

RECEIVED

Mar 24 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2020-000353

The State of South Carolina, ... Respondent,

v.

Brian Valbert, ... Appellant.

In the Matter of the Care and Treatment of Brian Valbert.

RECORD ON APPEAL

Deborah R.J. Shupe, SC Bar #5098
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
(803) 734-3797
dshupe@scag.gov
Attorney for Respondent

Michael S. Gambrell, SC Bar # 70044
104 South Calhoun Street
Greenville, South Carolina 29601
(864) 867-1415
michael@michaelgambrell-law.com
Attorney for Appellant

INDEX

Orders

Order dated September 7 and filed September 27, 2016	1
Order Denying Annual Review dated January 22 and filed February 3, 2020	3
Amended Order Denying Annual Review dated February 26 and filed March 2, 2020	5

Transcripts

Transcript of Record dated January 16, 2020	7
Brian Valbert - Direct Examination by Mr. Falk	9
Dr. Kelsey Laxton - Direct Examination by Mr. Bogle.....	18
Dr. Kelsey Laxton - Voir Dire by Mr. Falk of Dr. Kelsey Laxton	20
Dr. Kelsey Laxton - Voir Dire by The Court of Dr. Kelsey Laxton.....	22
Dr. Kelsey Laxton - Voir Dire by Mr. Bogle of Dr. Kelsey Laxton.....	24
Dr. Kelsey Laxton - Resume Direct Examination by Mr. Bogle.....	25
Dr. Kelsey Laxton - Cross-Examination by Mr. Falk.....	42
Rozann Tross - Direct Examination by Mr. Bogle	46
Rozann Tross - Cross-Examination by Mr. Falk	48
Brian Valbert - Redirect Examination by Mr. Falk	50

Other Documents

Letter to Judge Young date March 14, 2019.....	59
Annual Examination and Review Hearing Notice dated March 12, 2019.....	61
Annual Notice of Right to Petition for Release, Elections to Waive or Exercise Rights dated March 12, 2019	63
Sexually Violent Predator Annual Review Report dated March 12, 2019	64
Certificate of Counsel	82

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)
 IN THE MATTER OF THE CARE) CASE #: 2007-CP-08-03079
 AND TREATMENT OF)
)
 BRIAN VALBERT,)
)
 RESPONDENT.)

ORDER

FILED
 16 SEP 27 AM 9:59
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

This matter is pending before the Court pursuant to the Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10, *et seq.* The Respondent, Mr. Valbert, is represented by Charles T. Brooks, III and the State of South Carolina by Senior Assistant Attorney General James T. Bogle, Jr. Mr. Valbert was committed to the Sexually Violent Predator Treatment Program on November 6, 2008, and his case is currently before the Court for an annual review hearing on September 7, 2016, pursuant to S.C. Code Ann. Section 44-48-110.

The Court conducted a status conference with the attorneys on August 26, 2016. The following was presented. At the hearing scheduled for September 7, Mr. Brooks plans to present the expert testimony of Dr. Thomas V. Martin, a psychiatrist who has evaluated his client. Dr. Martin will testify that Mr. Valbert's mental abnormality has so changed that he is safe to be at large and be released from the SVP program.

The State's witness is Dr. Amy C. Swan. In her most recent Annual Review Treatment Report dated April 16, 2016, she had concluded that there was insufficient basis to opine that Mr. Valbert's situation had so changed that he was safe to be at large and, if released, would not engage in acts of sexual violence.

However, Mr. Bogle informed the court during the status conference that he had spoken with Dr. Swan on August 26, and that she had advised him that she had seen Mr. Valbert in June 2016 and that he had completed a number of assignments and other work that she had previously found lacking last Report. Mr. Bogle further stated that Dr. Swan had advised him that she verified these matters with Mr. Valbert's treatment chart, was scheduled to see him again on or about September 21, 2016, and that if matters were still the same with Mr. Valbert then, that she was going to recommend his release from the SVP Treatment Program. It was Mr. Bogle's understanding that she would testify to that at the hearing on September 7, 2016.

Based upon the foregoing, the State is stipulating that if the hearing was to go forward on September 7, and the testimony of the two expert witnesses was presented as outlined herein, the Court would make a finding of probable cause in favor of Mr. Valbert. The result would be an annual review jury trial in the future, if it turned out that Mr. Valbert's progress and conduct had deteriorated since Dr. Swan saw him in June and when she met with him September 21; on the other hand, if Dr. Swan's September 21 appointment showed Mr. Valbert's progress and treatment were

JB

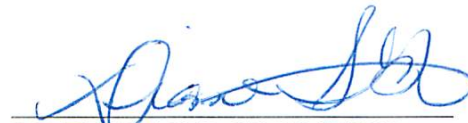
12

still satisfactory, she would recommend release, and a Release Hearing would be conducted at a future date before a judge.

Based upon the information gleaned from the status conference on August 26 as set forth herein,

IT IS HEREBY ORDERED that the September 7, 2016 annual review hearing be and hereby is continued, subject to the State's stipulation and the understanding of all parties that this matter will be resolved in the future by either a contested Annual Review jury trial or a Release Hearing.

AND IT IS SO ORDERED.



DIANE SHAFER GOODSTEIN

Circuit Judge

Ninth Judicial Circuit

Court of Common Pleas

9-8, 2016
Monica Corio South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE MATTER OF THE)
CARE AND TREATMENT OF)
MICHAEL VALBERT,)
)
RESPONDENT.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE #: 2007-CP-08-03079

ORDER DENYING ANNUAL REVIEW

FILED
CLERK OF COURT
BERKELEY COUNTY, SC

20 FEB - 3 PM 2:41

FILED

This matter came before the Court for an Annual Review hearing, pursuant to S.C. Code Ann. Section 44-48-110 of the Sexually Violent Predator Act, on January 16, 2020. The Respondent was personally present along with his attorney, James K. Falk, of Charleston. The State was represented by Senior Assistant Attorney General James G. Bogle, Jr.

The hearing covered all pending annual reviews through 2019. Testimony was received from Mr. Valbert on his own behalf, and from Chief Psychologist Dr. Kelsey Laxton and Dr. Rozanna Tross, both of the South Carolina Department of Mental Health. The Respondent was committed to the Department of Mental Health, Sexually Violent Predator Treatment Program, on or about November 6, 2008.

The issue at a hearing like this is whether or not Respondent's mental abnormality or personality disorder has so changed that he is safe to be at large and, if released, is not likely to commit acts of sexual violence. The burden is upon the Respondent to show probable cause that this has occurred.

The following procedural history lead to this hearing. In 2016, Respondent had a pending annual review where his attorney had obtained the services of Dr. Thomas V. Martin, who was prepared to testify Respondent was safe to be released. The Department of Mental Health evaluation at that time, by Dr. Amy C. Swan had found progress, and it was expected that Dr. Swan, upon seeing Respondent again and finding the same level of progress, would also recommend release. As a result, a September 7, 2016 hearing was continued by Order filed September 27, 2016, with the expectation that in the future there would be either a release hearing or an annual review trial.

It turned out that Dr. Swan did evaluate Respondent again, and recommended he be released. As part of the procedure at the Department, Respondent and Dr. Swan (by telephone) appear before the Discharge Review Board. However, after hearing from both of them, the Board declined to approve Respondent's release; thereafter, the Board had a follow-up meeting to hear more from Dr. Swan, and again denied Respondent's release. Dr. Swan's next annual review evaluation concluded Respondent's condition had not so changed to make him safe to be at large. This conclusion was reflected in annual reviews after that, including the most recent by Drs. Laxton and Tross.

Careful consideration was given to the testimony presented, to include the difficulties and changes in Respondent and his progress in treatment over the times indicated above. While his risk to reoffend on the actuarial risk assessments is only in the average risk category, he has demonstrated a number of static risk factors, including a sexual preference for prepubescent children, lack of emotionally intimate relationships with adults, dysfunctional coping and grievance thinking. His diagnoses are Anti-Social Personality Disorder and Pedophilic Disorder, Sexually Attracted to Females, Non-Exclusive Type. I find that Respondent has not met the probable cause burden under Section 44-48-110.

Mailed to 2.B.
2/3/2020
SW

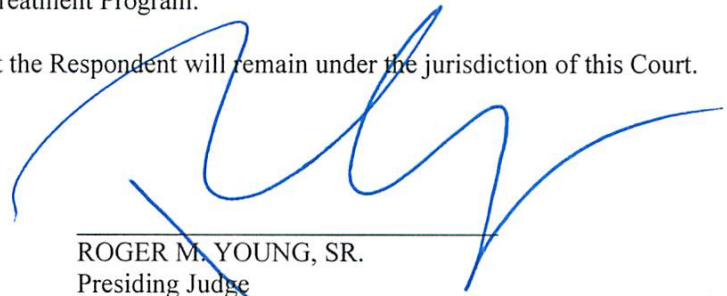
R

VB

IT IS HEREBY ORDERED that Respondent's annual review be and is hereby denied. He is to remain at the Sexually Violent Predator Treatment Program.

IT IS FURTHER ORDERED that the Respondent will remain under the jurisdiction of this Court.

AND IT IS SO ORDERED.

A large, stylized handwritten signature in blue ink, likely belonging to Roger M. Young, Sr., is written over the signature line and extends into the margin.

ROGER M. YOUNG, SR.
Presiding Judge
Ninth Judicial Circuit
Court of Common Pleas

January 22, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE #: 2007-CP-08-03079
IN THE MATTER OF THE	)	AMENDED
CARE AND TREATMENT OF	)	ORDER DENYING ANNUAL REVIEW
BRIAN VALBERT,	)	
	)	
RESPONDENT.	)	
_____	)	

FILED
 20 MAR -2 PM 3:43
 CLERK OF COURT
 BERKELEY COUNTY, SC

This matter came before the Court for an Annual Review hearing, pursuant to S.C. Code Ann. Section 44-48-110 of the Sexually Violent Predator Act, on January 16, 2020. The Respondent was personally present along with his attorney, James K. Falk, of Charleston. The State was represented by Senior Assistant Attorney General James G. Bogle, Jr.

The hearing covered all pending annual reviews through 2019. Testimony was received from Mr. Valbert on his own behalf, and from Chief Psychologist Dr. Kelsey Laxton and Dr. Rozanna Tross, both of the South Carolina Department of Mental Health. The Respondent was committed to the Department of Mental Health, Sexually Violent Predator Treatment Program, on or about November 6, 2008.

The issue at a hearing like this is whether or not Respondent's mental abnormality or personality disorder has so changed that he is safe to be at large and, if released, is not likely to commit acts of sexual violence. The burden is upon the Respondent to show probable cause that this has occurred.

The following procedural history lead to this hearing. In 2016, Respondent had a pending annual review where his attorney had obtained the services of Dr. Thomas V. Martin, who was prepared to testify Respondent was safe to be released. The Department of Mental Health evaluation at that time, by Dr. Amy C. Swan had found progress, and it was expected that Dr. Swan, upon seeing Respondent again and finding the same level of progress, would also recommend release. As a result, a September 7, 2016 hearing was continued by Order filed September 27, 2016, with the expectation that in the future there would be either a release hearing or an annual review trial.

It turned out that Dr. Swan did evaluate Respondent again, and recommended he be released. As part of the procedure at the Department, Respondent and Dr. Swan (by telephone) appear before the Discharge Review Board. However, after hearing from both of them, the Board declined to approve Respondent's release; thereafter, the Board had a follow-up meeting to hear more from Dr. Swan, and again denied Respondent's release. Dr. Swan's next annual review evaluation concluded Respondent's condition had not so changed to make him safe to be at large. This conclusion was reflected in annual reviews after that, including the most recent by Drs. Laxton and Tross.

Careful consideration was given to the testimony presented, to include the difficulties and changes in Respondent and his progress in treatment over the times indicated above. While his risk to reoffend on the actuarial risk assessments is only in the average risk category, he has demonstrated a number of static risk factors, including a sexual preference for prepubescent children, lack of emotionally intimate relationships with adults, dysfunctional coping and grievance thinking. His diagnoses are Anti-Social Personality Disorder and Pedophilic Disorder, Sexually Attracted to Females, Non-Exclusive Type. I find that Respondent has not met the probable cause burden under Section 44-48-110.

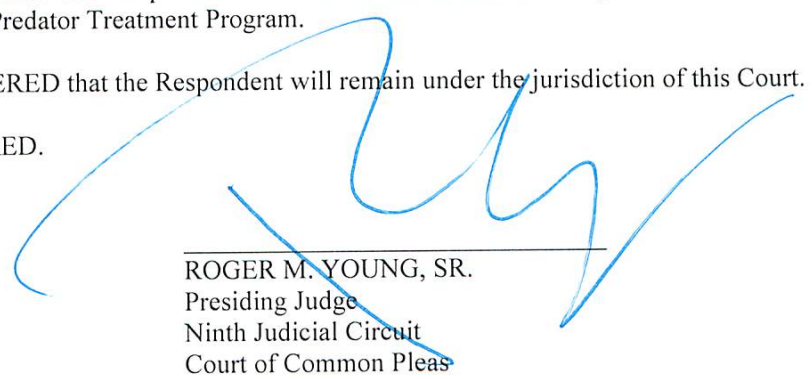
Rh

VB

IT IS HEREBY ORDERED that Respondent's annual review be and is hereby denied. He is to remain at the Sexually Violent Predator Treatment Program.

IT IS FURTHER ORDERED that the Respondent will remain under the jurisdiction of this Court.

AND IT IS SO ORDERED.



ROGER M. YOUNG, SR.
Presiding Judge
Ninth Judicial Circuit
Court of Common Pleas

February 26, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	
In the Matter of the Care	)	CASE NO. 2007-CP-08-03079
and Treatment of	)	
	)	
Brian Valbert.	)	TRANSCRIPT OF RECORD
	)	
	)	ORIGINAL
	)	
	)	
	)	

January 16, 2020

Moncks Corner, South Carolina

B E F O R E:

The Honorable Roger Young

A P P E A R A N C E S:

James G. Bogel, Esquire
For the Attorney General's Office

James K. Falk, Esquire
Representing Brian Valbert

Certified Transcript Provided For: Michael Gambrell

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

HEARING -- 03

EXHIBITS - None Proffered

WITNESSES

Brian Valbert:

Direct Examination by Mr. Falk -- 03

Dr. Kelsey Laxton:

Direct Examination by Mr. Bogle -- 12

Voir Dire by Mr. Falk of Dr. Kelsey Laxton -- 14

Voir Dire by The Court of Dr. Kelsey Laxton -- 16

Voir Dire by Mr. Bogle of Dr. Kelsey Laxton -- 18

Resume Direct Examination by Mr. Bogle -- 19

Cross-Examination by Mr. Falk -- 36

Rozann Tross:

Direct Examination by Mr. Bogle -- 40

Cross-Examination by Mr. Falk -- 42

Brian Valbert:

Redirect Examination by Mr. Falk -- 44

CERTIFICATION OF TRANSCRIPT -- 52

1 (WHEREUPON, the witness was duly sworn.)

2 THE CLERK: Please be seated. State your full name for
3 the record and please spell your last name.

4 THE WITNESS: Full name is Brian Ellis Valbert. Last
5 name is V as in Victor, A-L, B as in boy, E-R-T.

6 **DIRECT EXAMINATION BY MR. FALK OF BRIAN VALBERT**

7 Q. Mr. Valbert, I would like you to bring the Court sort of
8 up to date on the procedural history of your case. Because it
9 is somewhat unusual. You are evaluated sometime around 2014,
10 2015; is that correct?

11 A. Yes.

12 Q. And at one point were you not told that you were going to
13 have a release hearing?

14 A. Yes.

15 Q. Could you tell the Court about that situation.

16 A. Okay. In 2016, August 2016, there was a hearing here
17 with Judge Harrington or -- I'm not sure -- remember the name
18 exactly. But there was a judge here in Berkeley County with
19 Mr. Bogle and the evaluator Dr. Swan. You know, I guess it
20 was a telephone conference or something. And at that point it
21 was stated that Dr. Swan was considering recommending my
22 release, you know, based on, you know, her feeling that I had
23 so changed.

24 You know, so that it was order- -- so it was ordered by
25 the Court that I go back and be reevaluated and if Dr. Swan

1 finds that I have so changed and recommends release it would
2 be an annual review release hearing; and if she found that I
3 had not so changed that it would be a jury trial, a contested
4 jury trial.

5 You know, I did get that evaluation. And I was
6 recommended for release, you know, which was just prior to
7 Correct Care taking over the Sexual Violent Predator Program
8 from the Department of Mental Health.

9 You know, so with that changeover there were things that
10 came up. And part of -- you know, one of the things that came
11 up with that changeover was a bench warrant was issued for my
12 arrest in Berkeley County for failure to pay child support
13 which Wellpath or Correct Care was supposed to be taking out.
14 I said Wellpath, which is now the new name of the Correct
15 Care.

