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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
General Sessions

Alex Kinlaw, Jr., Presiding Judge, 13th Circuit

Appellate Case No. 2023-001766

Ex Parte: South Carolina Department of Mental Health,

Appellant,

In re:

The State of South Carolina,

Respondent,

v.

Jevon Kenneth Carter,

Respondent/Appellant,

INITIAL BRIEF OF APPELLANT SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH

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STATEMENT OF ISSUE ON APPEAL

I. Did the circuit court err in concluding that there was clear and convincing evidence that Appellant/Respondent Carter needed hospitalization when the only evidence before the court was the expert testimony of two physicians and the SCDMH Discharge Request and Report that each concluded that (1) Appellant/Respondent Carter has insight or capacity to make responsible decisions with respect to his treatment; (2) there is not a likelihood of serious harm to himself or others; and (3) he no longer needed hospitalization?

STATEMENT OF THE CASE

The Appellant South Carolina Department of Mental Health ("SCDMH") is the state entity designated by statute to provide treatment to persons found Not Guilty by Reason of Insanity ("NGRI"). S.C. Code Ann. § 17-24-40.

On August 28, 2020, Appellant/Respondent Jevon Carter ("Carter") was arrested for murder, burglary, and possession of a weapon during the commission of a violent crime. (See SCDMH Crim. Resp. Evaluation "NGRI Report", dated Oct. 13, 2021, at 1-2.) On July 5, 2021, Carter was evaluated by Appellant SCDMH for criminal responsibility and capacity to conform conduct to the requirements of the law. *See generally id*. Carter was diagnosed with Schizoaffective Disorder, Bipolar Type. *Id*. at 8; Tr. 9. The NGRI Report found, by the standard set forth in S.C. Code § 17-24-10(A), "sufficient evidence that the defendant has a serious mental illness that would have substantially impaired his ability to distinguish legal or moral right from legal or moral wrong." Oct. 2021 NGRI Report at 10.

After the NGRI evaluation then Chief Administrative Judge, Perry H. Gravely, conducted a bench trial on June 8, 2022. (NGRI Order, dated June 11, 2022, at 1.) Assistant Solicitor Andrew Miller represented the State. Attorney D. Josev Brewer represented Carter. By consent and stipulation of both the Respondent State and Appellant/Respondent Carter, and on presentation of testimony, the Court adjudicated Carter Not Guilty by Reason of Insanity ("NGRI"), pursuant to S.C. Code § 17-24-40. *See id*. Pursuant to that Order and by statute, Carter was admitted to the SCDMH on August 16, 2022. (See SCDMH Discharge Request and Report, dated June 28, 2023, at 1.) On November 10, 2022, the SCDMH rendered a Request for Discharge Report, as required by Section 17-24-40(B) of the South Carolina Code, and relayed to the Circuit Court that Carter was no longer in need of inpatient treatment pursuant to the standards set forth under S.C. Code §44-17-580. (See SCDMH Discharge Report, dated Nov. 10, 2022.)

Judge Gravely held a hearing, pursuant to S.C. Code §17-24-40(C)(1), on December 8, 2022. (Order for Inpatient Treatment, dated Jan. 9, 2023, at 1.) In an Order dated January 9, 2023, Judge

Gravely declined to accept that recommendation. *Id*. at 4.

In accord with its statutory obligations, SCDMH renewed its recommendation on July 7, 2023, that Carter was no longer in need of continued inpatient commitment. (*See* See SCDMH Discharge Request and Report, dated June 28, 2023, at 5.) Then Chief Administrative Judge Alex Kinlaw, Jr. held a hearing on August 30, 2023, and took testimony from two SCDMH witnesses in support of its recommendation that Carter was no longer in need of hospitalization and that he must, therefore, be discharged as a matter of law. (See Transcript, dated Aug. 30, 2023.) Those witnesses were SCDMH's Dr. Jennifer Alleyne, Attending Psychiatrist, and Dr. Richard Frierson, the Alexander G. Donald Professor of Psychiatry and Vice Chair for Academic Affairs at the University of South Carolina School of Medicine and the Program Director for the Forensic Psychiatry Fellowship at USC School of Medicine. Tr. 6-7, 66-67. Both individuals were qualified as experts without objection. *Id*. Both experts testified that Carter (1) had sufficient insight and capacity to make responsible decisions with respect to his treatment, Tr. 13-14, 20, 74, 76, 78; (2) was not violent and was not a danger to himself or others, Tr. 14, 20, 22, 79-80; and (3) was no longer in need of hospitalization, Tr. 52-87; (June 2023 Discharge Report at 3-5 ; Frierson Rep. At 10). The Respondent offered no witnesses of its own.

