

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M Young, Jr. Circuit Court Judge

THE MATTER OF THE CARE AND TREATMENT OF BRIAN VALBERT

Appellate Case No. 2020-000353

BRIAN VALBERT, APPELLANT, PRO-SE

PRO-SE BRIEF

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SC Court of Appeals

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ARGUMENT

 a) The court erred in hearing the case as it was presented.
 i.e., hearing multiple years annual hearings all at once. Appellant asserts that this is a Due Process Violation. 44-48-110 clearly states; The Court must conduct an annual hearing to review the status of the committed person. Appellant asserts that 44-48-110 does not allow for multiple Annual Hearings to be heard, since this would preclude the committed person from having the prescribed Annual Hearing with each years evaluator(s).

 b) Appellant has a right to effective assistance of counsel as prescribed in Title 44-48-90. Appellant's counsel failed to produce a defense in that Counsel failed to obtain an Independent Psychologist's Opinion, and have said Psychologist appear in Court as is appellant's right and Order of the court pursuant to 44-48-90 & 44-48-110

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STATEMENT OF ISSUES ON APPEAL

Whether the Court erred in hearing Annual Hearing for the calendar year of 2019 when no hearings had yet been concluded for the years of 2015, 2016, 2017 and 2018 which were conducted by other State Psychologists, who had differing views of appellants treatment needs.

Appellant asserts that his Constitutional Rights to Due Process were violated when the Court held the Annual hearing only for the calendar year 2019, when the Court also agreed that there had been "some" procedural issues in this case.

Whether counsel's failure to ensure an Independent Evaluation had been conducted resulted in counsel representing appellant in a standard far below the standards of professional conduct as prescribed by S.C. Annotated Code: Title 44-48-90 & 44-48-110. The U.S. Supreme Court has previously recognized section 44-48-90 provides a statutory right to counsel distinct from the Sixth Amendment right to counsel afforded in criminal proceedings. Given the significant due process implications inherent in civil commitments, The Supreme Court Found section 44-48-90's right to counsel a constitutional one arising under the Fourteenth Amendment and South Carolina Constitution. *Vitek*, 445 U.S. at 496-97; *In re Care & Treatment of Ontiberos*, 287, P.3d 855, 864-65 (Kan. 2012); (examining the three due process factors espoused in *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976) concluding there is a constitutional right to counsel arising under the Fourteenth Amendment and the State Constitution with regards to SVP commitment proceedings.

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PRO-SE BRIEF

Appellant Brian Valbert, moves this Court for the reversal of Order Denying Annual Review and for any other relief it deem proper for the following:

Appellant contends that the Court Erred for the following:

1. The Court had already concluded that probable cause existed and had ordered that Appellant receive either:
A: A contested Annual Review Jury Trial, or
B: A Release Hearing.
In an Order Filed on September 27, 2016 by the Honorable Diane Shafer Goodstein.
(Exhibit A)
2. The Court Erred by: Hearing Multiple Annual Review Hearings, 2015, 2016, 2017, 2018, 2019 all in one hearing (see Court Transcript pg 3, line 9-10), thereby denying Appellant of the Right to have an "Annual Hearing to Review the Status of the Committed Person", as is required by South Carolina Annotated Code; Title 44-48-110.
3. By: Denying Annual Review when in fact the Court Agreed that there had been some Procedural issues related to what happened in the past, referring to getting the Appellant his Jury Trial. (Transcript pgs 3-7 & 49-51) Thereby agreeing that Due Process of law had yet to be concluded.

Therefore Appellant claims the Court Erred by:

1. Not Having Jurisdiction to hear the case due to Due Process issues.
2. Holding multiple years annual reviews thereby denying Appellant of his right to an "Annual Hearing to Review the Status of the Committed Person, as is required by South Carolina Annotated Code; Title 44-48-110. Also a clear Due process violation.

Appellant contends: Ineffective Assistance of Counsel of James Kristian Falk for the following:

1. Failing to adequately prepare for the case in that he;
 - A: Was appointed to represent the Appellant in April 2017, and according to Berkeley County Clerk of Court, July 19, 2019, had filed one motion, (Exhibits B & C)
A Motion for Funding to Conduct an Independent Evaluation, Dated 4-9-2018, as was suggested by Assistant Attorney General James G. Bogle Jr. in an email dated January 18, 2018 (Exhibit D, pg 2 #6)
This evaluation was never conducted.
(Exhibit E)
A second Motion for funding was filed on January 7, 2020, just 9 days prior to the Annual Review Hearing, and this was signed and ordered by the court on January 16, 2020, the same day as appellant's court appearance.
(Exhibit F)
 - B: By failing to file documents in a timely manner, i.e., Motions for Hearings, Annual Review Rebuttals, etc. that Appellant continually sent to counsel,
(Exhibit G)
And that counsel acknowledged,
(Exhibit H)
thereby causing this case to become so far behind that Appellant now cannot obtain a **Fair Hearing** in the matter.
2. Failing to ensure an Independent Evaluation had been conducted even though Appellant and The Assistant Attorney General James G. Bogle Jr. continually reminded counsel to do so.
(Exhibits D-I)
Thereby failing to Produce a Defense by not having an Independent Doctor's Opinion to argue against the State as is Appellant's right, and was Ordered by The Court.
(Exhibits C & F) and S.C. Annotated Code: Title 44-48-110
Additionally, the Independent Evaluation Ordered above on January 16, 2020 did in fact result in the Opinion that to a reasonable degree of scientific certainty that at this time, there is sufficient basis to opine that Appellant's Mental Abnormality has so changed that Appellant is now safe to be at large and no longer likely to engage in acts of sexual violence.
(Dated February 21, 2021; Filed with Court)