16 Q. All right. Let me kind of -- let's stop for a minute and
17 sort of unwind. Now I was not representing you ---

18 A. No.

19 Q. --- at that hearing where you were told that you were
20 going to have -- either they were going to just have a release
21 hearing or you were going to have a jury trial; is that
22 correct?

23 A. That is correct.

24 Q. Okay. And who said that; who advised you of that; is
25 that what the Court's ruling was?

1 A. That is the Court ruling. I have a copy of that in my
2 file right there.

3 Q. Okay. And then you were recommended for release ---

4 A. Yes.

5 Q. --- by Dr. Swan and then you had to go before the
6 discharge review committee; is that correct?

7 A. That is correct.

8 Q. Okay. And when you went before the discharge review
9 committee who was running the show then; had Correct Care, now
10 Wellpath, taken over; or was it still the Department of Mental
11 Health?

12 A. The Department of Mental Health runs the review board.

13 Q. Okay. Okay. And at that time you -- had they served you
14 this warrant for nonpayment of child support?

15 A. No, they had not yet. But I knew about it.

16 Q. Okay. And why were you not paying your child support?

17 A. It was supposed to be taken -- being taken out of my
18 stipend of pay there, you know, while I was there. And
19 somehow the records had not gotten passed over from the
20 Department of Mental Health to Correct Care and therefore it
21 wasn't paid.

22 Whenever I realized that it wasn't being paid I was
23 letting them know, you know, this needs to be paid, this needs
24 to be paid. And then I got a notice from Berkeley County
25 stating that it needed to be paid; and they said that they was

1 going to start taking it out, but they didn't.

2 You know, so I went ahead and cut a draft out of the
3 account myself and caught it up, you know. But it was already
4 too late at that point. The bench warrant had already been
5 issued.

6 Q. So your concern was that you were going to be arrested
7 once you were ---

8 A. I was going to be arrested immediately upon my release.

9 Q. And did you sort of take your frustrations out on the
10 review board at that time?

11 A. Well, I wouldn't say that I took my frustrations out on
12 them. I mean I did absolutely verbalize my frustrations with
13 them. I informed them, you know, that I was concerned about
14 the child support obligation. You know, I was concerned
15 about, you know, multiple different things that were going on
16 with the -- with my case at the moment.

17 Q. Okay. Here are your materials. Can I ---

18 A. Yes.

19 Q. --- hand them to you?

20 A. Yes.

21 [WHEREUPON, counselors confer.]

22 Q. So that is the order that you handed me. And that is --
23 was -- and that is signed by Judge Goodstein?

24 A. Yes, it is.

25 Q. And it says at that time you were either going to have a

1 release hearing or a contested jury trial; is that correct?

2 A. That is correct.

3 Q. You have not had that yet, have you?

4 A. I have not had any of that.

5 Q. Was there ever any explanation why you haven't had the
6 jury trial?

7 A. No.

8 Q. What is your -- what is your treatment level now?

9 A. I am in Treatment Level 3, Phase 3 of 4. And just before
10 one of the facilitators was leaving the program it was stated
11 in group that our group is within six months of completing
12 Level 3 and phasing up to 4.

13 Q. Okay. And as part of Level -- phasing up to Level 3 does
14 that mean that you take a polygraph test?

15 A. That is -- yes.

16 Q. And so you took a polygraph test?

17 A. I did.

18 Q. Okay. And based on the results from the polygraph test
19 have you been -- have you admitted to all of your offenses?

20 A. I have.

21 Q. Okay. Did they give you a copy of the polygraph test --
22 this is what ---

23 A. Yes.

24 Q. Okay.

25 A. I have got a copy of mine.

1 Q. Okay. And so said this was -- this was not privately
2 done; this was conducted by Wellpath?

3 A. That is correct.

4 Q. Okay. And so there is no indication that there has been
5 any type of lack of openness on your part as far as admitting
6 to your prior offenses?

7 A. No.

8 Q. Okay. And what is your current -- what have you learned
9 from -- how long have you been in the program since ---

10 A. I have been in the program a little over 11 years.

11 Q. Okay. And do you believe that you have -- what have you
12 learned about your offense conduct by being in the program?

13 A. I have learned a lot about my offense conduct. You know,
14 how things tied into my background. You know, how I
15 mis-learned things, took things inappropriately.

16 You know, I learned that, you know, that everything I was
17 doing, you know, including sexual talk with, you know, younger
18 females was inappropriate; it was wrong. You know, and I had
19 justified a lot of my behaviors through the years, you know,
20 thinking that it was okay because -- you know, and then the
21 justification was, well, all of the guys do it, you know, this
22 is locker room talk, this is stuff that is okay.

23 And I mean, you know, even in today's age, you know, it
24 is really coming out, you know, that this is not okay; it has
25 never been okay.

1 Q. What is your relapse prevention plan?

2 A. My relapse prevention plan is -- you know, part of my
3 relapse prevention plan is to, you know, once released I'm
4 going to, you know, find an outpatient therapy, you know, to
5 maintain, you know, where I am at.

6 I'm going to be doing a lot more things than I used to
7 do. You know, whenever I was in the free world I didn't have
8 hobbies and stuff that I did and stuff like. You know, so I
9 recognize that those types of things, you know, set me up, you
10 know, definitely for failure.

11 Because I didn't have things to do. I didn't tell people
12 about my problems. I was afraid to talk to people feeling
13 that, you know, if I talked to them about my problems or
14 anything I would be rejected, you know.

15 And I always -- you know, and I -- I am an emotional type
16 person. You know, so I took things to heart and I
17 personalized them all the time.

18 You know, and now I am able to recognize, you know, that
19 feedback is feedback. It is, you know, just to be heard. It
20 is not necessarily for me to respond to. It's for me to
21 listen to and take to heart. And if there is something there
22 that, you know, that I can change then make the change and
23 move forward.

24 And I do have a copy of my relapse prevention plan here
25 with me as well.

1 Q. Okay. And what are you going to do -- what kind of
2 family support do you have?

3 A. My aunt and uncle who are in Illinois. You know, they
4 have supported me since the beginning, since I got
5 incarcerated. My sister who now lives in Elgin supports me.
6 I have a pastor. I have several friends; I want to say five
7 different friends, you know, right off the top of my head that
8 I have their phone number and their address. And, you know,
9 and I am able to be in contact with them.

10 You know, right now there are several others who have
11 graduated from the program, you know, who I would also talk to
12 as, you know, a support type person, you know, who are also in
13 the community. You know, they know the ins and outs of
14 different things that they're -- that I am going to experience
15 once released. You know, so I think that they would be a
16 great help, you know, for me especially initially whenever I
17 get out.

18 You know, but, you know, the main thing that I am
19 planning, you know, upon release is I am going to go to a
20 place like Shield Ministries here in North Charleston and as a
21 way for me to re-acclimate myself to society.

22 I mean I haven't been out there in nearly 18 years. I
23 don't have a clue what is going on. I don't understand, you
24 know, the technology. You know, so I know that I need this
25 re-acclimation process.

1 Q. And where would you get -- would you get additional sex
2 offender treatment?

3 A. I would.

4 Q. And have you -- where would you go for that?

5 A. Well, if I went to Charleston, if I do use Shield
6 Ministries, you know, I am planning on using Dr. Burke in
7 Summerville, you know, which is, you know, where a lot of the
8 guys that are there in the sex offender, you know, housing
9 there they go to Dr. Burke is my understanding.

10 Q. I have no further questions.

11 MR. BOGLE: No questions.

12 THE COURT: Okay. You can step down.

13 [WHEREUPON, witness steps down]

14 THE COURT: Do you have any other witnesses, Mr. Falk?

15 MR. FALK: No, Your Honor.

16 THE COURT: Mr. Bogle.

17 MR. BOGLE: Thank you, Your Honor. May it please the
18 Court. And just for the record, the case number is
19 2007-CP-08-3039 (sic). I am Jim Bogle with the Attorney
20 General's Office. An annual review hearing under Section
21 44-48-110. I would call Dr. Kelsey Laxton.

22 [WHEREUPON, the witness was duly sworn.]

23 THE CLERK: State your full name for the record, and
24 please spell your last name.

25 THE WITNESS: My name is Kelsey Laxton, L-A-X-T-O-N.

1 **DIRECT EXAMINATION BY MR. BOGLE OF KELSEY LAXTON:**

2 Q. Dr. Laxton, what is your current employment?

3 A. I am currently employed with the Department of Justice
4 and the Federal Bureau of Prisons in Williamsburg County.

5 Q. Okay. Is that at the federal prison down there?

6 A. Yes.

7 Q. Okay. Now what is your connection with the South
8 Carolina Department of Mental Health?

9 A. I completed a postdoctoral fellowship, the South Carolina
10 Department of Mental Health, doing forensic evaluations.

11 Q. Let's talk about education for a minute. What
12 educational degrees do you have that relate to psychology?

13 A. I have a bachelor's degree in psychology with a minor in
14 criminal justice from the University of Tennessee at Martin.
15 I have a master's degree and a PhD in clinical psychology from
16 Sam Houston State University in Huntsville, Texas.

17 Q. Okay. So you have got the -- your -- you got the
18 psychology degree. What is the next step in becoming licensed
19 as a psychologist in South Carolina?

20 A. You have to complete a pre-doctoral internship, was an
21 internship program, prior to the completion of the degree. I
22 completed that program at the Federal Correctional Complex in
23 Butner, North Carolina.

24 And then following the completion of the degree South
25 Carolina requires a year of supervised training after the

1 completion of the degree in order to apply for licensure.

2 Q. Is that year of supervised training what is called being
3 a fellow?

4 A. Yes, a postdoctoral fellowship; yes.

5 Q. And then the person supervising you in that training
6 would be Dr. Rozanna Tross, a psychologist with the Department
7 of Mental Health?

8 A. Yes, that is correct.

9 Q. Okay. And your work at Butner, is Butner where they send
10 the federal cases under the federal sexual predator treatment
11 law?

12 A. That is correct. When I was there on internship I did a
13 six-month rotation working in the treatment program for
14 federally committed, their version, of sexually violent
15 predators.

16 Q. Okay. Now so down here -- now have you testified before
17 in a case under this law here in South Carolina?

18 A. I have. In Dorchester County.

19 Q. Okay. What type of case was that?

20 A. That was an annual review hearing.

21 Q. Okay. It was a release hearing ---

22 A. Yes.

23 Q. --- or the guy was getting out?

24 A. Yes.

25 Q. Okay. And you testified there because you had done the

1 complete review of his treatment, his mental abnormality, and
2 all that sort of thing; right?

3 A. That is correct.

4 Q. And the issue there was that his mental abnormality had
5 changed enough for him to be safe to be at large, correct?

6 A. Correct.

7 Q. Okay. So you were assigned to do -- well, how did you
8 get involved -- let me back up a second. So you were allowed
9 to testify as to your expertise regarding that particular
10 person?

11 A. Yes.

12 Q. Okay.

13 MR. BOGLE: Your Honor, based on the foregoing I would
14 like to offer Dr. Laxton as an expert witness in the field of
15 psychology for the purposes of this hearing.

16 THE COURT: Do you have any objection or do you wish to
17 voir dire the witness?

18 MR. FALK: Your Honor, for the record I am going to --

19 **VOIR DIRE - DIRECT EXAMINATION BY MR. FALK OF DR. KELSEY**

20 **LAXTON:**

21 Q. So you had never had ---

22 MR. FALK: May I ask voir dire?

23 THE COURT: Sure.

24 Q. So you have never had a hearing in which was really --
25 your testimony was contested; is that correct? I was at your

1 hearing in Dorchester County?

2 A. Yes, ---

3 Q. Okay.

4 A. --- you were.

5 Q. And you were recommending that my client was going to be
6 released; is that correct?

7 A. That is correct.

8 Q. All right. So I had really no problems with whatever you
9 were going to say as long as you were going to say he is ready
10 to go; is that correct?

11 A. Yes, in that case.

12 Q. Okay. So this is the first time you have had an
13 opportunity to testify where it is contested; is that correct,
14 in South Carolina?

15 A. In South Carolina, yes.

16 Q. Okay. Have you -- when you are doing your work in North
17 Carolina did you ever testify -- what is it, the Adam Walsh
18 Act -- what is the -- what is the federal?

19 A. Yes, the Adam Walsh Act is the federal version of the SVP
20 Act ---

21 Q. Okay.

22 A. --- that we have here in South Carolina.

23 Q. Did you ever testify in any federal courts?

24 A. I did. In the District of Columbia. That was not an
25 Adam Walsh case, but it was a contested hearing.

1 Q. And what was the -- what was the issue in that hearing?

2 A. The issue in that hearing was -- it was a competency
3 case, so the defendant was refusing psychiatric medications.
4 And we opined that he met the criteria under Sell v. U.S. to
5 be involuntarily medicated. And that was a contested case
6 that I testified in.

7 Q. That was a competency to stand trial case?

8 A. Related to competency to stand trial.

9 Q. Okay. Was that a sexual offender case?

10 A. No.

11 Q. So have you testified in a sexually violent predator
12 case?

13 A. Yes.

14 Q. Where -- I mean other than in Dorchester County?

15 A. Not other than in Dorchester County.

16 MR. FALK: For the record, Your Honor, I would assert
17 that the witness, Ms. Laxton, lacks sufficient basis to give
18 an expert opinion in this case.

19 **VOIR DIRE EXAMINATION BY THE COURT OF DR. KELSEY LAXTON:**

20 Q. So you're -- you have been involved in the federal SVP
21 program?

22 A. I was.

23 Q. Okay. And is there any difference between the federal
24 program and the state program as far as South Carolina's
25 program?

1 A. As far as the treatment goes?

2 Q. As far as the standard for what it takes to be classified
3 as a sexually violent predator.

4 A. The law is written a little bit differently in the
5 federal system. The bar is a little bit higher. So the
6 federal system clarifies a substantial likelihood to reoffend;
7 where South Carolina, as you know, just has the likely
8 standard to reoffend.

9 But in the same vein, we assess mental abnormalities,
10 personality disorders, static and dynamic risk factors; so
11 that the process for doing these assessments and working with
12 individuals who are committed in treatment is very very
13 similar.

14 Q. Do you go through their background and look at all of
15 their reports and their offenses and things like that they
16 have committed and that all goes into your opinion?

17 A. Yes, sir.

18 Q. The same, this federal and state?

19 A. Yes, sir.

20 Q. And how many times did you testify in federal court
21 cases?

22 A. None under the Adam Walsh Sexually Violent Predator law.

23 Q. Okay. But you did make the assessments, you just didn't
24 testify in court?

25 A. That is correct.

1 Q. Okay. Roughly how many do you -- can you -- do you think
2 that you -- that you have worked on?

3 A. I have done a total of 19 sexually violent predator
4 evaluations.

5 Q. In the federal program?

6 A. No, in total.

7 Q. Oh, in total ---

8 A. Including here in ---

9 Q. --- including federal ---

10 A. South Carolina ---

11 Q. --- and South Carolina?

12 A. Uh-huh.

13 Q. Okay.

14 THE COURT: All right. Do you have any questions you
15 wanted to ask her; anymore, Mr. Bogle?

16 **VOIR DIRE CROSS-EXAMINATION BY MR. BOGLE OF DR. KELSEY LAXTON:**

17 Q. While the hearing was not contested in Dorchester County,
18 as far as Mr. Falk goes, you were examined quite lengthy by
19 Judge Goodstein; were you not?

20 A. I was.

21 Q. When I finish my direct examination, Mr. Falk finished,
22 Judge Goodstein basically examined you for about 15 or 20
23 minutes; did she not?

24 A. That is correct.

25 Q. Okay. Not that it was contested; but you were subject to

1 a lot of questions from the judge as well as from me, correct?

2 A. Right.

3 Q. Okay.

4 MR. BOGLE: That's all I have Judge.

5 THE COURT: All right. Well, I find that her
6 qualifications and background qualify her as an expert in this
7 field. So she is now qualified as an expert for either your
8 first or second time in South Carolina; it depends on how you
9 want to look at it, I suppose.

10 **RESUME DIRECT EXAMINATION BY MR. BOGLE OF DR. KELSEY LAXTON:**

11 Q. Dr. Laxton, let's talk about our SVP Act. Besides Mr.
12 Valbert what has your job been with the Department of Mental
13 Health and South Carolina's Sexually Violent Predator Act?

14 A. I was assigned evaluations for both precommitment
15 valuations - so individuals who are set to be released from
16 SCDC, Department of Corrections - to determine whether they
17 meet the criteria initially; and I have also done evaluations
18 under the annual review procedures where we are examining an
19 individual's mental abnormality and/or personality disorder to
20 determine whether that has so changed so that they are safe to
21 be at large.

22 Q. Okay. And at least one of those cases resulted in a
23 determination that it had so changed and they elected the
24 hearing in Dorchester County?

