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**Oct 05 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Darlington County  
The Honorable Roger E. Henderson, Circuit Court Judge  
Appellate Case No. 2018-001442

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In the Matter of the Care and Treatment of  
Larry James Tyler,

Appellant

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**REPLY TO APPELLANT’S MOTION FOR ORAL ARGUMENT**

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By letter dated October 1, 2021, the Court, “[a]fter careful consideration,” determined the Record on Appeal and the parties’ briefs were sufficient to decide the case without oral argument. Appellant responded by motion dated October 3, 2021, asking the Court to set the case for oral argument. Respondent submits the Record on Appeal contains everything that was before the circuit court in this matter, the facts and issues are exhaustively addressed in the parties’ briefs, and oral argument will only delay resolution of this appeal.<sup>1</sup>

Appellant’s counsel candidly admits, “this [motion] is personal.” (Motion, n. 10). While making vague assertions regarding the issues in the case and the necessity of oral argument, the basis of counsel’s motion is clear: he is frustrated because he believes strongly in the merits of Appellant’s case, and Appellant tried to relieve him as counsel. Rather than view the Court’s

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<sup>1</sup>In all likelihood, the losing party in this Court will seek reconsideration, and if that is denied, the party will then seek further review in the Supreme Court, all of which will certainly delay a final resolution and inevitably result in Appellant’s continued detention. It should be noted Appellant could avoid any further delay and move the case forward in circuit court by simply complying with the order compelling him to cooperate with the State’s independent evaluation. As The Honorable Ralph King Anderson often stated, Appellant “holds the key to his cell.”

decision to submit the case on the record as a testament to the many hours counsel devoted to researching and preparing the briefs on Appellant’s behalf, counsel apparently sees it as the opposite.

Counsel asserts “[e]ither the appellant or the Court has misjudged the need for oral argument,” and “appellant believes the Court will benefit from oral argument.”<sup>2</sup> Given the Court’s “careful consideration” of the 317 page Record on Appeal, the 31 page Final Brief of Appellant, the 31 page Final Brief of Respondent and the 25 page Final Reply Brief of Appellant, combined with counsel’s failure to identify any substantive issue the Court might have “misjudged” that should be explored at oral argument, there is no basis for reconsideration of the Court’s decision to submit the case rather than have oral argument.

Counsel also states this “Court does not want to hear me.” To the contrary, the Court has heard from counsel via the extensive briefs and other pleadings he prepared and submitted during the course of this appeal, including his impassioned response to Appellant’s motion to relieve him as counsel. His analysis of issues and belief in the merits of Appellant’s case are clear, and amply demonstrated by the documents before the Court, and it is difficult to envision any additional arguments counsel could offer during an oral argument.

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<sup>2</sup>Counsel’s citation to Stasi v. Sweigart, No. 2020-000677, 2021 WL 4302740 (S.C., filed September 22, 2021), as support for oral argument in this case is unavailing. Stasi involved a multi-year, complicated custody/visitation/adoption dispute, with an extraordinary set of facts and multiple family court rulings throughout the dispute. While Appellant has attempted to make this a complicated case, the facts are basically undisputed and there is only one lower court ruling at issue. As noted in the Final Brief of Respondent, the issue before this Court is relatively simple – “whether, after multiple findings of probable cause to believe the person is a sexually violent predator, a person being evaluated by a qualified expert pursuant to the SVPA can be compelled to comply with testing the expert deems necessary to complete a full psychosexual evaluation in order to determine if the person has a mental abnormality or personality disorder that makes him likely to reoffend sexually if not confined for treatment.” (FBOR, p. 8, n. 4).

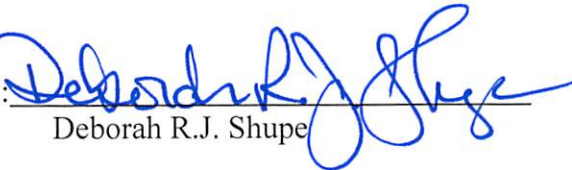
The factual and legal issues in this case (even issues Appellant raised that were expressly **not** ruled on by the circuit court) are extensively discussed in the parties' briefs. While the undersigned understands counsel's personal frustrations, and can certainly identify with them after her own 35 years of practice in the appellate courts, counsel's frustrations alone do not warrant reconsideration of the Court's carefully considered submission of this case on the record. Therefore, the Motion for Oral Argument should be denied.

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

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ATTORNEYS FOR RESPONDENT

October 5, 2021

Robert J. Rye

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In the Matter of the Care and Treatment of  
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**PROOF OF SERVICE**

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I, Sally Ellison, certify I served the Reply to Appellant's Motion for Oral Argument on counsel for the Appellant by electronic mail to the address listed for counsel in AIS. A paper bound copy will be sent by United States mail, postage prepaid, addressed to:

Thomas F. McDow, Esquire (1 copy)  
PO Box 891  
Rock Hill, SC 29731-6891  
thomasmcdow@mddowlaw.com

Robert M. Dudek (1 copy)  
Chief Appellate Defender  
SC Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
rdudek@sccid.sc.gov

I further certify that all parties required by Rule to be served have been served.

This 5<sup>th</sup> day of October, 2021



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SALLY ELLISON  
Legal Assistant

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(803) 734-3727

## Sally Ellison

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**From:** Sally Ellison  
**Sent:** Tuesday, October 5, 2021 9:49 AM  
**To:** thomasmcdow@mcdowlaw.com; 'rdudek@sccid.sc.gov'  
**Cc:** Deborah Shupe; Victim Services; Sally Ellison  
**Subject:** In the Matter of the Care and Treatment of Larry James Tyler  
**Attachments:** Letter to McDow and Dudek serving Reply to Motion for Oral Argument (02731407xD2C78).PDF; Reply to Appellant's Motion for Oral Argument (02731388xD2C78).PDF

Good Morning:

Attached for service this date is the Respondent's Reply to Appellant's Motion for Oral Argument with Certificate of Service and cover letter in the above matter. These documents will be filed today with the Court of Appeals through AIS One Drive. A copy will also be provided to you as indicated on the attached Proof of Service.

**SALLY ELLISON**, Legal Assistant  
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