STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable Roger M. Young, Circuit Court Judge
Appellate Case No. 2020-000697

In the Matter of the Care and Treatment
of Craig A. Carroll,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

STATEMENT OF ISSUE ON APPEAL

The record amply supports the circuit court's finding of no probable cause to believe Appellant's mental status had so changed he is safe to be at large.

STATEMENT OF THE CASE

In April 2017, a jury found Appellant Craig Carroll was a sexually violent predator beyond a reasonable doubt, and he was civilly committed pursuant to the South Carolina Sexually Violent Predator Act (SVPA). As required by the SVPA, the Department of Mental Health (DMH) reviewed Appellant's mental status annually, and in July 2019, a DMH psychologist issued an annual review report concluding Appellant's mental status had not so changed he was safe to be at large.

After a hearing, at which Appellant appeared and was represented by counsel, the Honorable Roger M. Young, Circuit Court Judge, found there was no probable cause to believe Appellant's mental status had so changed he was safe to be at large, and continued Appellant's civil commitment for long term, control, care and treatment. This appeal followed.

STATEMENT OF FACTS

In April 2017, a jury found beyond a reasonable doubt Appellant met the criteria for civil commitment pursuant to the SVPA. Thereafter, his mental status was reviewed annually, and each review found Appellant's mental status had not so changed he is safe to be at large.

In July 2019, Michelle A. Jones, J.D., Ph.D., issued an annual review report concluding Appellant's mental status had not so changed he is safe to be at large, and opining he should remain in the Sexually Violent Predator Treatment Program (SVPTP) for further long term control, care and treatment. Appellant sought and obtained an independent evaluation by Yadira Baez-Lockard, Psy.D, and requested an annual review probable cause hearing, asserting there was probable cause to believe he was safe to be at large.[1] The matter was called for a hearing on January 16, 2020, before the Honorable Roger M. Young, Circuit Court Judge.

Appellant testified about his involvement in treatment, stating he was currently enrolled in the Phase 2.1 disclosure group. He described the things he was working on in treatment, and what he had learned. He further testified he planned to attend outpatient treatment with Berkeley County Mental Health if he was released, but admitted he did not know if anyone had contacted that office about treating him, and his participation in outpatient treatment would be voluntary. He stated he did not believe he was a risk to reoffend sexually because of his support system (family members), the person he was becoming and what he had learned. (Hearing Transcript [HT], pp. 3-11; Record on Appeal [R.], pp. 6-14).

---

[1]The DMH Director did not authorize Appellant to file a release petition. *See* S.C. Code Ann. §44-48-120(A) (2018) (Director certifies in writing the resident is safe to be at large and authorizes resident to petition the court for release).

Dr. Baez-Lockhard was qualified as an expert in psychology,[2] and testified she reviewed the documents from Appellant's original commitment proceeding, his treatment records since his commitment in 2017, and the reports from Appellant's 2017-2018 and 2018-2019 annual reviews. She interviewed Appellant for approximately four hours over three occasions, and conducted psychological testing for an additional three hours. She diagnosed Appellant with antisocial personality disorder, and testified he no longer met the criteria for commitment under the SVPA based on her opinion he was no longer a risk to reoffend sexually. (HT, pp. 13-19; R., pp. 16-22).

Dr. Baez-Lockhard further testified she calculated Appellant's Static-99 score as three, which put him in the average risk to reoffend range when compared to sex offenders who had that score and reoffended. She also stated Appellant only had the dynamic risk factor of "lifestyle impulsiveness" based on his overall patterns of behavior throughout his life, nothing in the records supported any other known dynamic risk factors, and it was her opinion Appellant did not pose an unreasonable risk to reoffend sexually if released. (HT, pp. 19-27; R., pp.22-30).

On cross-examination, Dr. Baez-Lockhard agreed that the Static-99 score she calculated would be higher based on certain facts of which she was unaware. She further acknowledged that even though she concluded Appellant had "finished" his treatment in the SVP Treatment Program, he had only advanced to Phase 2.1 of the four stage treatment program. (HT, pp. 27-32; R., pp. 30-35).

Dr. Michelle Jones was qualified as an expert in forensic psychology, and testified DMH assigned her to conduct Appellant's 2018-2019 annual review. Her protocol included reviewing all documentation and treatment records from the original commitment proceeding through the

---

[2]Dr. Biaz-Lockhard stated she was licensed in forensic psychology, but there is no such license issued by the State of South Carolina. She was qualified as an expert in psychology, **not** forensic psychology. (HT, p. 17; R., p. 20).

period at issue in the annual review, scoring the Static-99R and Static-2002R, and interviewing Appellant based on her review of those records. In addition, she gathered Appellant's treatment records for several months prior to the actual hearing to get a sense of how he was progressing in treatment since she issued her report. (HT, pp. 32-35; R., pp. 35-38).