25 A. That is correct.

1 Q. Okay. And reports that you are writing, like Mr.
2 Valbert's, are cosigned by you and the supervising licensed
3 psychologist at the Department of Mental Health; in this case
4 for Mr. Valbert, Dr. Tross; is that correct?

5 A. That is right.

6 Q. And so far all of them have been cosigned by the
7 supervising psychologist?

8 A. Right.

9 Q. Okay. Now how did you get involved with Mr. Valbert;
10 what was your assignment there?

11 A. I was assigned to conduct his annual review evaluation.

12 Q. Okay. And in that process did you have access to
13 documentary information about him?

14 A. I did.

15 Q. Okay. Let's back up a second and talk about his history.
16 Are you familiar with his history as to where he was in 2016
17 and where he is right now?

18 A. Yes.

19 Q. Okay. You have heard him testify about what happened
20 back then; but at one point in time as a result of an annual
21 review he was cleared to be released in that the evaluating
22 psychologist, Dr. Amy Swan, concluded that his mental
23 abnormality had changed enough for him to be safe to be at
24 large; correct?

25 A. Correct.

1 Q. And that led to a hearing before something at the
2 Department called a discharge review board?

3 A. Right.

4 Q. And Mr. Valbert would have been there, and Dr. Swan who
5 had been physically injured was there by cell -- by speaker
6 phone?

7 A. That is what I understand, yes.

8 Q. Okay. And in that case the discharge review board they
9 have the final word on whether or not you are cleared for
10 release, correct?

11 A. Correct.

12 Q. Okay. So even though the evaluating psychologist might
13 say yes he is good to go, it is up to the review board and
14 then eventually up to a judge?

15 A. Correct.

16 Q. Okay. And in this case though, involving Mr. Valbert for
17 whatever happened at that discharge review board meeting, they
18 voted unanimously not to approve him for discharge?

19 A. That is right. My understanding is he presented very
20 poorly at that meeting.

21 Q. For whatever reason, and they voted no?

22 A. Uh-huh.

23 Q. And there was a subsequent meeting with them about two or
24 three weeks later and again they voted no?

25 A. That is correct.

1 Q. Okay. So then he went back into the cycle for annual
2 reviews. And his next annual review - not yours - but his
3 next one showed that his progress had not so changed and he
4 still needed to stay in the unit -- in the treatment program;
5 correct?

6 A. That is correct.

7 Q. And then fast-forward to you?

8 A. Right.

9 Q. Okay. Now so that is how we got from there to here.
10 Now, Doctor, as part of your evaluation did you have access to
11 written documentary information about him?

12 A. I did.

13 Q. Did that include records relating to his criminal
14 convictions?

15 A. Yes.

16 Q. Did it include all of his treatment records at the SVP
17 Treatment Program?

18 A. Yes.

19 Q. What about his prison records while confined at the
20 Department of Corrections?

21 A. Yes.

22 Q. And this is all summarized I think on page 2 of your
23 report, correct?

24 A. Yes it is.

25 Q. Okay. Is this the type of information that is typically

1 and reasonably relied upon by other experts in your field?

2 A. Yes.

3 Q. Did you rely upon that information along with any
4 personal interview or testing or scoring of Mr. Valbert in
5 reaching a conclusion and a recommendation about him?

6 A. I did.

7 Q. Let's talk about his prior criminal convictions. Could
8 you talk briefly about how many detected victims, what the
9 crimes were, how old was he, how old were the victims, just
10 basically what happened there. Very briefly, what was his
11 criminal history that got him committed to this program?

12 A. So Mr. Valbert has four victims that were detected by the
13 legal system. The -- one of those victims was his son over
14 the course of several years when his son was age one to age
15 four, from 1997 to 2000. He was charged with criminal sexual
16 conduct with a minor in the first degree and lewd act upon a
17 minor under age 16.

18 he was also around the same time charged with
19 criminal sexual conduct with a minor in the first degree and
20 lewd act upon a minor under age 16 for sexual abuse of the
21 five-year-old daughter of his ex-girlfriend.

22 And in -- for those two victims he pled guilty in an
23 Alford plea to two counts of lewd act upon a minor under the
24 age of 16.

25 Q. And the guilty pleas happened around 2002; is that right?

1 A. That is correct.

2 Q. Okay. At the sentencing hearing was it disclosed that
3 there were other unreported victims?

4 A. That is correct. The ---

5 Q. What did you learn about that?

6 A. The State discovered that there were two additional
7 victims, his nieces who were around the ages of seven and nine
8 when the abuse occurred. And they agreed to not issue
9 warrants for those offenses in agreement for his plea for the
10 other two offenses that I mentioned.

11 They also alluded to other reports, seven other reports
12 filed to police about abuse. But I didn't have any further
13 information about what those reports contained.

14 Q. Okay. In the course of your evaluation did you also have
15 access to and look at all of the prior evaluations done of him
16 including the precommitment evaluation done by Dr. Peggy
17 Wadman?

18 A. I did.

19 Q. Okay. In his precommitment evaluation done by Dr. Wadman
20 did she diagnosis him with a mental abnormality or a
21 personality disorder or both?

22 A. She diagnosed him with both. She diagnosed pedophilic
23 disorder, pedophilia, sexually attracted to both, nonexclusive
24 type, and antisocial personality disorder.

25 Q. Now by -- so we know what pedophilia disorder is, the

1 sexual interest in prepubescent children.

2 A. Correct.

3 Q. And when it says attracted to both, that mean boys and
4 girls?

5 A. Correct.

6 Q. When it says nonexclusive what does that mean?

7 A. That means that there is also an attraction to adult.

8 Q. Okay. Now his prior annual reviews, would you go over a
9 brief summary of what happened, what the result was of each of
10 those annual reviews starting back in about the 2012, 2013
11 time period?

12 A. Sure. In his initial years in the Sexually Violent
13 Predator Treatment Program he was manipulative and very
14 resistant to engaging in treatment. Starting around 2012 he
15 started to improve and began to identify and understand what
16 led to his offending pattern such as the feelings of rejection
17 that he experienced. He began to learn better coping
18 strategies and started to disclose additional victims. There
19 are various accounts of his victims. But upwards of 30
20 additional undetected victims he has disclosed in the course
21 of treatment.

22 He has disclosed having deviant sexual fantasies ---

23 Q. Were these 30 people all underage children, prepubescent
24 children; or are they different ages?

25 A. Different ages. Up to age 17.

1 Q. Okay. Go ahead.

2 A. And he disclosed having deviant fantasies and
3 masturbating to these victims, as well as children in general.
4 In 2015 to 2016 he began to explore the connections that he
5 had with children and his difficulty connecting to adults. He
6 began to disclose a little bit more fully about his deviant
7 sexual arousal to prepubescent children.

8 Q. And up to that time was his diagnosis in each of those
9 reviews the pedophilia disorder that we are talking about that
10 he still has?

11 A. That is correct, it was.

12 Q. Okay. Please continue.

13 A. And then, as you mentioned, from 2016 to 2018, around
14 that review period, he was evaluated by Dr. Swan who opined
15 that he had continued to make positive progress and had
16 managed his sexual arousal to the point that he no longer met
17 the criteria as an SVP; and she opined that he should be
18 released.

19 And as we have gone through, the discharge review board
20 did not agree with that. They opined that he was not ready
21 for release.

22 So she issued an updated evaluation, is the title of her
23 report, in January of 2018 and disclosed that new things had
24 come to light about his difficulty with hostility towards
25 women, grievance thinking. He was having a significant amount

1 of problem with a particular case manager around that time.
2 And the -- she said that these things were impeding his
3 treatment progress and that they were ongoing issues of
4 concern for him.

5 Q. And with that record and in that report, that updated
6 report, did she reco- -- did she continue to recommend his
7 release or did she change her mind?

8 A. She opined that he needed continued confinement.

9 Q. Okay. So let's move forward then. Pages 7 through 11 of
10 your report, the period you covered, ---

11 A. Correct, I reviewed ---

12 Q. --- how many phases does Wellpath have in their
13 treatment?

14 A. Four phases.

15 Q. What phase is Mr. Valbert in now?

16 A. At the time of my review he was in Phase 2.2.

17 Q. Okay. Do they also have different care levels out there?

18 A. Yes, based on their behavior in the program.

19 Q. Does care level relate to how much freedom of movement
20 you have around the unit or how much supervision you have;
21 things like that?

22 A. Yes.

23 Q. Okay. What was his care level?

24 A. He was Care Level 5 which is the highest level of
25 privileges that they can earn.

1 Q. Okay. Okay. Now what about his progress and treatment
2 during the time you looked at him?

3 A. Over the -- my review period was from September 2017 to
4 January of 2019. And in that time he continued to have some
5 of the difficulties that Dr. Swan had pointed out in her
6 updated report. He continues to have evidence of grievance
7 thinking and hostility. He continues ---

8 Q. What does -- what does grievance thinking mean? I hate
9 to interrupt you. But I am going to do that sometimes. When
10 you say grievance thinking what does that mean?

11 A. Grievance thinking means that an individual believes that
12 other people are out to get them or the world is against them,
13 that they have -- they are constantly perseverating on
14 grievances they have with how they feel like they have been
15 treated and that the world has treated them wrong.

16 Q. Okay. There's also some comments on page 8 about showing
17 them love, about child porn, about blaming the victim. What
18 are we -- what are you seeing -- what do you talk about there?

19 A. Yes, that he -- he had disclosed that he had previously
20 had attitudes about beliefs that he wasn't harming his
21 victims, that he was showing them love, and that he began --
22 that he had an interest in child pornography and was in denial
23 for a long time about his sexual interest in children.

24 And I think the biggest impediment over the review period
25 for Mr. Valbert has been his tendency to engage in impression

1 management, which means that he is always concerned about what
2 other people are thinking about him and how other people might
3 perceive him or how what he says might be used against him.

4 So he has been reluctant to disclose fully, openly and
5 honestly, about his arousal, about his offenses. He continues
6 to assert that he only abused his son on one occasion, for
7 example. And even when challenged by a group member or by his
8 peers or treatment providers he is still very concerned, very
9 wary of how other people might perceive him or if something
10 might be used against him and feeling rejected, wanting to
11 please other people. And those are the same things that he
12 says he was going through back when he was offending. So
13 those things are -- those things are still very present for
14 him.

15 Q. Okay. Now there is some talk in your report about at
16 some point he began talking about a 14-year-old female
17 undetected victim. Did that come out during the course of
18 your evaluation?

19 A. Yes, I recall reading that in the treatment records.

20 Q. Okay. Now when he was on the stand earlier today he
21 talked about somehow for some reason right before his
22 discharge review hearing he learned there was a bench warrant
23 out there in the Family Court for unpaid child support. Did
24 he ever talk to you about that, about that problem or how it
25 came to be, or did it concern him or anything like that; or

1 did that come up at all during your period of review?

2 A. I -- when I interviewed Mr. Valbert I mentioned -- or
3 asked him what happened during that discharge review board, of
4 course. And he said that he had gotten that news that he owed
5 a large sum of child support and that he was fearful that he
6 would be released and only to be brought to jail for not
7 paying child support. And he said that that was what was on
8 his mind when he went to the discharge review board.

9 Q. Okay. Now based on your review of where he is, you have
10 talked about some of the issues he is having. What needs to
11 be done for this guy; what goals has he not accomplished in
12 his treatment that you in your opinion reviewing him and the
13 work you have kind of done with these types of guys, what
14 needs to be done that he hasn't done that he hasn't gotten
15 there yet?

16 A. So as I mentioned, Mr. Valbert has diagnoses of
17 pedophilia and anti-social personality disorder. And as part
18 of that personality disorder there are traits,
19 characterological traits, that he exhibits, that he exhibited
20 while he was offending and that he continues to exhibit in
21 treatment. And those ---

22 Q. So the same thing, the same attitudes, back then when he
23 is committing crimes and even now?

24 A. Correct. And those attitudes such as being fearful of
25 being rejected and not knowing how to cope with being rejected

1 or how to cope with other people perceiving him in a negative
2 light. Which was a lot of what was going on in the discharge
3 review board meeting.

4 So it was a very concrete example of his tendency to want
5 to present himself in the best way they he can, and that
6 inhibits him from being able to be fully open and honest and
7 being able to address those traits in treatment.

8 Q. Okay. Now just to be clear, the treatment a guy like Mr.
9 Valbert gets is done by Wellpath at their facility out on
10 Broad River Road?

11 A. That is correct.

12 Q. The discharge review board is a board of people employed
13 by the Department of Mental Health; you meet at the Department
14 of Mental Health to decide whether a guy is ready for
15 discharge; is that correct?

16 A. That's right.

17 Q. Okay. And that includes, what, people -- psychologists,
18 psychiatrist, their lawyer, director, things like that, with
19 the Department of Mental Health?

20 A. Correct.

21 Q. Now there's different types of risk factors I have found
22 in these cases. What are static risk factors?

23 A. Static risk factors are elements of a person's life,
24 their history, that increases their likelihood to reoffend.
25 And the word static means unchanging. They are historical

1 factors that for the most part stay the same.

2 Q. Now going back to your interview with him - this is
3 pages 12 through 14 - you had mentioned the child support
4 warrant. Did he say anything about he felt he was led on by
5 one of his victims?

6 A. He did. He said that he felt like he was being led on by
7 the 14-year-old victim that you had mentioned.

8 Q. What about hostilities towards his wife and how that
9 might have affected his offending, is that in there?

10 A. Yes. I spoke to him at length because not only did --
11 was their sexual abuse present with his son but he and his
12 wife and even his son's siblings all engaged in a sort of a
13 culture in the home of physically abusing and alienating and
14 rejecting his son at a very young age. And part of that
15 according to Mr. Valbert came from his hostility towards his
16 son's mother and the blame that he had towards his son's
17 mother. And that is what led to some of the physical abuse as
18 well as the sexual abuse of his son.

19 Q. Was there an issue of him having some kind of sexual
20 thoughts right before your interview?

21 A. Yes, he acknowledged having sexual thoughts a few days
22 before the interview.

23 Q. Okay. Well, isn't that kind of normal with a guy; what
24 is -- what caught your attention about these sexual thoughts?

25 A. Well, it is relevant that he is still experiencing that

1 attraction to prepubescent ---

2 Q. Okay.

3 A. --- children. So ---

4 Q. So it is sexual thoughts ---

5 A. --- it is showing that his mental abnormality is still
6 present.

7 Q. So it was sexual thoughts about kids?

8 A. Right.

9 Q. Okay. Okay. Okay. Okay. Now you mentioned the
10 static risk factors a minute ago. Did you score him on the
11 Static-99R?

12 A. I did.

13 Q. Did you also score him on the Static-2002R?

14 A. Yes.

15 Q. What score did he get on the 99R?

16 A. I assigned a score of one.

17 Q. Okay. And where is a one -- the lowest is a three -- a
18 minus three; the highest is a 12. Where is a one?

19 A. One falls in the average risk category.

20 Q. Okay. Okay. Did you score him on the 2002R?

21 A. Yes.

22 Q. What was his score on that?

23 A. A four.

24 Q. And where does that put him on the range of that
25 instruments predictability or the likelihood to reoffend?

1 A. That also places him in the average risk category.

2 Q. Okay. Okay. What about -- are there things called
3 dynamic risk factors, risk factors that can be addressed in
4 treatment or are changeable?

5 A. Yes.

6 Q. Could you talk about the ones you identified that are
7 still an issue for Mr. Valbert.

8 A. We have talked about some of them. But dynamic risk
9 factors that are still particularly salient for Mr. Valbert
10 are: As we mentioned, the sexual preference for prepubescent
11 children. His lack of emotionally intimate relationships with
12 adults; he still struggles to have that connection and
13 acknowledges a difficulty trusting other adults and attaching
14 in a healthy way to other adults, and that is fueled in part
15 by his need to be approved of and his low self-esteem. He has
16 dysfunctional coping. He has difficulty coping with anger and
17 anxiety and especially feelings of rejection as he has talked
18 about. And the grievance thinking that we had mentioned. So
19 he perceives that he has been done wrong and been rejected,
20 perceived things as very personalized or personalized attacks
21 or threats on him as a person and reacts to that.

22 Q. Okay. Doctor, based upon your evaluation of Mr.
23 Valbert -- and you interviewed him personally?

24 A. I did.

25 Q. And just for the record, the guy you talked to is the guy

1 sitting next to Mr. Falk; right?

2 A. Right.

3 Q. Okay. So you looked at the records, criminal records,
4 prison record, treatment records, prior annual reviews, ---

5 A. Correct.

6 Q. --- precommitment review ---

7 A. Yes.

8 Q. --- evaluation? You scored him on the two statics, the
9 99R and the 2002R?

10 A. Correct.

11 Q. Based on all of this information, in your opinion to a
12 reasonable degree of psychological certainty, has Mr.
13 Valbert's mental abnormality and his personality disorder have
14 they so changed that he is now safe to be at large and if
15 released not likely to commit crimes of sexual violence?

