

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 31 2021
SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2013-CP-02-01005
Appellate Case No. 2018-000527

In the Matter of the Care and Treatment of:

Richard D. Ridley.....Appellant

PETITION FOR REHEARING

PETITION

The Appellant Richard D. Ridley (Ridley) hereby petitions, in accordance with Rule 221(a) SCACR, for a rehearing of the above captioned appeal. The grounds for this Petition are that a material factual or legal matter was overlooked or misapprehended in the panel’s opinion.

WHEREFORE, Ridley prays that this Court grant his Petition for Rehearing.

MEMORANDUM IN SUPPORT

INTRODUCTION

Ridley makes this Petition on the grounds that a material factual or legal matter was overlooked or misapprehended in the panel’s opinion. More specifically, Ridley contends that the panel overlooked or misapprehended Ridley’s central argument that the DSM-5 is the peer-reviewed manual for psychiatric diagnosis and that the exclusion of biastophilia from the DSM-

V is a conclusive determination that biastophilia is not recognized as a valid psychiatric diagnosis.

POINTS AND AUTHORITIES

“When admitting scientific evidence under Rule 702 SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable.” State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 516 (1999). In assessing the reliability of scientific evidence, the trial court must consider “the degree to which the trier of fact must accept, on faith, scientific hypotheses not capable of proof or disproof in court and not even generally accepted outside the courtroom.” State v. Jones, 273 S.C. 723, 731, 259 S.E. 2d 120, 124 (1979). In applying the Jones standard, the trial court must look at several factors including:

- (1) the publications and peer review of the technique;
- (2) prior application of the method to the type of evidence involved in the case;
- (3) the quality control procedures used to ensure reliability;
- (4) the consistency of the method with recognized scientific laws and procedures.

Council, 335 S.C. at 19, 515 S.E.2d at 518; citing, State v. Ford, 301 S.C. 485, 392 S.E.2d 781 (1990).

DSM-5 is a remarkable feat of assembling and compiling a representation of those psychological disorders that are generally accepted by the psychiatric community. “After World War II, DSM evolved through four major editions into a diagnostic classification system for psychiatrists, other physicians, and other mental health professionals that describe the essential features of the full range of mental disorders.” (DSM-5 at page 6, R. pp. 382-383) Also see the section in the Introduction of the DSM-5 at page 6 on the DSM-5 Revision Process (R. pp. 382-383).

In 1999, the APA launched an evaluation of the strengths and weaknesses of DSM based on emerging research that did not support the boundaries established for some mental disorders. This effort was coordinated with the World Health Organization (WHO) Division of Mental Health the World Psychiatric Association (WPA) and the National Institute of Mental Health (NIMH) in the form of several conferences, the proceedings of which were published in a 2002 monograph entitled A Research Agenda for the DSM-5. Thereafter, the task force of 28 members was approved in 2007, and appointments of more 130 workgroup members were approved in 2008. More than 400 additional workgroup advisors with no voting authority were also approved to participate in the process. An intensive 6-year process involved conducting literature reviews and secondary analyses, publishing research reports in scientific journals, developing draft diagnostic criteria, posting preliminary drafts on the DSM-5 website for public comment, presenting preliminary findings at professional meetings, performing field trials, and revising criteria and text. (DSM-5 at 6-7, App. pp. 1 and 2)

Through this rigorous process, the relevant scientific community of psychiatrists, psychologists, other physicians, and other mental health professionals rejected other specified paraphilic disorder, non-consent or biastophilia as a valid mental health diagnosis. (R. p. 443).

Ridley's counsel cross-examined the State's psychologist on the specific issue of whether other specified paraphilic disorder, non-consent or biastophilia was rejected by the committees and compilers that produced DSM-5. The State's psychiatrist engaged in significant circumlocution, but he was finally forced to admit that the diagnosis had been rejected by the expert committees and compilers that produced DSM-5. (R. pp. 175-183).

The peer-reviewed manual for psychiatric diagnosis does not include biastophilia as a valid psychiatric diagnosis. In fact the committees that identified the diagnoses recognized as valid by the psychiatric community specifically rejected biastophilia as a valid diagnosis. Under these circumstances, the diagnosis of biastophilia was inadmissible at Ridley's trial because it fails the Jones test. This Court's opinion shows that it misapprehended Ridley's argument on this point.

CONCLUSION

This Court should grant Ridley's Petition for Rehearing.

Respectfully Submitted,



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ATTORNEY FOR APPELLANT

Columbia, SC
March 29, 2021

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In the Matter of the Care and Treatment of:

Richard D. Ridley.....Appellant

PROOF OF SERVICE

I certify that on March 29, 2021, I served the Petition for Rehearing of the Appellant in
the above appeal by mailing a copy of this filing to:

Office of the Attorney General for South Carolina
Senior Assistant Deputy Attorney General Deborah R. J. Shupe
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Columbia, SC
March 29, 2021

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MAR 31 2021
SC Court of Appeals

Arthur K. Aiken

A. Bea Hightower (Retired)

August 21, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: In the Matter of the Care and Treatment of Richard Ridley
Circuit Court Case No.: 2013-CP-02-1005
Appellate Case Number: 2018-000527

Dear Ms. Kitchings:

I have enclosed one (1) original and seven (7) copies of a Petition for Rehearing in the above-captioned appeal. Please file the original, retain six (6) of the copies, and send me the remaining clocked copy in the enclosed SASE.

By copy of this letter with a copy of the Petition enclosed, I have served a copy of the Petition on opposing counsel, Sr. Assistant Deputy Attorney General Deborah R. J. Shupe. I invite you and Ms. Shupe to call or email with any questions about the enclosed.

Thank you for your help.

Sincerely,


Arthur K. Aiken
art@aikenandhightower.com

Enclosures as stated

cc: Sr. Assistant Deputy Attorney General Deborah R.J. Shupe (w/encl. except for SASE)
Richard Ridley (w/encl. except for SASE)

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