Dr. Jones diagnosed Appellant with antisocial personality disorder. She acknowledged the pre-commitment evaluation included a diagnosis of other specified paraphilic disorder – biastophilia, but stated she did not have sufficient information to make that diagnosis at the time of the annual review evaluation, and recommended in her report that the issue be explored in treatment. (HT, pp. 35-37; R., pp. 38-40).

Dr. Jones' antisocial personality disorder diagnosis was based on Appellant's behavioral problems, beginning at the age of six and continuing into adulthood. His sexual offenses included molestation of his stepmother's nine year old niece when he was thirteen years old. He had another sexual offense as a juvenile (sixteen years old), and then offended against his minor cousin as an adult. All his sexual offenses involved non-consenting victims. (HT, pp. 38-39; R., pp. 41-42).

Dr. Jones testified Appellant's treatment records indicated that while he was motivated for treatment, he had struggled with issues such as hostility, frustration and defensiveness when challenged about his sexual offenses, and he tended to overstate his treatment progress. Appellant's score on the Static-99R was seven, which was in the well above average risk category, and Dr. Jones explained in detail how she calculated that score. Appellant's score on the Static-2002R was nine, which was also in the well above average risk category. (HT, pp. 40-51); R., pp. 43-54).

In addition to his high Static scores, Dr. Jones found Appellant had numerous dynamic risk factors he needed to address in treatment, including offensive supportive attitudes, lack of

emotionally intimate relationships with adults, poor problem solving, resistance to rules and supervision, grievance and hostility, Machiavellian manipulation, and callousness. She stated Appellant had started learning about his risk factors and demonstrated some progress, but he needed further treatment to reduce his risk to reoffend, and he was not a good candidate for out-patient treatment. (HT, pp. 51-54; R., pp. 54-57).

The circuit court found there was sufficient evidence presented to support the State's contention Appellant still met the criteria for confinement and continued treatment. The court further found releasing Appellant would create a risk of him reoffending, and he should remain confined for treatment. (HT, pp. 56-60, Order Denying Annual Review Hearing, filed January 30, 2020; R., pp. 59-60, 65-66).

STANDARD OF REVIEW

"On review, the appellate court will not disturb the hearing count's finding on probable cause unless found to be without evidence that reasonably supports the hearing court's finding." In re Care and Treatment of Tucker, 353 S.C. 466, 578 S.E.2d 719, 721 (2003); *see also* In re Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338, 342 (2002) (on appeal of a non-jury law case, the findings of fact will not be disturbed unless found to be without evidentiary support); In re Care & Treatment of Corley, 365 S.C. 252, 616 S.E.2d 441, 444 (Ct. App. 2005) (trial court's probable cause ruling in SVPA annual review hearing will not be disturbed unless there is no evidence reasonably supporting it). When reviewing a trial court's rulings in a SVPA case, the appellate court will only reverse the trial court if there is no evidence to support the trial judge's ruling. In re Care and Treatment of Harvey, 355 S.C. 53, 584 S.E.2d 893, 896 (2003) (*citing* In re Matthews, 345 S.C. 638, 550 S.E.2d 311, 315 [2001]); Care & Treatment of Brown, 372 S.C. 611, 643 S.E.2d 118, 120–21 (Ct. App. 2007) (same). The appellate court is concerned with the existence of evidence, not its weight. Brown, 643 S.E.2d at 121.

ARGUMENT

The record amply supports the circuit court's finding of no probable cause to believe Appellant's mental status had so changed he is safe to be at large.

Appellant contends the circuit court erred in denying his request for a new commitment trial and finding no probable cause to believe his mental status has so changed he is safe to be at large. Appellant maintains the mere fact he presented expert testimony indicating he was safe to be at large mandates a finding of probable cause. Appellant's argument both undermines the purpose of an annual review hearing under the SVPA, and renders the presiding judge irrelevant by reducing the probable cause determination to a mere ministerial act.

In a SVPA annual review probable cause hearing, the committed person has the burden to show there is probable cause to believe his mental condition has so changed he can safely be released from civil commitment. Tucker, 578 S.E.2d at 722; S.C. Code. Ann. §44–48–110 (2018).[3] "'In the context of probable cause to believe someone to be a sexually violent predator, probable cause requires that the evidence presented would lead a reasonable person to believe and conscientiously entertain suspicion that the person meets the definition of a sexually violent predator.'" Care & Treatment of Chandler v. State, 382 S.C. 250, 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, 122–23 [Ct.App.2007]). "Probable cause 'does not demand any showing that such a belief be correct or more likely true than false.'" Brown, 643 S.E.2d at 123 (*quoting* Texas v. Brown, 460 U.S. 730, 742 [1983]). "The very term itself, 'probable cause,' does not import absolute certainty." *Id.* at 118, 122.