16 A. No.

17 Q. In your opinion, also to a reasonable degree of
18 psychological certainty, does Mr. Valbert still need to be
19 confined for treatment at the sexually violent predator
20 treatment facility?

21 A. Yes.

22 Q. Is this guy a good candidate right now today for
23 outpatient treatment, let him go and get outpatient treatment?

24 A. Based on the period that I reviewed, no.

25 Q. Okay. Thank you. Please answer any questions Mr. Falk

1 may have or the Court may have.

2 MR. BOGLE: Cross?

3 MR. FALK: Thank you, Your Honor.

4 **CROSS-EXAMINATION BY MR. FALK OF DR. KELSEY LAXTON:**

5 Q. You had spoken about his -- he had a sexual thought right
6 before the evaluation; is that correct?

7 A. That's correct.

8 Q. All right. And what was his response to that?

9 A. What do you mean?

10 Q. Do you have your report with you?

11 A. I do.

12 Q. I am looking at the last paragraph on page 13.

13 A. Okay.

14 Q. And that last paragraph talks about this disclosure that
15 he made to you and then also how he responded to it.

16 A. Yes. He disclosed that he did have this sexual thought
17 but he was able to think about his environment and what was
18 going on around him and he said he reminded himself that that
19 person is only a child, that children don't have those types
20 of thoughts. He said he went outside and spoke to a peer to
21 distract his thoughts when that occurred.

22 Q. Isn't that the -- you know, isn't that what he should
23 have done?

24 A. I think that was an adaptive response to that cope -- to
25 that thought that he had.

1 Q. Clearly showed recognition of a problem. It would
2 certainly show that he has -- that he is certainly cognizant
3 of his problem and he has a way of how he is going to deal
4 with the problem; you know, he is cognizant of it, he thought
5 about it, he realized that that was an inappropriate response,
6 he talked to people. Isn't that exactly what he is supposed
7 to be learning in this program?

8 A. Correct. I agree with you.

9 Q. Okay. When you talk -- you seem to talk a lot about
10 grievance thinking. It is a sign of some type of personality
11 disorder if you have a legitimate basis for a grievance?

12 A. Not typically.

13 Q. Because I mean if you were -- if you were told that you
14 were going to get some type of hearing back in 2016, either
15 you were going to be released from the program or you were
16 going to have the opportunity for a jury trial, and that has
17 never come around, wouldn't that justifies some grievance
18 thinking?

19 A. I think that makes sense to feel upset about that
20 situation, yes.

21 Q. And also if you were about to leave -- if you thought,
22 "a", that Wellpath or Correct Care or whoever was supposedly
23 supposed to be taking care of the child support obligation was
24 supposed to be forwarding the money and they were not doing
25 that and that winds up with a bench warrant been issued, that

1 would also justify some type of grievance thinking, would it
2 not?

3 A. I think so.

4 Q. Okay. And are you aware that Dr. Martin was prepared to
5 recommend his release back in 2016?

6 A. I have not reviewed Dr. Martin's report; but I was aware
7 of that, yes.

8 Q. So you are aware of this whole situation where he was
9 told he was going to be released or he was going to have a
10 trial and that Dr. Martin was going to say that he was ready
11 for release?

12 A. Yes.

13 Q. And if his static risk factor is a one, what does that
14 mean for his -- what is -- if he has a static -- if he has a
15 one on the Static-99 what does that mean as far as sexual
16 reoffending?

17 A. It means he is in the average risk category, meaning that
18 he compared to other people who scored a one on the Static-99
19 in the research samples it has an average risk level
20 associated with that score.

21 Q. Is there -- what is the average reoffense level for
22 somebody with -- for a sexual reoffending; isn't it about five
23 percent?

24 A. Yes.

25 Q. And you will admit that he has -- certainly is evidenced

1 by his response to the sexual thought, he has made
2 improvements in his -- he has benefited from the treatment so
3 far?

4 A. Yes.

5 Q. And what is the significance of him now being in Level 3?

6 A. I am not sure of that, because I wasn't even aware that
7 he was in Level 3. My evaluation was for the time period of
8 September of '17 to January of '19. So I think he must have
9 gotten promoted after the completion of my report. And I
10 don't have any knowledge about his progress and treatment
11 since January of 2019.

12 Q. Well, in general what does it mean if somebody is in
13 Level 3?

14 A. In general it means that they have progressed to a point
15 in treatment that they are able to go beyond a superficial
16 level. Phase 2 is more about disclosures and talking about an
17 individual's personal history, their offense history. Phase 3
18 begins to really address those underlying issues that they
19 have disclosed already in Phase 2.

20 MR. FALK: I have no further questions.

21 MR. BOGLE: Nothing further from this witness, Judge.

22 THE COURT: You may step down.

23 [WHEREUPON, witness steps down]

24 MR. BOGLE: May I call Dr. Rozanna Tross briefly, Your
25 Honor?

1 THE COURT: All right.

2 [WHEREUPON, the witness was duly sworn.]

3 THE CLERK: Please take a seat and please state your full
4 name, spelling your last name for the record.

5 THE WITNESS: It is Rozanna Tross. Last name T-R-O-S-S.

6 **DIRECT EXAMINATION BY MR. BOGEL OF ROZANNA TROSS:**

7 Q. Dr. Tross, very briefly, you are employed by the
8 Department Of Mental Health right now; right?

9 A. Yes.

10 Q. For how long?

11 A. Since January 2014.

12 Q. And has your employment with the Department continuously
13 been related to the Sexually Violent Predator Treatment
14 Program?

15 A. Yes.

16 Q. Okay. As a result are you a person called upon to do
17 both pre-commitment evaluations as well as annual review
18 evaluations of people committed under this law?

19 A. Yes.

20 Q. Okay. And in that capacity are you licensed to practice
21 psychology in the State of South Carolina?

22 A. Yes.

23 Q. Are you also in that capacity have you been qualified as
24 an expert witness and to testify in the circuit courts of
25 South Carolina regarding both pre-commitment and annual

1 reviews of people committed under the SVP?

2 A. Yes.

3 Q. About how many times?

4 A. Forty-nine times.

5 Q. Okay. Now what is a fellow in the psychology field, like
6 Dr. Laxton?

7 A. A fellow is somebody who has completed their doctoral
8 training, completed their doctoral internship, and they have
9 graduated and they are a psychologist.

10 The fellowship training is additional supervised
11 experience they receive prior to being granted licensure in a
12 given state.

13 Q. Is one of your jobs at the Department of Mental Health
14 related to these fellows out there?

15 A. Yes, I am the training director for our forensic
16 psychology fellowship.

17 Q. Okay. In that capacity were you the training director
18 for Dr. Kelsey Laxton?

19 A. Yes.

20 Q. And in that capacity did you also supervise and take part
21 in the annual review of Mr. Valbert which bears the signature
22 of both Dr. Laxton and you?

23 A. Yes.

24 Q. Okay. So her opinion is your opinions, about Dr.
25 Laxton?

1 A. Yes.

2 MR. BOGLE: Thank you. No more questions.

3 **CROSS-EXAMINATION BY MR. FALK OF ROZANNA TROSS:**

4 Q. Could you tell me what is the significance of going from
5 Level 2.2 to Level 3 is.

6 A. Are you talking about care level or ---

7 Q. Care level ---

8 A. --- phase?

9 Q. No, no, no, treatment level.

10 A. Treatment level?

11 Q. Phase -- whatever. I mean something -- when we --
12 somebody was at 2.1 that is at a level of how they are doing
13 through their treatment; is that correct?

14 A. No. There's two different concepts.

15 Q. Okay.

16 A. Care levels are indicative of how well they are doing,
17 how well they were behaving, and is based on privileges they
18 get within the treatment program. Phase of treatment is they
19 are able to progress through the phases of treatment by
20 completing different treatment objectives in addition to
21 maintaining a care level ---

22 Q. Okay.

23 A. --- of an appropriate status. And so sometimes they are
24 able to phase up in the program simply by completing different
25 concrete tasks, and so they are able to advance so they get

1 exposure to different phases of treatment and they have access
2 to work on different aspect- -- different parts of their
3 treatment.

4 Other times it is because they have shown significant
5 advancement in their intellectual ability to not only
6 understand but then apply the concept. So sometimes they can
7 move faster through the phases.

8 But we have guys that do sometimes move up in phase but
9 they still struggle greatly with some of the treatment
10 concepts and an ability to apply them, but they are able to
11 phase up. So one is not necessarily indicative of more
12 progress than the other.

13 Q. Are you aware that he phased up to Level 3?

14 A. No.

15 Q. What would be the significance of somebody who phased up
16 to Level 3?

17 A. It would depend on the individual.

18 Q. But I mean what do they do at Level 3 that is different
19 than Level 2, 2.2?

20 A. Well, as Dr. Laxton was testifying to, Phase 2 is a lot
21 of exploration of formative events, autobiographical
22 information, digging through the root aspects of somebody's
23 upbringing and early behavioral lifestyles that may have
24 contributed to why they were offending.

25 Phase 3 they get exposure to a sexual arousal management

1 group which specifically targets for those that have sexual
2 deviant interests in helping them understand the nature of
3 said interest, develop specific coping skills related to
4 managing those interests, keeping them appropriate.

5 Because somebody like Mr. Valbert who has pedophilia they
6 are not going to somehow not have pedophilia. But it is about
7 being able to learn tools to manage it.

8 So the significance of somebody being able to move into
9 Phase 3 is that now they have exposure to that type of
10 treatment that can help them learn more about their sexual
11 deviancy, that interest, how it played out in their life, and
12 of course specific coping skills to manage that more
13 effectively.

14 MR. FALK: I have no further questions.

15 THE COURT: Anything further?

16 MR. BOGLE: Nothing further, Your Honor. And no more
17 witnesses for the State.

18 THE COURT: You can step down.

19 [WHEREUPON, witness steps down]

20 MR. FALK: Your Honor, if I can recall my witness,
21 please, Mr. Valbert.

22 THE COURT: All right.

23 You are still under oath.

24 MR. VALBERT: Yes, sir.

25 **REDIRECT EXAMINATION BY MR. FALK OF BRIAN VALBERT:**

1 Q. Mr. Valbert, what is your understanding -- so you have
2 gone through the 2.1 phase in the treatment; is that correct?

3 A. Yes.

4 Q. And what did you learn there?

5 A. Well, in the 2.1 phase, you know, that there was -- I
6 wasn't actually in it with Correct Care. You know, that there
7 was part of, you know, my massive treatment through DMA12, DMH
8 had it.

9 Q. Okay.

10 A. You know, whenever DMH turned it over to Correct Care I
11 was put into Phase 2.2 which, you know, talk about, you know,
12 the active accounts, you know, digging deeper, you know,
13 identifying the distortions, being able to, you know, identify
14 the distortions that I have, the inconsistencies, you know,
15 that I have in the past used.

16 You know, how I -- you know, in prior disclosures, you
17 know, they were very vague, you know; but in the new program,
18 you know, they were more of an active account, you know, being
19 able to really dig deep and understanding, you know, what it
20 was about the offending that actually turned me on, you know,
21 so that I can learn how to not, you know, react to those and
22 be able to change those.

23 Q. Is there anything else out of the testimony from either
24 of the two experts that you want to respond ---

25 A. Well, in Phase 3 -- in Phase 3, you know, it is more

1 about putting together everything now. You know, getting to
2 the emotional states of things and understanding my emotions.
3 That is really where Phase 3 is at is, you know, getting a
4 better understanding of your emotions.

5 The first task that we did in that treatment group was
6 called a collage, you know, of the old me and the new me. You
7 know, and the old me talks about the things that I used to do,
8 you know, that were inappropriate, the way that I thought, you
9 know, how I felt about myself, how I thought about others and
10 felt about others. And the new me is, you know, things I am
11 going to do about it, you know, to make that change and be a
12 better person.

13 Q. There was some testimony about a discharge review
14 hearing?

15 A. Yes.

16 Q. You were present at the first one; is that correct?

17 A. I was present at the first one.

18 Q. And then it got continued; is that right?

19 A. It was supposed to be continued, yes.

20 Q. And what happened, did you ---

21 A. The day that I was supposed to go I was told I was not
22 being transported. And I was not transported to the second
23 annual review hearing where Dr. Swan was present.

24 You know, she was not present the first time. She was in
25 the hospital. It was stated that she was on a telephone

1 conference, but as far as I remember when I was in the room I
2 did not know she was even on the telephone. So she could have
3 been and I didn't -- she didn't speak, you know; or they may
4 have spoken to her prior to me getting there. You know, but I
5 do know that I don't recall that she was on the telephone.

6 Q. But they did not transport you to the second discharge
7 review hearing?

8 A. No, they didn't -- they did not transport me to the
9 second one. And, you know, subsequently because I was not
10 transported to the second annual board hearing the case
11 manager in that case wrote a summary, you know, including that
12 I had admitted to another off-the-record. Which I did not do.

13 You have in front of you a copy of the ICP rebuttal where
14 I clearly stated - I believe it is the second page - you know,
15 where I clearly stated that I did not admit to this. It is
16 nowhere in my records. I have gotten a copy of all my group
17 notes, and there is only one group note in there that says
18 anything.

19 What I did disclose was we were talking about disclosures
20 that day in group and I questioned the case manager, okay,
21 well, how does Correct Care want us to discuss off-the-record
22 offenses. And by that they may have believed that I had an
23 additional offense; that I hadn't talked, you know. But that
24 is not what I was telling them.

25 Q. And you have -- and, again, you took the polygraph test

1 and it said there was no deception?

2 A. That is correct.

3 Q. And that you had made a full disclosure of all of your
4 other offenses?

5 A. That is correct.

6 Q. So you didn't really have -- did you have -- you didn't
7 have an opportunity at this discharge -- the ultimate
8 discharge review hearing to address this last allegation?

9 A. No, I did not.

10 MR. FALK: No further questions.

11 THE COURT: Anything else you want to ask?

12 MR. BOGLE: Nothing, Your Honor.

13 THE COURT: You can step down.

14 [WHEREUPON, witness steps down]

15 THE COURT: Anything else?

16 MR. FALK: Just argument.

17 THE COURT: Go ahead.

18 MR. FALK: Your Honor, I don't know how we get around the
19 fact that Judge Goodstein ordered that he was either going to
20 have to be released or he was going to have a jury trial.

21 I know that I have a copy that while Mr. Brooks was
22 representing him he had petitioned for the hearing in 2017.
23 He filed a petition. I filed a petition for a hearing.

24 I have had numerous telephone conversations with Mr.
25 Bogle trying to schedule this trial, and there have been -- I

1 think there were some issues probably with the presiding judge
2 in Berkeley County at the time who also might -- a prosecutor
3 in Mr. Valbert's underlying criminal charges and was hesitant
4 to -- I don't really have a good explanation. I don't have a
5 good explanation to tell my client why when a judge ordered
6 that he was going to get one or the other he got neither of
7 them and it is three years later.

8 And I don't really think this is so much a probable cause
9 hearing as this is a hearing to try and get some conclusion as
10 to is he going to have a review hearing or is he going to have
11 a jury trial. But he was promised one or the other by a
12 judge, and it hasn't happened. And it has not been latches on
13 our part.

14 I have been in contact with Mr. Bogle. He will have to
15 admit that. I have filed a petition for release. Mr. Brooks
16 filed a petition. And it just never got set.

17 And I think that there have been some procedural problems
18 here that can only be remedied by him getting his jury trial.
19 And then this disclosure at the end that when they had the
20 discharge review hearing it was continued and then to a second
21 hearing at which he wasn't transported to. I think there have
22 been procedural problems that can only be fixed here by
23 granting him a jury trial.

24 Thank you.

25 MR. BOGLE: Starting backwards and working forward.

1 Where we were back in 2016 was Dr. Martin had been retained by
2 Mr. Brooks who represented Mr. Valbert. He was going to say
3 Mr. Valbert should get out.

4 Doctor Swan had seen him in a very favorable light.
5 There was a last interview. She could not be present for the
6 hearing. We continued it.

7 The order says basically that Dr. Swan will see him again
8 and if things look good he is going to get out, if not we will
9 have a contested annual review hearing or a contested trial.

10 The bottom line is Dr. Swan recommended release; and then
11 he went before the discharge review board with Dr. Swan on the
12 speakerphone, because she was in the emergency room, and for
13 whatever reason it didn't go well for Mr. Valbert and they
14 voted unanimously, all five of them, no.

15 They then reconvened later to hear more from Dr. Swan.
16 And it is their call, just like it is yours. For whatever
17 reason they decided not to bring Mr. Valbert back. They
18 wanted to hear some clarification of Dr. Swan.

19 And then we have the subsequent reports from Dr. Swan and
20 later from Dr. Laxton and Dr. Tross that his condition is not
21 that he should get out. And that is where we are today.