At the conclusion of this hearing, the Court requested briefs from Respondent, Appellant/Respondent Carter, and Appellant SCDMH. Tr. 100. All parties submitted briefs. (See Jevon Carter's Post-Hearing Memorandum in Support of SCDMH Recommendation for Discharge; Memorandum of SCDMH Regarding Lack of Need for Hospitalization; and Brief in Opposition to 2nd SCDMH Proposed Order).

The Circuit Court entered an Order on October 31, 2023. (Order of Continued Inpatient Treatment, dated Oct. 31, 2023.) The substantive portion of that Order states:

> In making its determination, the Court has reviewed and considered the Briefs and Memoranda submitted by the parties, arguments made at the hearing, the Violence Risk Assessment and other supporting documentation submitted at both the August 30 2023 and the December 8, 2022 hearing, the Courts previous orders in this case, and the testimonies of Dr. Jennifer Alleyne and Dr. Richard Frierson.
>
> Based on this review, the Court finds by clear and convincing evidence that the Defendant is still in need of inpatient treatment pursuant to the standard of §44-17-580(A). The Court finds that the Defendant is mentally ill; needs involuntary treatment; and because of his condition lacks insight or capacity to make responsible decisions regarding treatment; and there is a likelihood of serious harm to himself or others. Therefore, the Court orders that Defendant continue with inpatient treatment and be committed to the appropriate facility of SCDMH for further treatment.

Id. at 1-2.

This appeal follows.

STANDARD OF REVIEW

When reviewing an action at law, on appeal of a case tried without a jury, this Court will not disturb the judge's findings of fact "unless found to be without evidence which reasonably supports the judge's findings." *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 131, 568 S.E.2d 338, 342 (2002) (citing *Townes Associates, Ltd. v. City of Greenville*, S.E.2d 773, 775 (1976)). "We will not disturb the trial court's findings of fact unless those findings are wholly unsupported by the evidence or controlled by an erroneous conception or application of the law." *Renewable Water Res. v. Ins. Reserve Fund*, 897 S.E.2d 558, 561 (S.C. Ct. App. 2024) (citing *Smith v. Auto-Owners Ins. Co.*, 377 S.C. 512, 515, 660 S.E.2d 271, 272 (Ct. App. 2008)). "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." *Id.*

ARGUMENT

I. The court erred in ordering the continued hospitalization of Carter.

"The South Carolina Department of Mental Health is statutorily charged with responsibility for the care and treatment of NGRI adjudicated Defendants... ." *Interagency Protocol for Defendants Found Not Guilty by Reason of Insanity*; Administrative Order No. 2014-04-24-01, Supreme Court of South Carolina (2014). As part of its duties in caring for and treating NGRI patients, the SCDMH is required to "notify the chief administrative judge, the solicitor, the person, and the person's attorney", when "it is determined by officials of the State Hospital that the person is no longer in need of hospitalization." S.C. Code Ann. § 17-24-40(C)(2)(c). A hearing is then arranged in which the Department seeks an order discharging the patient to a community-based setting.

The standard of proof for continued inpatient commitment is "clear and convincing evidence." S.C. Code Ann. § 44-17-580(A); *see also Addington v. Texas*, 441 U.S. 418 (1979) ("[An] individual's interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify confinement by proof more substantial than a mere preponderance of the evidence.") Clear and convincing evidence has been defined as "that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. It is an intermediate measure of proof, i.e., more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." *Anderson v. The Augusta Chronicle*, 355 S.C. 461, 473, 585 S.E.2d 506, 512 (Ct. App. 2003) (internal citations and quotation marks omitted). It has also been defined as "highly probable." *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802 (4th Cir. 1992) (citing 9 J. Wigmore Evidence § 2498 (3d ed. 1940)).

