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Nov 08 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.

Appeal from Charleston County
The Honorable Jennifer B. McCoy, Circuit Court Judge
Appellate Case No. 2020-001551

In the Matter of the Care and Treatment
of Kevin Lamar Wright,

Appellant.

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2021-000249

In the Matter of the Care and Treatment
of John O'Neil Johnson,

Appellant.

**RETURN TO APPELLANTS' MOTION TO CONSOLIDATE APPEALS OR
CERTIFY CASES FOR REVIEW BY THE SUPREME COURT**

Appellants in the above captioned cases move for consolidation of their appeals, or alternatively, for certification of their cases to the Supreme Court. These cases involve circuit court decisions in annual review hearings required by the South Carolina Sexually Violent Predator Act (SVPA). S.C. Code Ann. §44-48-110 (2018). In response, Respondent submits the following:

Motion to Consolidate

Respondent has not served and filed its Initial Brief in In re Johnson, Appellate Case No. 2021-000249. While Appellants' stated issue on appeal in these cases is identical, the underlying facts of each case are very different, and application of those facts to the issue on appeal will require individual analysis. Contrary to Appellants' assertions, these cases do not boil down to a single issue of law. As discussed below, the issue is not novel, and the decision in each case will depend on whether the evidence in the individual records supports the circuit courts' rulings. Respondent submits consolidation of these appeals will not decrease the time or resources necessary for the Court to resolve them.

Motion to Certify

Appellants assert certification of their cases to the Supreme Court is warranted because their appeals involve a novel issue without any published South Carolina appellate decisions. The contention there is no precedent defining the probable cause standard at annual review hearings is incorrect. The Supreme Court specifically addressed the annual review probable cause issue in In re Tucker, 353 S.C. 466, 578 S.E.2d 719 (2003). As in these cases, Tucker involved conflicting expert testimony at an annual review probable cause hearing regarding whether Tucker's mental

status had so changed he was safe to be at large. In affirming the circuit court's finding of no probable cause to believe Tucker's mental status had so changed he was safe to be at large, the court stated: "[i]n a § 44-48-110 probable cause hearing, the committed person has the burden of showing the hearing court that probable cause exists to believe that his mental condition has so changed that he is safe to be released," and "the appellate court will not disturb the hearing court's finding on probable cause unless found to be without evidence that reasonably supports the hearing court's finding." *Id.* at 721. *See also, In re Chandler*, 382 S.C. 250, 676 S.E.2d 676, 680 (2009) ("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.") (quoting *In re Brown*, 372 S.C. 611, 643 S.E.2d 118, 122-23 [Ct.App.2007]).

Based on Tucker, Chandler and Brown, the committed person in an annual review probable cause hearing must present evidence that would lead a reasonable person to believe and conscientiously entertain suspicion that the person's mental status has so changed he is safe to be at large, and the circuit court's probable cause finding must be reasonably supported by the evidence. Thus, the probable cause standard for annual review hearing is **not** novel as Appellants claim.

Respondent does not dispute Appellants' liberty is at issue in an annual review probable cause hearing; however, the SVPA provides multiple due process safeguards for individuals subject to its terms. Appellants' were afforded significant protections, including the right to counsel, the right to an independent evaluation (at State expense), and the right to a full evidentiary hearing.

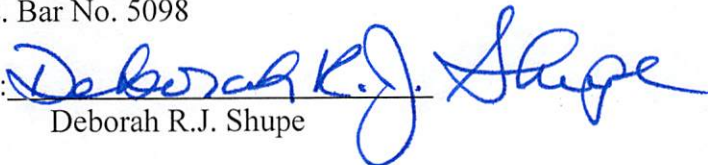
Rule 204(b), SCACR, provides that “[c]ertification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance,” As set forth above, the legal issue as stated by Appellants does not involve either “an issue of significant public interest or a legal principle of major importance.” The probable cause standard in SVPA cases has already been resolved, and there is no basis for certifying these cases to the Supreme Court without initial consideration by this Court.

Based on the foregoing, the State respectfully submits Appellants’ Motion to Consolidate or Certify these appeals to the Supreme Court 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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November 8, 2021

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PROOF OF SERVICE

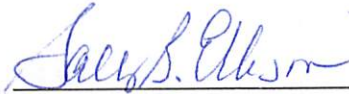
I, Sally B. Ellison, certify I served the within Return To Appellants' Motion To Consolidate Appeals Or Certify Cases For Review By The Supreme Court on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

James K. Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29211

The Return To Appellants' Motion To Consolidate Appeals Or Certify Cases For Review By The Supreme Court also been filed with the Court of Appeals through the AIS system.

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

This 8th day of November 2021.



SALLY B. ELLISON
Legal Assistant

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Sally Ellison

From: Sally Ellison
Sent: Monday, November 8, 2021 8:37 AM
To: 'jfalklaw@gmail.com'
Cc: Deborah Shupe; Sally Ellison; Victim Services
Subject: In the Matter of the Care and Treatment of Craig A. Carroll Appellate Case No. 2020-000697
Attachments: CRAIG CARROLL 2020-00697 Scanned letter to Jim Falk serving Return to Appellants- Motion to Consolidate Appeals. (02810890xD2C78).pdf; CARROLL Craig Allen et. al. 2020-00697 SCANNED Return to Appellants' Motion to Consolidate Appeals (02810887xD2C78).pdf

Good Morning:

Attached for service upon you this date, is the State's Return to Appellants' Motion to Consolidate Appeals or Certify Cases for Review by the Supreme Court, with Proof of Service. The original will be filed today through the AIS system. As indicated on the Proof of Service, two copies of the State's Return will be deposited in the US Mail today for service upon you.

SALLY ELLISON, Legal Assistant
South Carolina Attorney General's Office
Criminal Division – SVP Unit | Office 803-734-4156
P.O. Box 11549 | Columbia, SC 29211
scag.gov



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