22 So moving forward -- moving forward to the present we
23 have the qualified expert testimony of Dr. Laxton under the
24 direct supervision of Dr. Tross that there has been progress
25 by this guy. He is in a top-care level as far as access to

1 the unit, freedom to go around. But he is not where he should
2 be as far as getting out. He still has dynamic static risk
3 factors that have not been addressed in treatment. He still
4 is at risk to reoffend. And that is the expert opinion that
5 we have presented, Your Honor. Thank you.

6 THE COURT: Well, I agree -- procedurally I don't know
7 what happened in the past. I can only kind of deal with where
8 we are at that right now. And that is I think it is like Mr.
9 Bogle says, the guy has made a lot of progress but he is not
10 quite there yet. And I think he would benefit from
11 matriculating through the program some more. And he continues
12 on his path of progress I have no doubt he will perhaps make
13 it out one day.

14 But right now I don't think he has met the burden of
15 proving that he is no longer a threat to reoffend if released,
16 so I am going to deny the petition.

17 MR. BOGLE: Thank you, Your Honor. I will e-mail orders
18 to your law clerk tomorrow.

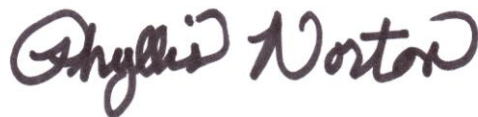
19 (WHEREUPON, the hearing concluded.)

(*NOTE:* Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on January 16, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

A handwritten signature in dark ink that reads "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: October 6, 2021

Certified Transcript Provided For: Michael Gambrell
Certification Reference #2021-1006 Duplicate of Original



State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:

Alison Y. Evans, PsyD, Chair
Sharon L. Wilson, Vice Chair
Louise Haynes
Bob Hott, MEd

INTERIM STATE DIRECTOR
Mark Binkley

Division of Inpatient Services
Forensic Evaluation and Outpatient Services
7901 Farrow Road, Building #6
Columbia, SC 29203
Information: (803) 935-5600

March 14, 2019

The Honorable Roger M. Young, Sr.
Chief Administrative Judge
Ninth Judicial Circuit
100 Broad Street, Ste. 368
Charleston, SC 29401

Re: Valbert, Brian
Case No: 07-CP-08-3079

Dear Judge Young:

Mr. Brian Valbert was committed to the South Carolina Department of Mental Health, Sexually Violent Predator Treatment Program, on November 6, 2008, pursuant to SC Code of Laws § 44-48-100, Sexually Violent Predator Act.

Pursuant to SC Code of Laws § 44-48-110, "The court shall conduct an annual hearing to review the status of the committed person." Therefore, please find enclosed the required documents in order to conduct such a hearing:

1. Annual Examination Annual Review Hearing, Annual Notice of Right to Petition for Release, Election to Waive or Exercise Rights form.
2. Annual Treatment Review Summary, dated March 12, 2019.

Based on our re-evaluation of Mr. Valbert, it is our recommendation, to the Courts, that Mr. Valbert remain in inpatient treatment in the South Carolina Department of Mental Health, Sexually Violent Predator Treatment Program.

Pursuant to Order of the South Carolina Supreme Court and guidance provided by the SC Commission of Indigent Defense, please have the Clerk of Court appoint an attorney from the list of contract attorneys provided by Indigent Defense.

MISSION STATEMENT

To support the recovery of people with mental illnesses.



The Attorney General's Office will contact you if a hearing needs to be scheduled to address Mr. Valbert's review hearing.

Also, if I can be of further assistance to the Court, please feel free to contact me or Ms. Rosalind T. Burks, Paralegal, (803)935-5540.

Respectfully,

Rosalind Burks
for Holly Scaturo
Director
Forensic Evaluation Services and the
Sexually Violent Predator Treatment Program
(803) 935-5809

cc: James Bogle, Assistant Attorney General
Scarlet A. Wilson, Solicitor, Ninth Judicial Circuit
James K. Falk., Attorney at Law
Leah Guerry Dupree, Clerk of Court, Berkeley County
Colb Sutton, Psy.D., Multidisciplinary Team

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
SEXUALLY VIOLENT PREDATOR PROGRAM

ANNUAL EXAMINATION AND REVIEW HEARING NOTICE

TO: Brian Valbert
Name of Resident

DATE: 3/12/19 . 2018

I. ANNUAL EXAMINATION AND REVIEW HEARING

Pursuant to Section 44-48-110, South Carolina Code of Laws,

A. You are entitled to an annual re-examination of your condition. A report of such examination is attached and will be furnished to the Court which committed you, the Attorney General, the Solicitor in the Circuit you were convicted of the qualifying offense(s), your attorney (unless you do not have one), and the multi-disciplinary team.

B. The Court conducts an annual hearing to review your status.

Please initial and check one (1) box below:

I am aware that I have the right to an annual hearing to review the status of my case.

☐ I choose to waive my right to an annual hearing. **Do NOT complete I. C. or D.**

BV ☒ I do not waive my right to an annual hearing.

C. You have the right to have an attorney represent you at the hearing, but you are not entitled to be present at the hearing. If you do not have an attorney and are indigent, you may request the Court to appoint an attorney to represent you at the review hearing.

Please initial and check one (1) box below:

I am aware that I have the right to be represented by an attorney at the annual hearing to review the status of my case.

☐ I choose to waive my right to representation by an attorney.

☐ I will exercise my right to counsel by hiring an attorney to represent me.

☐ I want to exercise that right, do not have an attorney, I am indigent, and request the Court to appoint an attorney for me.

BV ☒ James Falk was my last Court appointed attorney.

- D. You may retain or, if you are indigent and so request, the Court may appoint a qualified expert to examine you, and the expert shall have access to all your medical, psychological, criminal offense and disciplinary records and reports.

Please initial and check one (1) box below:

I am aware that I have the right to have a qualified expert examine me and that I may present the results of that examination to the Court at the annual review hearing.

☐ I choose not to exercise that right at this time.

☐ I choose to exercise that right and will hire a qualified expert to examine me.

R ☒ I am indigent and I wish to have the Court appoint a qualified expert to examine me. I understand that the appointment of an expert is discretionary with the Court.

III. ACKNOWLEDGMENT

I have received and reviewed the foregoing ANNUAL EXAMINATION AND REVIEW HEARING form.

Brian Valbert
Resident: PRINT Name

B.T. 3/12/19
Resident: SIGN Name Date

[Signature] 3/12/19
Witness Date

Or, resident refused to sign.

Witness Date

ANNUAL NOTICE OF RIGHT TO PETITION FOR RELEASE
ELECTIONS TO WAIVE OR EXERCISE RIGHTS

TO: Brian Valbert
Name of Resident

DATE: 3/12/19 ~~2018~~

II. ANNUAL NOTICE OF RIGHT TO PETITION FOR RELEASE

Pursuant to Section 44-48-110 and 130, South Carolina Code of Laws,

- A. You have the right to petition the Court for release at any time, with or without the approval of the Department of Mental Health. However, it is important that you understand that if you do petition the Court for release without the approval of the Director of the Department of Mental Health, and the Court finds that either: (1) the petition was frivolous or (2) your condition has not changed so that you (the petitioner) are now safe to be at large, then the Court may deny any subsequent petitions without a hearing unless the petition contains facts upon which a Court could find your condition has so changed as to warrant a hearing.

Please initial and check the box below:

Pr ☒ I am aware of the fact that I have the right to petition the Court for release at any time and I am aware that this document does not constitute a "Petition for Release."

III. ACKNOWLEDGMENT

I have received and reviewed the foregoing ANNUAL NOTICE OF RIGHT TO PETITION FOR RELEASE form.

Brian Valbert
Resident: PRINT Name

Brian Valbert 3/12/19
Resident: SIGN Name Date
[Signature] 3/12/19
Witness Date

Or, resident refused to sign.

Witness Date

**SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICES**

**SEXUALLY VIOLENT PREDATOR ANNUAL REVIEW REPORT
Pursuant to §44-48-110**

Name: Valbert, Brian
Date of Birth: [REDACTED]/1970 (age 48)
Date of Commitment: 11/6/2008
County: Berkeley
Review Period: September 2017 through January 2019
Date of Report: 3/12/2019
Evaluators: Kelsey Laxton, Ph.D.
Rozanna Tross, Psy.D.

IDENTIFYING INFORMATION

Brian Valbert is a 48-year-old male committed to the South Carolina Sexually Violent Predator Treatment Program (SVPTP) facilitated by Wellpath Recovery Solutions (formerly known as Correct Care Recovery Solutions) under the South Carolina Department of Mental Health (SCDMH). Following adjudication as a Sexually Violent Predator on 11/6/2008, he was committed to the SVPTP for "long-term control, care, and treatment." He was subsequently admitted to the program on 11/10/2008.

REASON FOR EVALUATION

This evaluation is being completed pursuant to South Carolina Code §44-48-110, which provides for individuals committed as Sexually Violent Predators (SVP) to have a current annual examination attesting to their mental abnormality. This evaluation is provided to assist the Court in determining whether there is probable cause to believe that Mr. Valbert's mental abnormality or personality disorder has so changed that the person is safe to be at large and if released, he is not likely to commit acts of sexual violence.

South Carolina Statute §44-48-30 defines *mental abnormality* as "a mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sexually violent offenses." *Likely to commit acts of sexual violence* is statutorily defined as "the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others."

NOTIFICATION

The nature and purpose of the evaluation were explained to Mr. Valbert at the beginning of the interview. He was advised he was not required to participate in an interview for the evaluation if he did not wish to do so, as it is a voluntary aspect of the annual review process. He was advised a report would be written and submitted to the court regardless of his participation, and a decision to decline to interview would not negatively impact his review. He was advised the evaluators would review available records and gather information from relevant collateral informants as needed, and that any or all information gleaned from these sources could be used in the report submitted to the court. Mr. Valbert was explicitly advised any statements he made in the context of this evaluation were not confidential and could also be made part of the report and/or become part of courtroom testimony and related records. He was advised this information could also become part of his record and may be viewable to members of his treatment team and those affiliated with his legal case. He was given the opportunity to ask questions and consented to participation in the interview.

SOURCES OF INFORMATION

Mr. Valbert participated in a clinical interview for approximately three hours on 2/6/2019. In addition, the following sources of information were reviewed during the current evaluation and report:

- Wellpath/Correct Care Recovery Solutions (CCRS) Treatment Records, dated September 2017 to January 2019
 - Treatment Summary, dated 11/27/2018
 - Treatment Plans, dated 4/19/2018 and 10/24/2018
 - Progress and Weekly Group Notes and Related Assignments
 - Psychiatric Evaluation and Psychiatrist Progress Notes
- Prior Annual Review Reports by Amy C. Swan, Psy.D., dated 9/23/2013, 2/13/2015, 4/18/2016, 2/8/2017, and 1/4/2018
- Prior Annual Review Report by Allyson M. Sipes, Psy.D., dated 3/16/2012
- Prior Annual Review Reports by Kimberly S. Harrison, Ph.D., dated 10/5/2009 and 3/8/2011
- Admission Psychosocial Evaluation, dated 1/15/2009
- Psychosexual Testing Results, dated 1/31/2009
- Original Commitment Documents:
 - Forensic Psychiatric Evaluation by Peggy C. Wadman, M.D., dated 5/27/2008
 - Penile Plethysmograph Report by William Burke, Ph.D., dated 6/13/2008
 - Petition Pursuant to the Sexually Violent Predator Act, dated 12/13/2007
 - Sexual Predator Referral Form, dated 10/16/2007
 - Available incident and supplemental reports, warrants, indictments, and sentence sheets related to sexual offense history
- South Carolina Department of Corrections Records, various dates
- South Carolina Criminal History Record, performed 9/15/2003

BRIEF HISTORY

Unless otherwise noted, the following historical information was gathered from prior evaluation reports.

Mr. Valbert was born and raised in Charleston, South Carolina, by his biological parents as the youngest of five children. His father was in the Navy, which led to the family moving often in childhood. He described his father as an alcoholic and his mother as a strict disciplinarian. He has consistently described being raised in an "invalidating" environment. In treatment assignments, he described growing up in a "dysfunctional" home. He said the family often had financial difficulties, and he and his siblings "took on adult responsibilities" in the home. He said he worked from age 11 and used his money to assist his parents financially. He described that his siblings were often in charge of childcare or babysitting him. His parents are each now deceased. Mr. Valbert endorsed physical and emotional abuse from his mother and father. Mr. Valbert has also reported being raped at age 9 by a 12-year-old male neighbor and being sexually assaulted in prison.

Mr. Valbert has described failing three grades in school, though he denied any placement in special education. He described frequently being truant from school due to being bullied. He said he was suspended several times for fighting, smoking, and talking back to teachers. He said he accidentally set his house on fire when he was four or five years old. He reportedly attempted to flush a cat down a toilet at age 10. He reportedly stole money from his parents and siblings and repeatedly lied to his parents.

Mr. Valbert joined the Air Force for approximately three years. He also worked delivering newspapers and in the heating and air conditioning service. He reported being fired at least three times for tardiness or not presenting for work, and he has quit jobs without having another lined up "because he was bored."

Mr. Valbert reported he began drinking alcohol and smoking marijuana at age 11 or 12. He drank to the point of intoxication repeatedly as a teenager, but he said he decreased consumption around age 21. He said he smoked marijuana every day, though he said he "did not like the high" and "only pretended that he was smoking due to peer pressure." He said he last smoked around age 23.

In regard to relationship history, Mr. Valbert reported he has been married three times. He first married at age 23, but "caught his wife in bed with another man" within two weeks of their marriage. They remained married for approximately one year because she was pregnant, but they then divorced. He remarried at age 26 and said his second marriage lasted approximately two years. This union also produced a son. He remarried a third time at age 30 or 31 for approximately five years. This union produced two sons. The marriage dissolved when he was incarcerated. He has described being "controlling" and "unfaithful" during each of his romantic relationships.

During his initial forensic evaluation, Mr. Valbert denied any history of mental health diagnosis or treatment, except an antidepressant for approximately six months following his divorce in prison. SCDC records corroborated his report. He also received a court-ordered assessment in 2001 in which he was diagnosed with Adjustment Disorder. Mr. Valbert was treated for about a year from 2009 to 2010 with antidepressant medications for "inattentiveness" and complaints of depression and anxiety. He requested to discontinue the medications in 2010.

CRIMINAL HISTORY

Non-Sexual Offense History

Mr. Valbert has reported a history of juvenile delinquency. He reported offenses of Breaking and Entering, Vandalism, and Grand Larceny related to one incident at age 11 or 12. Records indicate Mr. Valbert has arrests as an adult for Theft of Cable and Fraudulent Check, though the dispositions of these offenses are unknown.

Institutional Disciplinary History

While incarcerated in SCDC, Mr. Valbert received on disciplinary infraction for possession of a tattoo gun.

Sexual Offense History

Mr. Valbert has a history of sexual offending, with four detected victims. His known history is detailed below in chronological order, with convictions underlined.

On November 15, 2000, the mother of Mr. Valbert's 4-year-old son contacted police after he reported to a counselor that his father "touched his penis and buttocks." He reported that other children in the home had "squeezed his penis" on several occasions. He reported that his father and stepmother "would put their fingers inside his butt." He stated his father "hit" him, and, on one occasion left a bruise in the shape of a handprint on his buttocks. He said his father, stepmother, and other children called him vulgar, derogatory names.

On 1/24/2001, Mr. Valbert was arrested and charged with one count of *Criminal Sexual Conduct (CSC) with a Minor in the First Degree and Lewd Act upon a Minor under age 16*. Per the indictments for these charges, the offense conduct included "numerous" occasions that occurred "on or about or between" 12/1/1997 and 11/15/2000 (when the victim was age 1 to 4 years). The court transcript revealed the victim did not disclose he had been digitally penetrated at a later interview, so the CSC charge was dismissed. The State indicated the victim's older brother was also present while the abuse occurred. Records also indicate Mr. Valbert's wife (the victim's stepmother) was a co-defendant and similarly charged with CSC with a Minor in the First Degree.

According to a confidential assessment completed of the victim (dated 11/15/2000), the victim had various other instances of physical abuse by Mr. Valbert. The document indicates the victim returned to his mother's home with a black eye, two cigarette burns on his face, unexplained bruises, and a belt mark on his leg. It indicates Mr. Valbert pulled the victim's hair, and his stepmother has "slapped" the child's face. The document describes Mr. Valbert telling his son that his mother and grandmother are "stupid bitches" who "hate" the victim, and that it was the mother's fault Mr. Valbert was jailed for child support nonpayment. Mr. Valbert allegedly called the victim names such as "f***ing piece of shit, and asshole, they call him stupid and an idiot" [sic]. The victim reportedly returned home angry and upset but "says he can't talk about what happened at daddies [sic] because daddy says not to." The assessment indicated the victim was "at risk of harm physically, emotionally, and mentally during visits with his father, stepmother, and stepsiblings." Physical examination documents are largely illegible, though the Petition states a medical exam revealed "redness and irritation to the anus and bruises and scrapes...consistent with...sexual abuse."