"To admit expert testimony under Rule 702, the proponent ...must demonstrate, **and the trial court must find**, the existence of three elements: the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." *State v. Wallace*, 440 S.C. 537, 544 (S.C.

2023) (cleaned up) (emphasis added).

These hearings are to "determine whether the person is in need of continued hospitalization pursuant to the standard of Section 44-17-580." S.C. Code Ann. § 17-24-40(C)(2)(c). Thus the threshold inquiry is: does the person need continued inpatient hospitalization? If yes, the process ends and the patient remains committed to the Department's inpatient facility. If no, then the Court may consider conditions for release, which must be therapeutic in nature. S.C. Code Ann. § 17-24-40(D).

A. The court erred in denying Carter's discharge as the undisputed testimony of two experts showed that (1) Appellant has insight or capacity to make responsible decisions with respect to his treatment; and (2) there is not a likelihood of serious harm to himself or others

The standard for ordering continued inpatient hospitalization under section 44-17-580 requires a finding "upon clear and convincing evidence that the person is mentally ill, needs involuntary treatment **and** because of his condition: (1) lacks sufficient insight or capacity to make responsible decisions with respect to his treatment; or (2) there is a likelihood of serious harm to himself or others." (emphasis added).

In its two page order, the court states:

> The Court finds that the Defendant is mentally ill; needs involuntary treatment; and because of his condition lacks insight or capacity to make responsible decisions regarding treatment; and there is a likelihood of serious harm to himself or others.

Order of Continued Inpatient Treatment dated Oct. 31, 2023.

No findings of fact are made by the Court as to the basis for this finding.

Working through the § 44-17-580 standard, there is no doubt that Carter is mentally ill and will need to take medications for his condition indefinitely. However, there is scant, if any, evidence in the record to support the Court's finding that Carter (1) lacks sufficient insight or capacity; and (2) there is a likelihood of serious harm to himself or others.

(1) Insight or Capacity

The only witnesses at the hearing were two medical doctors, qualified as experts in the field of forensic psychiatry, without objection . Dr. Jennifer Alleyne, Carter's supervising and evaluating psychiatrist, was a signatory to the SCDMH Discharge Request and Report. (Tr. 8; June 2023 Discharge Request at 6). Dr. Alleyne testified at length about Carter's insight and capacity (June 2023 Discharge Request at 3-4; Tr. 13-14, 20, 74, 76, and 78). Dr. Alleyne, questioned specifically about whether she believed Carter had sufficient insight into his condition and treatment, answered affirmatively. (Tr. 14, 20). Dr. Alleyne described in detail Carter's capacity and insight into his condition and his recognition of the symptoms, triggers for illness, and effective use of his support system. (Tr. 13-14).

The only other witness, Dr. Richard Frierson, performed a Violence Risk Assessment on Carter and testified about the report he produced, which was entered into evidence without objection. (Tr. 68-70). Asked about Carter's insight, Dr. Frierson testified that

> It’s 98 percent better. I mean he has really good insight with my interviews with him and demonstrates a thorough knowledge of his illness, the reasons for the medications, the warning signs that he could be decompensating, the need for lifelong treatment, the need to avoid any drug use because it's likely to worsen his symptoms. He demonstrates very good insight.
> Tr. 75.

Dr. Frierson further discussed Carter's insight and capacity to make responsible decisions regarding his continued treatment, specifically noting Carter's “understanding of the medicines and what they are used for,” the “need for ongoing monitoring and treatment,” and Carter's “understanding that he likely will need lifelong treatment.” (Tr. 76).