[3]Appellant's brief indicates he "is unaware of any published South Carolina decision addressing the appropriate probable cause standard under S.C. Code §44-48-110." (Brief of Appellant, p. 8). To the contrary, Tucker expressly addresses that issue.

In the context of an annual review probable cause hearing under the SVPA, the original commitment proceedings establish the person has a mental abnormality or personality disorder that makes him likely to commit future acts of sexual violence, and the circuit court must determine whether the evidence presented at an annual review hearing would lead a reasonable person to believe and conscientiously entertain a suspicion the person's mental status has so changed he is now safe to be at large. Making that determination necessarily requires consideration of more than the mere existence of evidence. Rather, the court must consider the credibility of the witnesses and evidence presented. *See* State v. Keith, 356 S.C. 219, 588 S.E.2d 145, 147 (Ct.App.2003) (probable cause determination requires a practical, common-sense decision based on the totality of evidence presented, "including the veracity and basis of knowledge of persons supplying information"). If, as Appellant argues, merely presenting an expert at an annual review hearing mandates a finding of probable cause, conducting the hearing itself becomes a meaningless exercise, and the circuit court's role is reduced to a ministerial function. Such a result would be absurd in light of the SVPA's express public safety purpose.

Appellant's reliance on In re Sipe, 239 P.3d 871 (Kan. Ct. App. 2010), and In re Miles, 276 P.3d 232 (Kan. Ct. App. 2012), is unavailing. In both cases, the lower court's annual review probable cause determinations were based solely on the reports prepared and submitted by experts for the state and the committed person, and the appellate court applied a *de novo* standard of review.[4] Sipe, 239 P.3d at 877; Miles, 276 P.3d at 236.

[4]Appellant correctly asserts South Carolina's SVPA was originally premised on the Kansas sexually violent predator statute, and South Carolina appellate courts relied heavily on Kansas case law in interpreting the SVPA. Since originally enacted, however, both the Kansas and South Carolina statutes have been significantly amended, and South Carolina's case law regarding the SVPA no longer relies as heavily on Kansas law. One major difference is South Carolina's appellate standard of review for probable cause determinations.

As in this case, SVPA annual review probable cause hearings are generally full evidentiary hearings with witness testimony rather than determinations based solely on expert reports, and South Carolina appellate courts apply a deferential standard of review for circuit court annual review probable cause determinations. *See* Tucker, 578 S.E.2d at 721-722; S.C. Code Ann. §44-48-110 (2018). Given the circuit court's ability to hear direct and cross-examination of witnesses as well as review submitted reports, the court has an inherent ability to consider the credibility and weight of the evidence before it, and the deferential standard of review recognizes that ability.

In this case, the circuit court received evidence from Dr. Jones detailing Appellant's progress in treatment since he entered the treatment program in 2017, including specific notes by his direct treatment providers, the current status of his mental abnormality and personality disorder, his numerous dynamic risk factors, and the multiple issues he needed to continue addressing in treatment to reduce his risk of reoffending sexually. In contrast, Dr. Biaz-Lockhard relied primarily on Appellant's version of his treatment progress and current status, and ultimately was forced to acknowledge her risk assessment calculation was erroneous because she was unaware of certain facts that substantially increased his risk assessment score. The court also heard Appellant's testimony and was able to judge his credibility directly. The totality of the evidence presented substantiated Dr. Jones' finding that Appellant tended to overstate his treatment progress and current mental status, which directly undermined the basis for, and credibility of, Dr. Biaz-Lockhard's conclusions and opinion regarding Appellant's mental status and risk to reoffend sexually.

There is ample evidence in the record supporting the circuit court's finding of no probable cause to believe Appellant's mental status had so changed he is safe to be at large. Accordingly,

the Court should affirm the circuit court's ruling and Appellant's continued confinement under the SVPA for long term control, care and treatment.

CONCLUSION

Based on the foregoing reasons, the State respectfully submits the Court should affirm the circuit court finding of no probable cause and Appellant's continued commitment for treatment pursuant to the SVPA.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

BY: Deborah R.J. Shupe
Deborah R.J. Shupe

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 18, 2021

RECEIVED
May 18 2021
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable Roger M. Young, Circuit Court Judge
Appellate Case No. 2020-000697

In the Matter of the Care and Treatment
of Craig A. Carroll,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b, SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

BY: Deborah R.J. Shupe
Deborah R.J. Shupe

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 18, 2021