On 11/19/2001, the 5-year-old daughter of Mr. Valbert's ex-girlfriend disclosed he had "put his finger into her vagina." She reported she was sleeping and was awakened by him putting his finger into her vagina. On 1/8/2002, Mr. Valbert was charged with *CSC with a Minor in the First Degree and Lewd Act upon a Minor under age 16*. Per the indictments for these charges, the offense conduct included "numerous" incidents that occurred "on or about or between" 6/1/1999 and 11/30/1999 (when the victim was age 4 to 5 years).

On 6/10/2002, Mr. Valbert pleaded guilty in an *Alford* plea to two counts of Lewd Act upon a Minor under the age of 16. He was sentenced to two concurrent sentences of 12 years' incarceration and ordered to register on both the child abuse and sex offender registries. According to court transcripts related to his hearing, the State had investigated and located two additional victims, Mr. Valbert's nieces. The abuse allegedly occurred in 1996. The State stated, "the similarities between what had happened to [the 5-year-old female above] and the two nieces were strikingly similar." The State agreed to decline to serve two additional warrants for such offenses in exchange for Mr. Valbert's plea. The State further stated there had been about seven other reports filed to police alleging abuse by Mr. Valbert. No additional records are available for any of these allegations.

Mr. Valbert told Dr. Sipes in 2012 that his first victims were his nieces at age 7 and 9, when he was approximately 28 years old. He reported he offended the younger victim on three occasions and the older victim on "two or three" occasions, over a period of nine months. He said he helped them with their baths to build up to offending. He acknowledged he masturbated to thoughts of these victims for three or four months prior to offending. He said he fondled their genitals with his hand. He acknowledged to Dr. Swan in 2013 that he also had oral sex with the older victim.

Mr. Valbert told Dr. Sipes (2012) that his third victim was his 5-year-old son, when Mr. Valbert was approximately 30 years old. He described masturbating his son when he was giving him a bath on one occasion. He denied digitally penetrating his son's anus, stating his son might have been referencing the time he gave him a suppository on another occasion. He acknowledged to Dr. Swan in 2015 that he rubbed his son's penis until he was erect and then performed oral sex on his son.

In 2012, Mr. Valbert reported his fourth victim was the 5- or 6-year-old daughter of his then-girlfriend. He said the daughter would get in bed with him and his girlfriend, and he would fondle her vagina and then masturbate himself. He said this occurred about four to five times, each when his girlfriend was also asleep in the bed. He said he digitally penetrated her vagina on one occasion. He endorsed fantasies about the victim once the offending began.

Uncharged Sexual Offense Allegations

Victim Registration Form statements included with the State's Petition from mothers of alleged victims included additional sexual offense allegations by Mr. Valbert, including children who were "too scared to

testify" against Mr. Valbert and one child's mother who did not want her to have to testify after she had received treatment for the trauma. In prior annual review evaluations, Mr. Valbert has disclosed that he has offended against anywhere from 10 to 30 total victims. He reported all his victims were female with the exception of his son. Though he initially reported having an additional male victim, he later reported the victim was actually a female. He said his first offense occurred at age 10, when he would not allow a 7-year-old female neighbor in his fort "unless she had sex with me." He said he laid on top of her naked. In 2013, Mr. Valbert disclosed having 16 victims with females aged 3 to 16 years. He also reported "non-contact" victims, which included female children whom he "peeped on" or thought about offending, but reportedly never sexually abused. Seven of these victims were aged 12 to 16 while he was age 17 to 21, and he was reportedly in a sexual relationship with several of these victims. These offenses occurred from age 10 to his index offense convictions. Mr. Valbert described prior attraction to female children because they were "virgins, innocent, pure, naturally affectionate, hairless." He has consistently denied an attraction to males.

ORIGINAL COMMITMENT FINDINGS

Mr. Valbert was originally evaluated for possible civil commitment under the SVP Act in May 2008 by Dr. Peggy Wadman. She assigned diagnoses of Pedophilia, Sexually Attracted to Both, Nonexclusive type and Antisocial Personality Disorder. Noting his history of antisocial behavior, impulsivity in sexual offending, and his multiple victims, she opined he met criteria for civil commitment as a sexually violent predator.

Mr. Valbert received a Penile Plethysmograph performed on 6/13/2008 by William Burke, Ph.D. Results indicated a sexual preference for female children in coercive situations.

PRIOR TESTING RESULTS

An admission psychosocial assessment in 2009 agreed with Dr. Wadman's opinions. He was again assigned diagnoses of Pedophilia and Antisocial Personality Disorder. The evaluation noted a need for "intensive treatment" and his "denial regarding his arousal and deviant thoughts/arousal." Mr. Valbert was also administered the Multiphasic Sex Inventory, Second Edition (MSI-II) in January 2009. Results indicated he was guarded in responding, though the results were deemed valid for interpretation. His results showed he had an inclination to experience apprehension and anxiety with adult females, as well as significant antisocial behaviors. On measures of sexual deviance, he acknowledged deviant sexual desires or arousal to fantasies involving a child, though his responses indicated he did not "recognize or acknowledge the full extent of his use of deviant fantasy." While he did not acknowledge pre-assault feelings and behaviors such as manipulation, planning, or excitement, he disclosed child molestation behaviors involving several children. He endorsed a prior addiction to pornography and minimized his past "sex obsession." In regards to his cognitions about offending, he justified, minimized, and engaged in victim-blaming thoughts.

TREATMENT PROGRESS

Prior Annual Review Conclusions

According to prior annual review evaluation reports, in his first few years in the SVPTP, Mr. Valbert reportedly presented as "demanding, resistant to change and re-direction." He initially exhibited "extensive minimization, justification, and externalizing blame" in his accounts of his offenses, though some improvement was noted. He engaged in manipulation and threats toward staff to achieve desire outcomes (i.e., a room change, be next in line to present his assignment), and received infractions for the same. He attributed his offending behaviors to the abuse he endured as a child, his difficulty maintaining an erection, and rejection from same-aged females.

Mr. Valbert's participation improved beginning in 2012, according to that year's annual review report, and his assignments were described as "thorough." He reportedly began to identify and understand his history of feelings of rejection and inadequacy, taking a victim stance and his cognitive distortions. In his 2012 and 2013 annual evaluations, he was also able to identify immediate risk factors for re-offense, and he accepted feedback from peers and staff. Nevertheless, evaluators reported he continued to require improved

emotional regulation, awareness and management of deviant sexual arousal, understanding of his offense cycle, improved self-esteem, identification and implementation of copings strategies, and development of a support network. Per the subsequent annual review report, questions were raised in treatment in 2014 and 2015 about Mr. Valbert's full disclosure of victims, as he expressed notable reluctance to discuss "off-the-record" victims for fear it would "incriminate" him. He asked questions about who could be considered a victim, and his group expressed frustration with his questions and reluctance. He also expressed concerns about completing tracking logs for fantasies and masturbation habits, again for fear the information could be used to "incriminate" him. Per the evaluation report, he disclosed to his case manager that providing accounts of his past sexual offenses and completing sexual arousal logs were arousing for him. In a later evaluation, he disclosed that he had been having deviant fantasies and masturbating to them, in contrast to his previous accounts to the contrary. In 2014, Mr. Valbert was also counseled for continuing to have written communication with his son (a victim) despite his case manager's instructions to cease communication.

In 2015 to 2016, Mr. Valbert was described in his annual review evaluation as having "considerable insight" toward his goal of understanding and managing deviant sexual arousal. He reportedly began to explore the emotional and cognitive connections he believed he achieved with children, and he identified patterns and challenges related to his deviant arousal. He was also noted in the report to display notable improvement in emotional self-regulation, as demonstrated with his calm, assertive responses to situations with group members and co-workers that were or could have been confrontational.

Annual review evaluation reports from 2009 to 2018 have consistently included a diagnosis of Pedophilia (or Pedophilic Disorder), Sexually attracted to both, Non-exclusive type. Since 2015, the same evaluator has diagnosed him with Other Specified Paraphilic Disorder, Sexually attracted to pubescent females.

Most Recent Annual Review Conclusions

Mr. Valbert's most recent annual review evaluations were conducted by Dr. Swan (dated 2/8/2017 and 1/4/2018). In the 2017 report (for the 2016 review period), Mr. Valbert was noted to continue to make successful progress on his treatment goals regarding managing deviant arousal and improving emotional regulation. He also discussed additional aspects of his life that contributed to offending, including how he attempted to fulfill unmet emotional needs such as "acceptance and feeling loved and wanted," "control," and "self-validation," through offending. He elaborated, "With children I felt accepted, loved, and they were always happy when they saw me." Per the report, he identified strategies to cope with deviant arousal, including "thought stopping," recognizing and avoiding triggers, seeking help, awareness of his thoughts and feelings, and having avoidance and escape plans. Dr. Swan noted that he had made significant progress on all of his applicable dynamic risk factors, and several had been absent for over a year. In light of this, his notable progress in treatment in the identified treatment needs, and his motivation to avoid re-offense, Dr. Swan opined Mr. Valbert did *not* continue to meet the definition of an SVP and that he was now safe to be at large and was no longer likely to engage in acts of sexual violence.

According to Dr. Swan's subsequent report, in March 2017, Mr. Valbert attended a meeting with the Discharge Review Board. At the meeting, Mr. Valbert reportedly presented "poorly, as he was overconfident, was focused on his child support obligation, and had ongoing deviant fantasies but was not able to verbalize what he was doing to manage them." After a second meeting with the examiner present, the Board did not grant approval for Mr. Valbert's discharge. No other information or documentation is available regarding the Review Board's concerns regarding his release.

As such, Dr. Swan completed an "updated evaluation" report, dated 1/4/2018. Mr. Valbert's case manager provided a consultation with the Discharge Review Board and Dr. Swan. She reported he continued to evidence "transference issues" with his case manager, as he reported she "reminds him of his mother." He was assigned a related treatment assignment, and he reportedly did well on the assignment. His case manager reportedly provided him feedback that he was demonstrating "hostility towards women," but he

became upset and "was not able to say that he was upset because it reminds him of his mother." Per the report, "She said that he has issues with staff as he was pushed aside as a child." While "grievance/hostility" had not been described in prior annual review evaluations, Dr. Swan noted in the 2018 update that he displayed grievance thinking toward his case manager and blamed her for his denial of release. Dr. Swan noted this factor was "impeding his treatment progress." Dr. Swan opined, "his transference issues and hostility toward women" were ongoing issues of concern. He described that his case manager "was not listening" to him and that she "invalidated" him, and Dr. Swan noted he "does not seem to understand that he should not rely on others for approval."

Nevertheless, Dr. Swan described that Mr. Valbert "did an outstanding job" on assignments related to his cognitive distortions, decision chains, and lifestyle during offending. She also noted he "stuffs things and blows up and he is not able to address the problem." Dr. Swan indicated "some deficits have come to light" in the area of sexual preference for children and that he "will require additional work on the relationship between his sexual fantasies and sexual offending." She also noted he used poor problem solving in the Discharge Review Board meeting and "in dealing with issues that have arisen in group." There were reportedly additional concerns that Mr. Valbert was "not being completely honest" in groups about the reasons he offended, specifically in regard to his sexual arousal to children. She noted there were also "concerns that he was participating in a superficial manner because he was fearful about his upcoming evaluation."

During the second interview with Dr. Swan, Mr. Valbert reportedly expressed concerns that "DMH allowed him to over-report victims," as he questioned whether masturbating to an 8-year-old female at his uncle's house led to her being a victim, as he never physically offended against her. Dr. Swan noted, "This also demonstrates grievance thinking and blame-shifting, and it is apparent Mr. Valbert requires more work on these issues." As such, Dr. Swan opined he continued to meet the definition of a Sexually Violent Predator and remained likely to engage in acts of sexual violence.

Treatment Progress During Review Period

During the review period, Mr. Valbert has been working in the Corrective Thinking Track of Phase 2.2 (of four) of the Wellpath (formerly Correct Care Recovery Solutions) treatment program. During this phase, participants aim to identify the main factors that contributed to their past offending. To this end, participants work "to develop insight into their current expression of risk factors and to further enunciate continued barriers to personal balance." Overall, Mr. Valbert was described in the treatment summary (dated 11/27/2018) as active and engaged in treatment, and he successfully completed numerous assignments. He has maintained employment and CARE level 5 (i.e., the highest level of privileges in the behavioral system). While he does not participate in structured activities of activity therapy, he joined the gardening group during the review period, and he has been observed communicating well with staff and peers in the activities department. Most recently, group notes indicate Mr. Valbert began the Sexual Arousal Management group on 1/17/2019.

Early in the review period, group notes indicated Mr. Valbert continued to be hesitant or reluctant to fully engage in group discussions and assignments. When discussing a particular set of assignments, he was informed group facilitators would determine which victims to discuss within the assignments. He replied, "I have issues with that. I have off the record offenses. The details may make me reportable." On other occasions, group notes indicate Mr. Valbert was challenged for his emphasis on "not getting his needs met" as an "excuse" for his offending, and a discussion of "wants" versus "needs" ensued. In the same group, Mr. Valbert reportedly denied having any sexual thoughts or fantasies in over a year, and he denied masturbating in over two years. He also denied ever having intrusive sexual thoughts about children during any of his marriages. The group note indicated facilitators questioned Mr. Valbert whether his upcoming appointment with an evaluator (Dr. Swan) impacted his reluctance to answer questions truthfully and meaningfully. He maintained that he was being honest. In a group on 9/7/2017, Mr. Valbert did not

complete an assignment about sexual thoughts and fantasies. He reported he was unable to concentrate due to discontinuation of his medication. When questioned, he denied any feelings of anxiety related to his assignment as well as the appointment with an evaluator. Per the group note, "The writer has concerns in regards to Mr. Valbert's honesty in regards to the actual reason the assignments were not completed." He then completed and presented the assignment in group the following week.

According to his subsequent treatment plan (dated 4/19/2018), Mr. Valbert acknowledged his poor performance in front of the Discharge Review Board. He processed stressors that led to his presentation, including increased depressive mood symptoms and a new legal stressor. Specifically, the treatment summary and treatment plan noted Mr. Valbert received notice prior to the Board meeting that he had an arrest warrant for nonpayment of child support of over \$20,000. The same records indicated he described significant concern that he would be released from the SVPTP only to be jailed.

According to the 4/19/2018 treatment plan, Mr. Valbert's treatment goals included identifying his cognitive distortions and thinking errors during his presentations in group, completing coping logs, and providing a complete and honest account of life events from childhood through adulthood to include sexual offenses and sexually deviant behaviors and fantasies. Mr. Valbert achieved this latter goal by presenting an assignment called "Patterns in My Offending" in several groups throughout the review period. In his October 2017 presentation, he discussed masturbating to "looking up girls' dresses at school ... or when I was able to see through their panties or tights." He also reported, "In my later teens (15-16), I masturbated and usually fantasizing [sic] because I was too afraid to ask girls for sex. I was very insecure sexually because I had performance anxiety," which he clarified to mean difficulty and anxiety around getting an erection because he was "unable to perform the first time I attempted to have sex with a girl." In his subsequent presentations in November 2017, he described "gambling and wasting money" and using credit "to support his lifestyle." He described having difficulty in relationships and observing dysfunction in his parents' relationships. He described being unhappy in his marriage and liking her "as a friend" rather than loving her "as a wife." He said he entered into marriage because "I was emotionally needy. I did not want to be alone." Mr. Valbert shared he was controlling in his relationship: "I would not allow my wife to work so I got a second job. I bought her the car I wanted her to have. I thought she needed to exercise, I took her to nature trails." He acknowledged having feelings of "shame" about his wife "due to her size" and "not [wanting to] be seen with her in public." He said he would choose where they ate, and he would take her to the next town. Per the group notes related to these presentations, Mr. Valbert was noted to demonstrate a solid understanding of his lifestyles, attitudes, emotions, and dynamic risk factors in this assignment.

Per group notes, Mr. Valbert presented a revised version of this assignment on 5/15/2018. In group, he reportedly explained offense-supportive attitudes regarding his offending behaviors, including beliefs that he was not harming his victims but rather showing them "love." He also described looking at child pornography that he requested from a peer. He acknowledged he was in denial of his sexual interest in children at the time of his offending. A review of his assignment indicated he specifically described his offending behaviors toward his nieces. He said he requested to care for his brother's daughters, "not knowing that some of the things I did was for the purpose of grooming my brother and his wife." According to his assignment, when he watched them on one occasion, he said he "was told to make sure she washed her hair. This led to permission giving in that I could justify entering the bathroom while she was taking a bath." He wrote he offered to babysit his nieces on unplanned occasions. He said he helped the oldest wash her hair, and "this allowed me to access to her while she was naked and I began to test her boundaries and touched her vagina." He said the younger niece was "streaking through the house," and he "saw an opportunity to be able to further test [the oldest niece's] boundaries by also allowing her to run around naked giving me more opportunities to touch her (fondle her vagina) without her knowing what I was doing, such as placing my hand on her vagina when I had her sit with me to watch TV." He wrote he then began creating opportunities to be in contact with her while she was naked. He further wrote:

With the distortion that female children's vaginas look like their mothers, in a twisted way I felt like when I saw [the victim] naked I was looking at her mother naked. ... I fantasized about my brothers girlfriend [the victim's mother] when I was 15... in some twisted way touching my niece was like touching her mother. ... There were times when I knew the victim awoke and I gave them a half-hearted apology after offending in an attempt to excuse my behavior, and when the victim accepted my apology/excuse it gave me a pass (I didn't have to face any negative emotions) and it allowed me to further distort my beliefs to: she likes it.