The Respondent did not call any witnesses to provide testimony. In their brief submitted to the court, they argued that Carter lacks insight based on two elopements from Marshall Pickens in 2020 and “refusals” to take medications while at the detention center in 2022. (Brief in Opposition, pp. 5-6). Dr. Alleyne noted that Carter was only at Marshall Pickens for less than a

month back in 2020, while she had been treating Carter for more than a year at the time of the hearing. (Tr. 50-51). No elopements are present in the record during Carter's time at SCDMH. Dr. Alleyne addressed the medication concerns, noting that since Carter advanced to self-administration of medications in February 2023, he had no record of refusing medications and had not missed any medications. (Tr. 11-12). She elaborated, noting that "we wanted to be able to show the Court and the patient that he was capable of doing this [self-administering medications] himself." (Tr. 17). On cross examination, Dr. Alleyne again noted that Carter had never missed a dose since he began self-administration. (Tr. 26-27).

In examining the evidence on the record, the only facts supporting the court's finding that Carter, "because of his condition lacks insight or capacity to make responsible decisions regarding his treatment" are found in the Respondent's insinuations regarding behaviors from years past. Balanced against that are the opinions and recommendations of two experts in the field of forensic psychiatry. In the context of a negligent discharge action, our Supreme Court stated "we hold **the proper treatment of a mental patient** like Sevits and the standard of care required **in deciding to discharge him under a plan of outpatient care is not a matter of common knowledge to the average layman.** " *Sharpe v. S.C. Dept. of Mental Health*, 292 S.C. 11, 14 (S.C. Ct. App. 1987). While *Sharpe* is concerned with an initially voluntary commitment, the analysis for inpatient commitment found in section 44-17-580 is the same for civil commitments and for NGRI commitments.

Even if expert testimony is not *required*[1] for a finding of lack of insight or capacity, certainly there must be some weight given to the uncontroverted testimony of two admitted

1"Although Rule 702 states an expert witness may testify about matters involving scientific, technical, or specialized knowledge, we have held on several occasions that expert testimony is required when the subject matter of the testimony falls outside the realm of ordinary lay knowledge." *State v. Gibbs*, 438 S.C. 542, 550-51 (S.C. 2023) (string citation omitted).

experts in the field of forensic psychiatry? The court, in admitting both doctors as experts, has already found "the existence of three elements: the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." *State v. Wallace*, 440 S.C. 537, 544 (S.C. 2023) (cleaned up). It is unclear how the court can determine that expert testimony will assist the trier of fact only to find, without any conflicting testimony, "clear and convincing evidence" that directly contradicts the opinions, conclusions, and recommendations of both experts as to the insight and capacity of Carter.

(2) Likelihood of Serious Harm

The term "likelihood of serious harm" is defined by statute and explicitly applies to the August 30, 2023 hearing:

> When used in this chapter, ... Articles 3, 5, 7, and 9 of Chapter 17... unless the context clearly indicates a different meaning:
> ...
> (13) "Likelihood of serious harm" means because of mental illness there is:
>
> (a) a substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm;
>
> (b) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them; or
>
> (c) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that the person is gravely disabled and that reasonable provision for the person's protection is not available in the community.

S.C Code Ann. § 44-23-10(13).

Dr. Alleyne testified as to Carter's likelihood of serious harm to himself or others and the June 2023 Discharge Report detailed her findings and conclusions. (Tr. 14-15, 20; Discharge Request at 3-4). Asked specifically if Carter has "exhibited any of these signs you would be concerned about regarding harm to self or others," Dr. Alleyne answered "[h]e has not." (Tr. 15). The Discharge Request further indicated Dr. Alleyne's observation that Carter has exhibited no violence or agggression during his time at SCDMH. (Discharge Report at 3; see Tr. 22).

Dr. Frierson was specifically requested by the SCDMH to prepare a Violence Risk Assessment of Carter. At the hearing, Dr. Frierson testified about some factors that led him to conclude that Carter was well situated for discharge. (Tr. 79-90). He opined that Carter has "been able to demonstrate the skills to stay clear of … getting involved" with difficult, rude, and violent people. (Tr. 80). In the Violence Risk Assessment report, Dr. Frierson notes that Carter was "described as a model patient" and "has had no altercations or disputes with other patients." (Frierson Report at 5).

