

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

In the Matter of the Care and Treatment of Thomas
Griffin, Appellant.

Appellate Case No. 2018-001975

Appeal From Horry County
William H. Seals, Circuit Judge
D. Craig Brown, Circuit Court Judge

Opinion No. 5839
Heard June 9, 2021 – Filed July 21, 2021

AFFIRMED

Appellate Defender Joanna Katherine Delany, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia, for Respondent.

WILLIAMS, J.: Thomas Griffin appeals his commitment to the South Carolina Department of Mental Health (the Department) as a sexually violent predator (SVP). On appeal, Griffin argues the trial court violated his procedural due process rights in denying his request for a competency evaluation. We affirm.

FACTS/PROCEDURAL HISTORY

In 1999, Griffin pled guilty but mentally ill to assault with intent to commit criminal sexual conduct (CSC) with a minor in the second degree. The plea court sentenced him to twenty years' imprisonment. Prior to his release, the State filed a

petition for Griffin's civil commitment to the Department pursuant to the Sexually Violent Predator Act¹ (the Act).

Prior to trial, Griffin moved for a competency evaluation. The trial court held a hearing on the matter and denied Griffin's motion, finding the Act does not require a prisoner to be competent for SVP proceedings.²

On the first day of trial, Griffin again moved for a competency evaluation. Finding it could not overrule the prior holding, the trial court denied the motion.³

At the close of trial, the jury found beyond a reasonable doubt that Griffin posed a danger to society, and the trial court filed an order of commitment. This appeal followed.

ISSUE ON APPEAL

Did the trial court violate Griffin's procedural due process rights in denying his pretrial motion for a competency evaluation?

STANDARD OF REVIEW

"Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." *In re Oxner*, 430 S.C. 555, 561, 846 S.E.2d 365, 369 (Ct. App. 2020) (quoting *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 424 S.C. 542, 547, 819 S.E.2d 124, 126 (2018)).

LAW/ANALYSIS

Griffin argues the trial court violated his procedural due process rights in denying his pretrial motion for a competency evaluation. We disagree.

The General Assembly enacted the Act to establish the "involuntary civil commitment process for the long-term control, care, and treatment of sexually violent predators." § 44-48-20. "The United States Supreme Court 'repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.'" *In re Chapman*, 419

¹ S.C. Code Ann. §§44-48-10 to -170 (2018).

² The hearing occurred before the Honorable William H. Seals.

³ The Honorable D. Craig Brown presided over the trial.

S.C. 172, 179, 796 S.E.2d 843, 846 (2017) (quoting *Addington v. Texas*, 441 U.S. 418, 425 (1979)). Our supreme court has found that "to satisfy due process, prisoners suffering from a mental disease or defect requiring involuntary commitment must be provided with independent assistance during the commitment proceeding." *Id.* However, our appellate courts have not yet addressed the issue raised by Griffin: does a potential SVP's right to counsel naturally encompass the right to be competent to assist counsel in his or her defense during the civil commitment trial? We find it does not.

"The cardinal rule of statutory construction is that the court ascertain and effectuate the intent of the legislature." *Odom v. Town of McBee Election Comm'n*, 427 S.C. 305, 310, 831 S.E.2d 429, 432 (2019). In construing the Act in its entirety, we can find no statutory requirement of competence for proceedings arising under the Act. Rather, it appears the General Assembly contemplated the likelihood of a potential SVP to be incompetent to adequately assist in his or her own defense. This is apparent from the numerous safeguards the Legislature included to ensure an individual's constitutional right to procedural due process is not violated, such as the opportunity for appointed counsel, the requisite probable cause hearing, the appointment of qualified experts for psychological examinations, the right to a jury trial in which a unanimous verdict is required, the imposition on the State of the highest burden of proof of beyond a reasonable doubt, the ability to appeal, the ability to petition for release, annual examinations, etc. We find such protections sufficiently satisfy the requirements of procedural due process. *See Blanton v. Stathos*, 351 S.C. 534, 541, 570 S.E.2d 565, 569 (Ct. App. 2002) ("Due process is flexible and calls for such procedural protections as the particular situation demands."). Furthermore, our precedent supports this conclusion. *See Oxner*, 430 S.C. at 566–69, 846 S.E.2d at 371–73 (finding the appellant's procedural due process rights were not violated when the appellant was incompetent for the SVP probable cause hearing); *c.f. Council v. Catoe*, 359 S.C. 120, 125, 597 S.E.2d 782, 784–85 (2004) (finding "the constitutional protections that forbid a criminal trial of a mentally incompetent defendant do not apply" in PCR actions).⁴ Thus, we find a prisoner is not entitled to be competent to stand trial under the Act.

⁴ Several jurisdictions have made similar findings. *See Moore v. Superior Court*, 237 P.3d 530 (Cal. 2010); *In re Commitment of Weekly*, 956 N.E.2d 634 (Ill. App. Ct. 2011); *In re Det. of Cabbage*, 671 N.W.2d 442 (Iowa 2003); *In re Sykes*, 367 P.3d 1244 (Kan. 2016); *Commonwealth v. Nieves*, 846 N.E.2d 379 (Mass. 2006); *In re Det. of Morgan*, 330 P.3d 774 (Wash. 2014).

Based on the foregoing, we hold the trial court did not err in denying Griffin's pretrial motion for a competency evaluation.⁵

CONCLUSION

Accordingly, Griffin's commitment is

AFFIRMED.

THOMAS and HILL, JJ., concur.

⁵ Because our finding above is dispositive of the appeal, we decline to address Griffin's remaining issue of whether the trial court erred in denying Griffin's second motion for a competency evaluation. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).