In the group progress note, the facilitator noted that Mr. Valbert "remained communicative throughout the group process and was receptive to the feedback he received."

Mr. Valbert completed other assignments, which focused on understanding his offending behaviors and related dynamic risk factors. These assignments were reviewed by this writer. In one assignment, he shared he viewed females as "something to conquer," a view that "allowed me to take advantage of others to get what I wanted, sex." He shared, "... my needs must be met so when I had an urge, I acted on it without thought of the consequences." He described feelings of "insecurities, feeling inadequate, having performance anxiety, which also relates to why I wanted inexperienced younger females." He reported the teenage females he engaged with were often "very petite, slim build, and looked younger than they were. ... at times I was in denial that I was sexually attracted to prepubescent children." In assignments, Mr. Valbert also identified cognitive distortions and offense-supportive attitudes present at this time in his life, to include sexual entitlement and thoughts such as, "Children have sexual thoughts and needs. Children are not harmed by my sexual contact." In a subsequent group encounter note, he was asked to revise his assignment to include more information about his sexual preoccupation during this time, and he did so.

Mr. Valbert's assignments and presentations also included Decision Chain analyses of his prior sexual offenses. Across several groups in July and August 2018, he presented and discussed the Decision Chain analysis related to the victimization of his son. Per group notes, he identified thoughts, feelings, and behaviors leading up to, during, and following the offense. However, it was noted by group facilitators that there were large gaps in time between his decision chain "links," and he agreed his links were not fluid and needed additional details to tie them together. In his presentations, group notes indicated Mr. Valbert described feelings of remorse and self-loathing following the offense against his son. He disclosed that he had been watching pornography just before giving his son a bath, and he was preoccupied with wanting to return to viewing pornography. He said his son got an erection in the bathtub, and Mr. Valbert felt "aroused and curious." He reportedly thought, "It felt good and he liked being touched on his penis," and "I could suck his penis and he would let me because it would feel good to him." He said he was aroused by the thought of sexually assaulting his son because he had "gotten away with" assaulting many other children. During his presentation, Mr. Valbert was noted by the facilitator to be "hesitant" in responding to questions, as his responses "took a while." Per group notes, in group a week later, he was asked to process his negative emotions during his presentation. He stated, "I felt as though the group was not accepting me. ... It seemed as though I was being challenged about my truthfulness. I feel as though I am being alienated because I offended against children." The facilitator noted she encouraged Mr. Valbert to examine his feelings regarding his offenses "as there may be unresolved feelings of guilt and shame that he has yet to acknowledge."

Beginning in group on 10/1/2018, Mr. Valbert provided an account of offending on a 14-year-old female undetected victim. In this assignment and a subsequent LRAES assignment (Lifestyle, Relationships, Attitudes, Emotions, and Sexual interests), Mr. Valbert disclosed he "convinced" her to have sex with him while she was intoxicated at a party. He said he later found her passed out in the bathroom, and he woke her to bring her back to the room to continue having sex. When he was unable to wake her, he left. A review of the assignment indicated Mr. Valbert adequately linked numerous dynamic risk factors to this offense using specific behaviors or cognitions as examples. Relatedly, he identified a number of cognitive distortions

present during his offending. Group facilitators noted in progress notes that he responded appropriately to clarifying questions asked by his group members. In a subsequent presentation (per a group note for 11/26/2018), Mr. Valbert was challenged by his peers about details of his offense. He and his peers engaged in a lengthy discussion about whether Mr. Valbert "picking the lock" on the bathroom door (where the victim had been) was considered "breaking in" to the bathroom. Per the group note, his peers shared that he was showing sensitivity to specific words, appearing to be concerned with impression management. He was noted by facilitators to show a defensive and frustrated emotional response and "indications of minimizing his offense." He received feedback that he "always attempted to present himself as the 'good guy' and does not like speaking about himself in a way that portrays him negatively." The note indicated Mr. Valbert was likely "censoring or carefully considering his words for fear that they can be used against" him. To his credit, the facilitator described, "he does seem to require time to process feedback and usually integrates it after the conclusion of group." Per the progress note, Mr. Valbert apologized to his peers in the following group.

Mr. Valbert has shared in group and during assignments that he "felt something was wrong with him" when he could not get an erection with a female. Per the treatment summary and group notes, he continued to experience rejection and performance anxiety, which contributed to his seeking sex with virgins because "they would have nobody else to compare me to." In group, he stated he believed his attraction to younger and inexperienced females stemmed from them being more vulnerable and less likely to judge him. Per the treatment summary and his assignment, Mr. Valbert further explained that he typically associated with teens three or more years younger than he was, since he was behind in school and "comfortable being where I was (there was less risk of me being rejected by them). According to the treatment summary, and his assignment he disclosed engaging in "around 10 to 12 inappropriate relationships with underage females in the age range of 12 to 16" when he was 17 to 18 years old. He described developing attitudes towards females from things he heard from his brothers and other teenage males. Per his assignment, he reportedly believed, "if she says no keep trying, don't stop until she slaps/hits you, persistence gets the prize, she dresses in a provocative way to get me to look, she wants me to look, consent is what it's all about, making her say yes."

Mr. Valbert's next treatment plan (dated 10/24/2018) provided multiple examples of effective use of the "Coping Logs" assignments. These assignments are used to process and evaluate daily opportunities to engage in effective and/or dysfunctional coping strategies as well as to identify dynamic risk factors and parallel offending where applicable. A review of the coping log assignments suggested Mr. Valbert completed coping logs on perceived difficulties, accurately identified emotion-focused, avoidant, and problem-focused methods of coping, and he apparently utilized the coping logs to challenge his own unhelpful automatic thoughts.

The treatment summary (dated 11/27/2018) noted Mr. Valbert has continued progressing in his goal of understanding and managing dynamic risk factors named in his previous evaluation in his numerous treatment assignments. The author also noted, "there is no known concern regarding sexual preoccupation, and he has continued to make efforts to effectively cope with stressors and take responsibility for his offending behaviors."

However, his prior evaluation listed dynamic risk factors of grievance thinking/hostility, poor problem solving, and hostility toward women, which were described in the treatment plan as ongoing treatment needs during the review period. In regard to grievance thinking/hostility, for example, the treatment summary noted he experienced some medical concerns and expressed a belief that he is "not being helped by anyone." Per the treatment summary, he said, "I feel they believe I am exaggerating my symptoms. ... It is really nice to be called a liar. It made me feel like shit. ... I will suck it up. ... They did not believe it was a problem. If I was having a heart attack, I will drop dead." Another example of "grievance thinking" identified in the treatment summary was Mr. Valbert's coping log on his perception that his attorney was ignoring and not listening to him. Per the treatment summary, he acknowledged emotion-focused coping by ruminating and "internally cussing him out." The treatment summary and the related group note indicated when his

peers attempted to encourage him to see the situation from his attorney's point of view, Mr. Valbert's voice elevated and his face flushed, and he acknowledged feeling angry.

In regard to hostility toward women, Mr. Valbert reportedly continued to evidence difficulty in the therapeutic alliance with his previous case manager (the same one named in Dr. Swan's report), according to the treatment summary. In one meeting with her, he challenged her and stated, "You know I struggle with trusting women. When I give you feedback, you go on the defensive." Per his report during the current evaluation, however, his relationships with subsequent case managers have been notably improved. In April, he reported a desire to continue to work on "conditional trust" and "learn how to be more open with people."

In regard to poor problem solving, Mr. Valbert's poor performance to the Discharge Board was provided as an example by treatment staff in his treatment plans and treatment summary. Another example cited in the same involved Mr. Valbert's decisions to engage in negative (nonsexual) conversations with peers near the beginning of the review period. He acknowledged his poor decisions and recognized this as an area of treatment need. Later, the treatment summary noted he demonstrated improvement, as he has excused himself from negative conversations and informed his peers that he does not desire to be involved in such conversations. Per a group note dated 7/19/2018, Mr. Valbert presented a coping log where he described thinking about his options when a family member informed him one of his son's wanted to write him a letter and send a high school graduation photo. He demonstrated an ability to reason through options and identified problematic behavior he would have likely engaged in in the past (e.g., used policies to justify my actions and just allowed him to write without thinking ahead to potential consequences.)"

In regard to other ongoing treatment needs, the treatment summary indicated Mr. Valbert continued to show "inconsistencies" in his disclosures. Specifically, the author of the treatment summary noted, "he is often challenged by his peers for seemingly missing information or to the accuracy and openness of his presentations." He was noted to show some defensiveness when challenged by his peers. These concerns have been suggested to stem from his "attempts at impression management." Further, "self-esteem and effective communication" are reportedly still an ongoing focus of treatment. To his credit, he was noted in the treatment summary "to have made improvement in his comfort level of utilizing assertive communication, even at the risk of others disliking him." Finally, according to the treatment summary, "while his coping is mostly effective, he demonstrates difficulty in identifying possible solutions when emotionally activated." For example, during some groups, Mr. Valbert was noted to become "hostile" toward group facilitators. During subsequent revisions of one assignment, he was given feedback that he did not answer questions as instructed. He was noted to become "hostile" with an elevated tone, tense posture, and slamming a book on the chair adjacent to him. In another group on 10/24/2017, he requested to discuss issues with his care plan in group. The facilitator informed him he could discuss the concerns at the next group session. Mr. Valbert tossed his copy of his plan into an empty chair and stated, "I am not signing it." He showed an elevated and curt tone and tense posture and asked again whether his plan could be reviewed during group. He stated, "I feel you are not hearing me." He calmed shortly thereafter. The facilitator indicated in the group note that he demonstrated "poor problem-solving skills/emotional regulation."

Psychiatric Treatment

From 2015 to 2017, Mr. Valbert was prescribed Doxepin for depressed mood and sleep. He reported this medication also reduced his sexual arousal. However, a psychiatry note from 9/13/2017 indicated the request for doxepin was denied at an administration level. Mr. Valbert reported feeling "very depressed" after his prescription had expired. He agreed to a trial of Remeron, which was reportedly ineffective. He reported the Doxepin had been helpful for concentration, and he described ongoing feelings of anxiety. He agreed to a trial of Buspar, which was also ineffective. He requested Wellbutrin to "help him concentrate," but his request was denied due to "no clinical indication" for it. A little over one month later (3/28/2018), Mr. Valbert requested to be seen and reported feeling depressed and feelings of hopelessness. He was prescribed Prozac. Several weeks later, Mr. Valbert requested to be seen and presented with complaints of

difficulty sleeping since beginning Prozac. On 5/2/2018, he requested to be seen and reported that Prozac was not helpful. On 5/3/2018, he shared, "I have not felt right since Correct Care discontinued by Doxepin. I feel confused, gloomy, and depressed." He complained of sleep disturbance and poor attention. He was prescribed Paxil, from which he reportedly benefited over the next six months. He described improved mood and sleep with a more optimism. At the evaluation, Mr. Valbert reportedly continued to take Paxil as prescribed.

INTERVIEW

Dr. Laxton met with Mr. Valbert on 2/6/2018 for approximately three hours. He presented as appropriately dressed and adequately groomed. He appeared oriented to person, time, place, and situation. Eye contact was appropriate, and he was cooperative with the interview. His speech was appropriate in rate, volume, and rhythm, and the content of his speech was organized and coherent. He had no apparent difficulty with attention or concentration, and recent and remote memory appeared largely intact. No evidence of psychotic processes was observed or elicited. He denied any suicidal or homicidal ideation. Mr. Valbert described his mood as largely positive and much improved over the past month, as he was enjoying placement in the new treatment facility. His affect appeared euthymic, though restricted in range. He denied any recent concerns or changes in sleep, appetite, or overall mood.

Mr. Valbert was initially given an opportunity to ask questions or make corrections to his previous annual review evaluation. Consistent with treatment records, he continued to dispute reports from the case manager described in Dr. Swan's report. He said she had confused him with another resident and that she was inaccurate in describing that he had disclosed an additional victim. Mr. Valbert seemed convinced this error significantly contributed to the Board's decision to deny approval for his release. He also disputed Dr. Swan's mention of having a deviant fantasy at the Board meeting. (Due to a lack of documentation about the Board meeting, Mr. Valbert's report is unable to be refuted or corroborated.) He reported that he may have been confused about whether the Board had asked him about deviant "fantasies" versus "thoughts." When asked for his account of what happened at the Board meeting, Mr. Valbert reported the Board asked, "Due to your number of off-the-record offenses, how can we be sure you won't reoffend?" He explained, "I felt like I was being judged for disclosing all the off the record victims that I had ... [because of] the shame. I felt like I was being prosecuted for them. I didn't feel like that was a fair question at the time." He elaborated that he "used to try to subdivide the offenses, based on no-contact offenses vs. contact offenses. But I know that it's an offense. It's an offense to talk sexually to an underage girl, because she isn't able to consent. I knew I was offending in that aspect. [I] probably divided them out to help myself feel better, considering non-contact offenses as lesser offenses." When asked why he felt the Board's question was unfair, he replied, "because they were off the record offenses, I was being held accountable for them, when the treatment program models that you should talk about them, but the attorney [the Board member] had asked it, that threw me." Mr. Valbert went on to explain the stressor of having a warrant for his arrest for nonpayment of child support as a significant stressor at the time. He also described getting a "negative" feeling every time he is placed in handcuffs. He said the transporting officer said, "They're not meant for comfort," which he personalized. He also stated, "Without Dr. Swan there I didn't feel like anyone there was on my side." He acknowledged, "I failed miserably. I wanted to knock on the door and say, today hasn't been a good day, can we try that again?" He identified his behavior at the Board meeting as poor problem solving, though he agreed with the evaluator's suggestion that he displayed dysfunctional coping. He also acknowledged elements of grievance thinking for approximately one month after the meeting.

In regard to Dr. Swan's subsequent evaluation, Mr. Valbert reported he "doesn't necessarily agree" that he displayed the risk factors of grievance/hostility and hostility toward women. He initially expressed that an individual "either has it [the risk factor] or you don't," but he was receptive to education that the presence (or absence) of any of the dynamic risk factors is more of a continuum than "all or nothing." When prompted, Mr. Valbert stated, "I can see how my defensiveness can be interpreted" as grievance/hostility. When questioned how hostility toward women and grievance thinking have appeared in his life, he said his

offending patterns "often came about after separations from romantic relationships. I wouldn't take responsibility for my part in the breakups. I was told I was controlling and demanding. I felt justified feeling demanding. I felt like I had to be or I would be taken advantage of." Asked to explain, he vaguely attributed this thought to "early relationships, feeling rejected." He elaborated, "When I did get someone who genuinely liked me, I felt like I had to do everything to hold on to that relationship, I felt like I had to make it work. Feeling like a failure (in relationships) led me to seek out ways to feel good through offending." He was asked to focus on how these dynamic risk factors were evident in his offending behaviors. He described feeling sexually "teased" and "led on" by a teenage victim with whom he was in a sexually inappropriate relationship (due to her age). He acknowledged feeling angry that she rejected his sexual advances on one occasion, and he said he "exploited an opportunity" when she was at a party. He said he contributed to her consuming more alcohol and later raped her. He said he was "motivated by anger" due to "continuously being rejected by girls as a child." In relation to younger victims, he said, "When I got into power and authority over children, I never gave them the ability to say no. I took advantage of them looking up to me. I manipulated that and exploited that. Because of feeling rejected at an early age." In relation to the offense against his 9-year-old niece, he acknowledged feelings of hostility toward his brother (the victim's father) and toward women. He explained, "My brother had sex with my girlfriends when I was a teenager. I was sexually attracted to her mother [the brother's wife]. I see hostility toward women because she didn't give me the time of day. I was able to have sex with her by proxy."

In relation to the offense against his son, Mr. Valbert reported feelings of grievance/hostility toward his son's mother (his ex-wife). He said, "I felt she had betrayed me, keeping my son from me." Mr. Valbert reported,

I was harsh with him, I was abusive, physically. I left a handprint bruise. I treated him poorly, blamed his mother for problems and downgraded her in front of him. I used him as a pawn to hurt his mother. [I thought] if I can get him to hate her like I do, he will want to come stay with me, and that will hurt her like I was hurting. I poisoned the relationship between my son and his stepmother because of my hatred towards her.

