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SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
IN THE MATTER OF THE CARE)
AND TREATMENT OF)
JOHN O'NEIL JOHNSON,)
)

RESPONDENT.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2006-CP-26-07123

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

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 so 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 44-48-110. Respondent is represented by James K. Falk, Esquire. The State of South Carolina is represented by Suzanne J. Shaw, Assistant Attorney General.

Respondent was committed to the Sexually Violent Predator Treatment Program ("SVPTP") on or about July 15, 2008 following a voluntary waiver of his right to a jury trial and entry of the order consenting to civil commitment. As required under the statute, Respondent's mental status has been periodically reviewed. During the 2019-20 review period, Respondent sought an independent evaluation of his mental status. The independent evaluation report was not completed until November 11, 2020.

The Court received a letter from DMH for the 2019-2020 review period dated April 1, 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 and an Annual Notice of Right to Petition for Release both dated April 1, 2020, and an Annual Review Treatment Report, dated March 27, 2020, prepared by Dr. Rozanna Tross, Psy.D., on behalf of DMH. Dr. Tross' report was admitted as

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State's Exhibit 1 at the Annual Review hearing held on February 11, 2021.

An Annual Review hearing was held via video/WebEx on February 11, 2021 with the consent of all parties. The Respondent was present by video/audioconferencing from WellPath Recovery Solutions where he is currently in treatment. Respondent presented Yadira Baez-Lockard, Psy.D., as an expert witness, and the State presented Rozanna Tross, Psy.D., as an expert witness. The Court qualified both Dr. Baez-Lockard and Dr. Tross as experts in the field of forensic psychology and sexually violent predator evaluations, leaving the Court to weigh the credibility and presentation of two qualified experts. Both experts diagnosed Respondent with Other Specified Personality Disorder, with Antisocial Features.

Dr. Baez-Lockard testified she believed Respondent has completed sex offender treatment, and 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. Baez-Lockard testified, in her 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 is able to manage some of his dynamic risk factors. Dr. Baez-Lockard's opinion is primarily based on the self-serving statements and information provided by Respondent during his interviews with her. Neither Dr. Baez-Lockard's testimony on direct examination, nor her report discuss Respondent's dynamic risk factors that he has not made progress on, nor how Respondent has worked to address these factors in treatment. Dr. Baez-Lockard's report also does not take into account Respondent's lack of progress over time in treatment, his lack of substance abuse treatment which significantly contributed to his offending, his lack of completion of the SVPTP program, and his lack of engagement and motivation in treatment from 2019 to present. Dr. Baez-Lockard also failed to make any effort at collateral

contacts with the family members Respondent identified as supports, and failed to verify that his rudimentary discharge plan was, in fact, viable.

Dr. Tross testified Respondent has made some progress in his treatment, but numerous issues remain, and his mental abnormality and personality disorder has not so changed that he is safe to be at large. She opined that he remained likely to commit acts of sexual violence if released to the community. Dr. Tross stated Respondent has multiple active dynamic risk factors which contribute to sexual recidivism including a lack of intimate relationships with adults, lifestyle impulsiveness, resistance to rules and supervision, poor problem solving, grievance/hostility thinking, negative social influences, hostility toward women, callousness/lack of concern for others, and dysfunctional coping. Dr. Tross opined Respondent has not satisfactorily addressed his dynamic risk factors through treatment and, noted particularly, her concern of Respondent's lack of sufficient progress with his treatment goals over time, as well as his lack of motivation for pro-social change and to meaningfully engage in treatment. She highlighted that Respondent remains in the early phases of treatment, and has not made significant progress in his treatment goals, which have remained largely unchanged for the past twelve years,

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 that 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 multiple additional treatment goals that need to be met before DMH will consider him eligible for release, specifically his dynamic risk factors discussed above, and the need to meaningfully engage in the treatment process. While Respondent has shown some evidence of progress, in that he is less physically assaultive than he was for the first eight years of his commitment at SVPTP, he has failed to establish probable cause to believe his condition has so changed that he is safe to be at large and, if released, is not likely to commit acts of sexual violence.

After weighing the expert testimony offered at the hearing, the Court finds the testimony

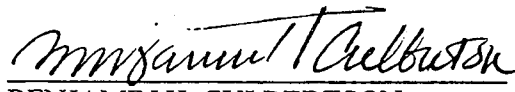
of the State's expert, Dr. Tross, to be more credible. In addition, the Court carefully considered the documents received into the record, and the arguments of counsel. Based on this review, the Court finds the Respondent failed to establish probable cause that Respondent's mental abnormality or personality disorder has so changed that he is safe to be at large, and, if released, not likely to commit acts of sexual violence.

NOW, THEREFORE, it is hereby

ORDERED, that 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, that the Respondent continues under the jurisdiction of this Court.

AND IT IS SO ORDERED.


BENJAMIN H. CULBERTSON,
Chief Administrative Judge
Fifteenth Judicial Circuit
Court of Common Pleas

February 23, 2021
Conway, South Carolina