; Sally Ellison
Subject: Emailing: Griffin Thomas In the Matter of the Care and Treatment Appellate Case No. 2018-001975 Letter serving missing page 22 of FBOR (02509287xD2C78).PDF
Attachments: Griffin Thomas In the Matter of the Care and Treatment Appellate Case No. 2018-001975 Letter serving missing page 22 of FBOR (02509287xD2C78).pdf

Good Afternoon:

As set forth in the above letter, attached is page 22 of the Final Brief of Respondent. A copy of the page and this email will be filed today with the Court of Appeals. Please confirm receipt of this email.

Thank you.

Sally Ellison
Legal Assistant
SC Attorney General's Office
1000 Assembly Street
Columbia, South Carolina 29201