According to South Carolina Annotated Code, Title 44-48-110 Appellant has a right to be represented by an attorney at the hearing.

Appellant contends that James Kristian Falk failed to provide a defense by failing to Update the Independent Evaluation whereby it was Previously Determined that the Appellant no longer meets the Definition of a Sexually Violent Predator, resulting in counsel representing Appellant in a standard far below the standards of professional conduct and that Appellant was Prejudiced by the Court due to the deficiency to the extent that there is reasonable probability that, but for counsel's unprofessional conduct / errors, the result of the hearing would have been different.

3. Communication, Rule 1.4 of the Model Rules of Professional Conduct states:
- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
 - (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

In this Hearing, James Kristian Falk was to represent Appellant's interests and as can be seen from the Court Transcript (pages 3-7) Appellant was misled to believe that the hearing being conducted was for the purpose of obtaining the Contested Annual Review Jury Trial.

However, as can be seen from multiple Email's sent to Assistant Attorney General James Bogle, James Kristian Falk not only knew, but actively pursued to have the posture of the case changed to an Annual Review Hearing.

(Exhibits J in reverse order pg 8 to 1)

And appears to have succeeded based on the Motion filed by Assistant Attorney General James G. Bogle Jr. on November 1, 2018.
(Exhibit K)

This falls under the reasonable Communication between a lawyer and his client and is necessary for the client to make informed decisions in regard to the attorneys Representation, as well as Rule 1.2[A] Scope of representation stating: A Lawyer shall abide by Clients decisions concerning the objectives of representation, and as required by Rule 1.4 shall consult with the client as to the means which they are to be pursued.

None of which ever occurred. Appellant had multiple telephone conversations with James Kristian Falk and in each counsel asserted that he would meet with Appellant prior to any Court appearance, and this never happened.

Controlling Standard:

This is a new procedure with regard to SVP matters. In Chapman, the Court held "the more appropriate standard in these instances is the two-prong Strickland standard used to vindicate a criminal defendant's Sixth Amendment Right to Counsel."

Chapman, 419 S.C. at 184-185, 796 S.E. 2d at 849.

The proper range of performance is whether the attorney provided representation within the range of competence required in a case of this nature. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984).


Because of this, counsel's performance is measured by it's reasonableness under professional norms. And if deficient, that performance must also have prejudiced Petitioner to the extent there is reasonable probability that, but for counsel's unprofessional errors, the result of the trial would have been different.

Cherry v. State, 300 S.C. 115, 117, 386 S.E. 2d 624, 625 (1989)

CONCLUSION

For these alone Appellant contend that the Court's Ruling should be reversed.

Based upon the foregoing, the Appellant hereby contends that his rights were so violated that there can no longer be a fair hearing in this matter, therefore Appellant demands that this Court enter a motion for his immediate release, and any such other further releif as the Court may deem appropriate.



Brian Valbert

Appellant

PRO-SE

This 28th day of February, 2022.

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 28, 2022 deposited a true and accurate copy of the Pro-Se Brief in the Postal Mail Box with sufficient first class postage affixed, and addressed to the South Carolina Court of Appeals P.O. Box 11629 Columbia, S.C. 29211, and Deborah R.J. Shupe, Esquire office of the South Carolina Attorney General P.O. Box 11549 Columbia, S.C. 29211, and The Berkeley Circuit Court Clerk 300-B California Ave. Moncks Corner, S.C. 29461.

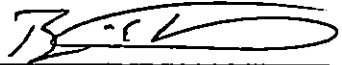
I further certify that all parties required to be served by Rule to be served have been served this day. February 28, 2022.

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COVER LETTER

Appellant hereby asserts that he is filing this Pro-Se Brief due to Defense Counsel filing an Anders Breif on this case. Appellant hereby certifies that appellant was unaware of having counsel, no mailings were ever received other than the notification from The South Carolina Court of appeals, whereby Counsel James Kristian Falk was relieved as counsel.

Appellant also asserts that under Douglas v. California a case must be seen through, therefore Appellant asserts that he is entitled to continued representation by counsel, whomsoever has been appointed to represent this Appeal.



Brian E. Veltart
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CERTIFIED MAIL



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