Mr. Valbert further acknowledged that his son endured verbal abuse by his stepmother and his siblings in the home. He said the siblings played without him, left him out, and were mean to him. Mr. Valbert stated that he modeled hostility toward the son's biological mother, and his son took the blame. Mr. Valbert denied sexually abusing his son on more than the one occasion, in contrast to records that state the abuse occurred for several years. He also denied ever digitally penetrating his son, again attributing his son's report to a suppository. He was asked about his contrasting accounts to different evaluators, though he maintained his account provided in treatment.

Mr. Valbert reported grievance thinking and hostility have not been an issue for him in the past year. He provided an example where his room was searched and he felt "violated." He said he was able to see the situation from a different perspective after several minutes and went to recreation and took some deep breaths to calm himself and challenged his thoughts. He provided another example when a staff member requested that he say "please" after a requested he made. He reported he thought in the moment, "I'm not going to give you what I want," and he responded with sarcasm. He said he did a coping log and realized there is no harm in saying please and thank you. Mr. Valbert acknowledged a tendency to take others' statements or situations personally. He attributed this to the invalidating environment in which he was raised, which led to his "craving" external validation. He said he often thinks "people don't like me, people don't want to be around me." Mr. Valbert asserted that he has improved in this area in the past year, though he acknowledged engaging in the same behavior in presence of the review board.

Mr. Valbert reported his last sexual thought occurred two days prior to the interview. He said he had a sexual thought about an 8 to 10-year-old female who "wanted to be near me." He said he responded by examining his thought and his immediate environment and situation. He reportedly reminded himself,

"that's only a child. Children don't have those types of thoughts." He said he went outside and talked with others. Mr. Valbert reportedly has sexual thoughts approximately once or twice per month, though he reported he has not had any deviant fantasies since "possibly 2014." Similarly, he said he has not masturbated to sexual thoughts of a child since 2014. He reported he had not had any sexual thoughts, fantasies, or any sexual urges in approximately six weeks. He described masturbating approximately once per month in the past year. He said he often "plans" his masturbation habits so that deviant thoughts do not interfere. For example, he designates a specific, private time and place to fantasize and masturbate, and his fantasy includes going on a date with an adult female and then having sex at the conclusion of the date. Mr. Valbert described appropriate coping strategies for deviant sexual thoughts such as becoming aware of his surroundings, feelings, emotions, and triggers; listening to Christian music; thinking about his Christian morals; drawing or designing homes; building baskets; or playing games or puzzles. He also described beginning the sexual arousal management treatment group which will focus on managing sexual urges and arousals. He also reported he will take a polygraph and a PPG test before he is able to enter the third phase of treatment.

Mr. Valbert assessed his current risk level to be "1%. I'd like to say 0, but the reality is it's easy to slip back in to old behaviors. I've done it before, so I'd do it again." Asked to describe his risk factors, he replied, "allowing myself to get close to children or anyone under the age of 18, backsliding in my management, forgetting my treatment, not paying attention to where I came from... Toxic relationships, losing a job, high stress situations." He identified his most prominent risk factor as deviant sexual interests in children. He said he would know that this risk factor was present in the community if he "wanted to be around children, sexualized children, talked to them in sexual tones, looked at child pornography, had more frequent deviant sexual thoughts, and having appropriate fantasies turning into a deviant fantasy." He identified his next most prominent risk factor as sexual preoccupation. He said he would know that this risk factor was present in the community if he "told sexual jokes to teenagers or women, sexualized talk and jokes, touching to spark an interest, looking at a female as a sexual object, having sex on my mind more often, feeling something is out of balance, like a belongingness."

DIAGNOSTIC FORMULATION

Based on available information, it appears Mr. Valbert's presentation is best characterized by the following diagnosis from the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*:

Pedophilic disorder, sexually attracted to females, non-exclusive type

According to the DSM-5, "The term *paraphilia* denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners." Further, a "*paraphilic disorder* is a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others" (p. 685). Pedophilia is a type of paraphilia in which the sexual focus is on prepubescent children. Mr. Valbert has four detected sexual offenses against four child victims, and he has discussed upwards of 30 victims including contact and non-contact offending behaviors. He has acknowledged fantasies and masturbation to children prior to and during his offending behaviors. He has also reported having sexual fantasies about children during the past 10 years he has been in treatment. While Mr. Valbert sexually abused his son, the remainder of his victims have been female. He has denied any interest in prepubescent males, stating that the abuse of his son was based more on availability than a sexual interest in a male child. There is no indication he has a specific sexual attraction to males, therefore, the specifier *sexually attracted to females*, rather than *both*, is added. Mr. Valbert reports having a concomitant sexual attraction to adult females and has had previous sexual and intimate relationships with adult females. Therefore, the specifier *non-exclusive type* is assigned. However, it is likely his sexual attraction to female children is his preferred, if not his dominate, sexual attraction. This is likely given the majority of his reported pleasurable sexual experiences are with children rather than adults; his sexual fantasy life has been

dominated by sexual activity with children; he chose to engage in sexual activity with children despite having available and willing adult sexual partners (e.g., in bed with him); and he consistently reported having performance anxiety/difficulty when attempting sexual relationships with adult females.

Per the DSM-5, a *personality disorder* is "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment." Personality disorders manifest in two or more of the following areas: cognition (i.e., ways of perceiving and interpreting self, other people, and events); affectivity (i.e., the range, intensity, lability, and appropriateness of emotional response); interpersonal functioning; and impulse control. Mr. Valbert has evidenced impairment in functioning across all these areas in multiple domains of his life since adolescence. Antisocial Personality Disorder is a pervasive pattern of disregard for and violation of the rights of others. As evidenced by his criminal history and institutional infractions, Mr. Valbert demonstrates this pattern, with a history of failure to conform his behavior with respect to social and legal norms. Mr. Valbert has demonstrated marked impulsivity, to include self-damaging behaviors (e.g., substance use, gambling), irresponsibility as indicated by repeated failure to sustain consistent work behavior or financial obligations, irritability and hostility toward others, and indifference to or rationalizing having hurt or stolen from others. Based on the available history, there is evidence that Mr. Valbert exhibited behavior prior to age 15 to warrant a diagnosis of Conduct Disorder (e.g., truancy, school suspensions, criminal charges as a juvenile, theft, setting his home on fire, lying, and harming a family pet). Thus, consistent with prior evaluations (2008, 2009), Mr. Valbert's presentation is best described by Antisocial Personality Disorder.

RISK ASSESSMENT

The key factors empirically supported through the research as contributing to sexual offense recidivism are typically divided into static and dynamic factors. Static factors (e.g., offense and victim characteristics) are relatively fixed aspects of an offender's history and therefore do not change with treatment interventions, environmental changes, or in terms of relationship to risk. Dynamic or sometimes referred to as psychologically meaningful factors (e.g., relationship status, deviant sexual interests, and compliance with supervision), are changeable and amenable to treatment and/or environmental manipulations and can help mitigate risk if adequately managed or intervened upon. Assessment of both static and dynamic factors is involved in determining risk for sexual re-offense.

Static Risk Factors

The following items have been empirically supported in the literature as contributing to sexual recidivism: having prior sexual offenses, having deviant sexual interests, psychopathy, being young at the time of offending, having stranger and/or unrelated victims, having male victims, never having been married or in a committed relationship, and violating the conditions of release and/or treatment (Witt & Conroy, 2009). Mr. Valbert has deviant sexual interests, was young at the time he began offending (e.g., age 10), and has unrelated and male victims.

Static 99R and Static-2002R:

The Static-99R and Static-2002R are actuarial risk assessment instruments designed to assess risk of sexual recidivism for adult males who have already been charged with or convicted of at least one sex offense against a child or non-consenting adult. The instruments provide a relative degree of risk for sexual recidivism based on commonly available demographic and criminal history information that has been found to correlate with sexual recidivism in adult male sex offenders. The recidivism estimates were derived from new charges and reconvictions of *groups* of individuals; as such, these estimates do not directly correspond to the recidivism risk of an *individual offender*. Additionally, risk estimates involve some degree of "plus or minus" error that should be considered when interpreting each result listed below. The Static-2002R differs from the Static-99R in that it addresses persistence of sexual offending, deviant sexual interests and general criminality. When used together, these two instruments add incremental validity to risk prediction. Authors

of the Static-99R and Static-2002R now suggest using both instruments when assessing risk prediction in high stakes evaluations, to include Sexually Violent Predator evaluations.

On the Static-99R, Mr. Valbert was assigned a score of 1 on a scale that ranges from -3 to 12, which places him in the *Average* risk category relative to other adult male sex offenders. Mr. Valbert's score was compared to a reference group identified as "routine." On average, 3.9% (with a confidence interval of 3.3% to 4.7%) of routine sex offenders with this score sexually recidivated within five years. In other words, out of 100 sexual offenders with the same risk score, between about 3 and 5 would be charged with or convicted of a new sexual offense within five years in the community.

On the Static-2002R, Mr. Valbert was assigned a score of 4 on a scale that ranges from -2 to 13, which places him in the *Average* risk category. With this score, the rate of recidivism in the routine sample within five-years was 9.7% (with a confidence interval of 8.3% to 11.3%). Overall, his static risk falls in the *Average* range.

Dynamic Risk Factors

The following items have been empirically supported as contributing to sexual recidivism (Mann, Hanson, & Thornton, 2010): having a sexual preoccupation, a sexual preference for prepubescent or pubescent children, sexualized violence, multiple paraphillias, offense-supportive attitudes, emotional congruence with children, a lack of emotionally intimate relationships with adults, lifestyle impulsiveness, exhibiting poor problem solving, demonstrating resistance to rules and supervision, grievance/hostility, and having negative social influences. Additionally, there are several factors found to have significant predictive value for sexual recidivism but which have less empirical support to date. These are hostility toward women, Machiavellianism, possessing a callousness/lack of concern for others, and displaying dysfunctional coping.

Based on the available information, including Mr. Valbert's history, offense dynamics, treatment records, and self-report, many dynamic risk factors are applicable. Historically, Mr. Valbert has demonstrated the following:

- ***Sexual Preoccupation:*** Mr. Valbert engaged in sexual offending behaviors with multiple victims simultaneously, all while he was married and had an available sexual partner. He has acknowledged a history of sexual preoccupation, and he acknowledges this as a key risk factor for him. In recent years, Mr. Valbert has described making notable progress in addressing this risk factor. Dr. Swan indicated in his 2017 review, "He has an awareness of how his sexual preoccupation led him to see sexual gratification without regard for the harm he caused his child victims." Mr. Valbert has recently began the Sexual Arousal Management group, and his honest disclosures in managing his sexual deviance and ongoing sexual thoughts/fantasies/arousals will be critical for managing his risk for recidivism.
- ***Offense-Supportive Attitudes:*** Mr. Valbert has discussed and acknowledged his distorted beliefs about sex with children and their ability to replace adults in relationships and sex for him. In treatment in recent years, he appears to have gained insight into his distorted thinking about his offending. There is no evidence of ongoing offense-supportive beliefs.
- ***Emotional Congruence with Children:*** Mr. Valbert has described identification with individuals much younger than himself since his teenage years. He described feelings of satisfaction in relationships with children, and he emphasizes how children did not contribute to feelings of "rejection" he perceived from adults.
- ***Resistance to Rules and Supervision:*** Mr. Valbert has frequently engaged in rule-breaking behaviors since adolescence, including while incarcerated and in the SVPT. His resistance to rules is highly influenced by his emotional state. As such, he has shown notably more stability and subsequently less rule-breaking behaviors in treatment. He has not received a disciplinary report in several years.

Additionally, Mr. Valbert has demonstrated the following risk factors, which are considered the most salient and should be the focus of treatment:

- *Sexual Preference for Prepubescent Children*
- *Lack of Emotionally Intimate Relationships with Adults:* Mr. Valbert has been married three times, and, by his own account, the relationships were wrought with conflict and infidelity. He has historically described them as "toxic." Mr. Valbert has made noteworthy progress in understanding how his lack of emotionally intimate relationships with adults contributed to his sexual offenses. Still, though, he acknowledged some ongoing difficulties with "attachment" and trust with others. He likely maintains maladaptive core beliefs about himself that contribute to misperceptions in others' interactions with him, which likely serve to maintain problems in relationships.
- *Poor Problem-Solving:* Mr. Valbert has made significant progress in his ability to problem solve adaptively. When being questioned or challenged in group, or faced with a dilemma in his job, he has responded appropriately. However, as evidenced by his difficulty generating a wide range of solutions regarding the problems that arose around the time of his discharge review board meeting, he continues to require work in this area. To his credit, in the time since the board meeting, he has evidenced ongoing improvements in solving problems of daily living.
- *Dysfunctional Coping:* While Mr. Valbert had made significant improvement in adaptive means of coping, his poor performance at the Discharge Review Board meeting indicates ongoing difficulties with coping successfully with anger, anxiety, and rejection. As mentioned, he also seems to have significant core beliefs that contribute to a difficulty understanding his emotions, accurately perceiving interactions or seemingly benign situations, and implementing effective emotional management skills.
- *Grievance Thinking:* Mr. Valbert has described perceptions of having been done wrong by various women in his life. He described wanting to punish some children of these women, especially the mother of his son, via abuse on their children. He felt rejected by his niece's mother and was angry with his brother for perceived slights from many years prior. With prompting, he is able to recognize the impact of grievance thinking and revenge themes in his sexual offending behaviors. Similarly, Mr. Valbert acknowledged a tendency to perceive personal attacks or threats from nonthreatening statements or situations. It is evident he needs continued practice with accurately perceiving and interpreting his environment and interactions with others.

Of note, several of these latter risk factors are inherent in Mr. Valbert's personality disorder. Addressing these risk factors at the level of characterological impairment will be imperative to truly progress in treatment.

OPINION

Pedophilic Disorder and Antisocial Personality Disorder are both considered life-long, and treatment efforts are therefore long-term. Having been in the program for several years, Mr. Valbert has made positive progress in the past two years. He has shown and demonstrated some understanding of the origins of and examples of dynamic risk factors in his life. He has learned foundational skills to cope and function adaptively, and he remains highly motivated for treatment. He has worked to mitigate a number of his dynamic risk factors. His progress led to a recommendation for release in 2017. However, in his Discharge Review Board meeting and the subsequent year of treatment, that opinion was rescinded and Mr. Valbert evidenced notable concerns regarding grievance, hostility, and dysfunctional coping.

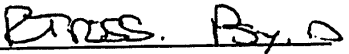
Moreover, Mr. Valbert's progress with understanding the role his deviant sexual interests in children play in his choice to offend and reoffend is limited. He largely attributes his offending behaviors to core beliefs about himself, interpersonal problems, and emotional discomfort, rather than acknowledging the impact of a true sexual attraction to children. His relapse prevention plan is vague and generalized and minimizes the impact of his pedophilia on his risk for re-offense. During the interview for the current evaluation, with

prompting, Mr. Valbert made some connections between grievance thinking and hostility and his sexual offending behaviors. Conversely, in his accounts in group and his treatment assignments, he minimizes the anger and hostility present during his offending and emphasizes negative emotions of rejection, seemingly in efforts to present himself in a less negative light and to garner sympathy (e.g., utilizing the "poor me" cognitive distortion). Specifically, he has minimized the physical abuse of his son by himself, his wife, and his son's siblings. He also did not identify feelings of anger or vengefulness toward his brother as an aspect of the sexual abuse of his niece until he was asked explicitly by a group member. Importantly, Mr. Valbert continues to evidence themes of grievance thinking, misperceptions and personalization of interactions, and difficulty accepting the aspects of his environment with which he disagrees.

Despite some progress in treatment, Mr. Valbert requires additional work in developing awareness of and acceptance of his problematic behaviors and relevant dynamic risk factors (i.e., sexually deviant interests in children, grievance thinking/hostility, dysfunctional coping). He has not yet demonstrated sufficient awareness, control, or management of key dynamic factors contributing to his choice and risk to sexually offend and reoffend. Pedophilia and notable characterological deficits work in tandem in relation to Mr. Valbert's risk for re-offense; as such, he must address these issues concurrently in treatment. Therefore, it is our opinion that Mr. Valbert continues to exhibit a mental abnormality that predisposes him to commit acts of sexual violence, and this abnormality has not changed to the degree that he would be safe to be at large.


Kelsey Laxton, Ph.D.
Postdoctoral Psychology Fellow

3/12/19
Date


Rozanna Tross, Psy.D.
Chief Psychologist
Supervising Psychologist

3/12/19
Date

RECEIVED

Mar 24 2022

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 24, 2022

s/Michael S. Gambrell
Michael S. Gambrell, SC Bar # 70044
104 South Calhoun Street
Greenville, South Carolina 29601
(864) 867-1415
michael@michaelgambrell-law.com
Attorney for Appellant