

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger M Young

RECEIVED
Oct 28 2021
SC Court of Appeals

IN THE MATTER OF THE CARE AND
TREATMENT OF CRAIG A CARROLL

APPELLANT

APPELLATE CASE NO. 2020-000697

MOTION TO CONSOLIDATE APPEAL WITH THE FOLLOWING CASES:

In The Matter of the Care and Treatment of Kevin L Wright Appellate Case No: 2020-001551;

In the Matter of the Care and Treatment of John O'Neil Johnson, Appellate Case No: 2021-0249

ALTERNATIVELY, MOTION TO CERTIFY CASES FOR REVIEW BY THE SUPREME
COURT

Appellants Craig A Carroll, Kevin L Wright, and John O'Neil Johnson, by and through undersigned counsel and pursuant to Rule 214, SCACR move to consolidate their cases for appellate review. Additionally, or in the alternative Appellants Craig A Carroll, Kevin L Wright, and John O'Neil Johnson, by and through undersigned counsel and pursuant to Rule 204, SCACR move to certify either individually or as a consolidated action their cases for review by the Supreme Court. As grounds for these motions Appellants state:

INTRODUCTION

1. *In the Matter of the Care and Treatment of Craig A Carroll*, Case No. 2020-00697. On April 23, 2020 Appellant filed a Notice of Appeal from the Honorable Roger M Young Sr's decision in Berkeley County Court case 2015-CP-08-2677 denying Appellant an annual review trial pursuant to SC Code § 44-48-110. The S.C. Appellate Case Management system describes this case as being "ready for consideration".
2. *In the Matter of the Care and Treatment of Kevin L Wright*, Case No. 2020-1551. On November 23, 2020 Appellant filed a Notice of Appeal from the Honorable Jennifer B McCoy's decision in Charleston County Court case 2012-CP-10-1719 denying Appellant an annual review trial pursuant to SC Code § 44-48-110. The S.C. Appellate Case Management system describes this case as being "ready for consideration".
3. *In the Matter of the Care and Treatment of John O'Neill Johnson*, Case No. 2021-0249. On March 8, 2021 Appellant filed a Notice of Appeal from the Honorable Benjamin H Culbertson's decision in Horry County Court case 2006-CP-26-7123 denying Appellant an annual review trial pursuant to SC Code § 44-48-110. Appellant filed his Amended Initial Brief on October 25, 2021.
4. Deborah R.J. Shupe, Esquire in counsel of record for the Respondent in all three cases.

MOTION TO CONSOLIDATE

5. Consolidation is proper when the same question is involved in the appeal of two or more different cases. An identical Statement of the Issue on Appeal was asserted Appellants' briefs in all three cases, namely:

At Appellant's Sexually Violent Predator annual review hearing under SC Code § 44-48-110, whether the trial court applied the wrong burden of proof.

in violation of due process, when it looked beyond the mere existence or non-existence of evidence and instead considered the weight of the evidence that Appellant presented to determine whether Appellant provided probable cause that his condition had so changed that he was safe to be released from the Sexually Violent Predator Treatment program.

6. In all three cases the Appellant called a forensic psychologist to testify. In both Mr Carroll's and Mr Johnson's cases, counsel called Dr Yadira Baez-Lockard, PsyD and in Kevin Wright's case counsel called Dr. E. Selman Watson, Ph.D. to testify. In all three cases the Court allowed Appellants' witnesses to testify as experts in the field of forensic psychology. .
7. A different expert from the South Carolina Department of Mental Health was called as an expert in each of the cases: Dr Michelle A Jones testified in Mr Carroll's case; Dr Christopher T.A. Gillen testified in Mr Wright's case; and, Dr. Rozanna Tross testified in Mr Johnson's case.
8. In all three cases the circuit court judge ruled that the testimony from the State's witness was more credible than that of Appellant's witness and on that basis denied setting annual release trials.
9. Since the same issue is raised on appeal in each case, and there are no significant differences in the facts of the three cases, there is no bar to consolidating these three cases for review. Counsel seeks consolidation in order to insure a uniform resolution of all three cases.

MOTION TO CERTIFY CASES TO THE SUPREME COURT FOR REVIEW

10. In addition to asking that these three cases be consolidated for review, undersigned counsel asks the Court to certify all three cases either individually or as consolidated to the Supreme Court for review.
11. Certification of issue raised in these three cases is appropriate because: 1) the issue raised would be one of first impression before the Court; 2) the issue arises annually for each individual committed to the sexually violent predator treatment program; 3) and the issue implicates Appellant's due process interests.
 - a. Counsel is informed and believes that there are no published South Carolina appellate decisions that define the probable cause standard as it would apply to a committed individual's burden of proof at a sexually violent predator annual review hearing. South Carolina case law defines probable cause as it applies in criminal cases to the State's burden at a preliminary hearing; and, in Sexually Violent Predator actions as it applies to the State's burden under SC Code § 44-48-080 to initiate a pre-commitment action.
 - b. On information and belief there are currently 206 individuals committed to the Sexually Violent Predator Treatment Program and the issue raised in these appeals could arise every year for each of these individuals. S.C. Code § 44-48-110 provides that each person committed to the program must be evaluated annually to determine whether their *mental abnormality or personality disorder has so changed that the person is safe to be at large and if released is not likely to commit acts of sexual violence*. The circuit court from which the individual was committed is required to conduct an annual hearing to review the status of the committed person.

If at the annual review hearing the committed person can show that probable cause exists to believe that the his condition has so changed, the court must schedule a trial on the issue.

- c. Appellants' continued commitment to the sexually violent predator treatment program significantly impacts their liberty interests. Therefore Appellants would face substantial prejudice for each day they remain in the treatment program if they were denied a release trial under S.C. Code § 44-48-110 as a result of the trial court's misapplying the appropriate burden of proof at their annual review hearing.
- d. Since no controlling precedent currently exists, undersigned counsel is informed and believes that both sides of this litigation would appeal an adverse ruling from the Court of Appeals. Therefore certification of these cases would expedite a final resolution of the issues raised.

Respectfully Submitted,

S/ *James Falk*

James Falk
Falk Law Firm
PO Box 1058
CHARLESTON, SC 29402
(843) 606-6007
Attorney
Craig A Carroll
Kevin L Wright
John O Johnson