The Respondent called no witnesses. Their brief in opposition points only to the index offense and the "risk to the community" as support for their contention that there is a "likelihood of serious harm to the defendant or others." (State's Brief in Opposition, pp. 8-11). In their brief, Respondent cites *Jones v. United States,* comparing a finding of a criminal act "beyond a reasonable doubt" that "may be at least as persuasive as any predictions about dangerousness that might be made in a civil-commitment proceeding." (State's Brief, pp. 8-9). This is a strange use of that case, as the standard for NGRI in South Carolina is a preponderance of the evidence. S.C. Code Ann. § 17-24-10 (B). More relevant here is the *Jones* court's holding that "[t]he purpose of commitment following an insanity acquittal, like that of civil commitment, is to treat the individual's mental illness and protect him and society from his potential dangerousness." *Jones v. United States*, 463 U.S. 354, 368 (1983). The *Jones* court further noted that the "State may punish a person convicted of a crime even if satisfied that he is unlikely to commit further crimes. Different considerations underlie commitment of an insanity acquittee. As he was not convicted, he may not be punished. His confinement rests on his **continuing illness and dangerousness." (***Id.* at 369 (emphasis added)).

The term "likelihood of serious harm" has a clear statutory definition. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its

literal meaning." *Id.* When interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. "[T]he statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper Cnty.* , 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Statutory interpretation is a question of law, which this court is "free to decide without any deference to the court below." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

In looking to the plain language of section 44-23-10, a "likelihood of serious harm" includes three possibilities. Subsection (a) requires a showing of "substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm." There is no evidence in the record of threats of suicide or self-injurious behaviors.

Subsection (b) requires a showing of "a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them." There is no evidence in the record of homicidal or other violent behaviors in the time since Carter began treatment.

Finally, subsection (c) indicates "a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that the person is gravely disabled and that reasonable provision for the person's protection is not available in the community." No one contends, and the record does not support, any risk of impairment or injury rendering Carter "gravely disabled."

To the extent that the court below relies on the index offense as "clear and convincing evidence" of a "substantial risk of physical harm" requiring continued inpatient hospitalization, the court has erred. That line of reasoning would always be applicable, meaning that an NGRI acquittee would never cease being a danger. That is clearly not a constitutionally permitted result under *Jones*.

On the other hand, if the court relied on the "risk to the community" as Respondent urged them to, that cannot possibly constitute "clear and convincing evidence" of a "substantial risk" as it would,

again, be based solely on the index offense, as Respondent offered no evidence of violent behavior by Carter since he has been treated by the SCDMH.

B. The court erred in denying Carter's discharge based on placement concerns outside the appropriate statutory standards of S.C. Code § 44-17-580

The NGRI statute plainly states that ”a hearing to determine whether the person is in need of continued hospitalization” is done “pursuant to the standard of Section 44-17-580.” S.C. Code Ann. § 17-24-40(C)(2)(c). Section 44-17-580 states:

> (A) If, upon completion of the hearing and consideration of the record, the court finds upon clear and convincing evidence that the person is mentally ill, needs involuntary treatment and because of his condition:
>
> (1) lacks sufficient insight or capacity to make responsible decisions with respect to his treatment; or
>
> (2) there is a likelihood of serious harm to himself or others, the court shall order in-patient or out-patient treatment at a mental health facility, public or private, designated by the Department of Mental Health and may order out-patient treatment following in-patient treatment. If the court finds that the person is not mentally ill and not in need of involuntary treatment, the court shall dismiss the proceedings.

The NGRI statute indicates that:

> If the finding of the court is that the person is in need of continued hospitalization, the court must order his continued confinement. If the court's finding is that the person is not in need of continued hospitalization, it may order the person released upon such terms and conditions, if any, as the chief administrative judge considers appropriate for the safety of the community and the well-being of the person.
> S.C. Code Ann. § 17-24-40(C)(2)(c).

This bifurcated approach requires the court to first determine if the person is in need of continued hospitalization under the standards of section 44-17-580, which do not address placement. Only if the court determines there is no longer a need for continued hospitalization does it reach the point of considering terms of discharge, including placement.

If the court determines that a person is no longer in need of inpatient commitment under

the -580 standards, the NGRI statute gives the court wide latitude to “order the person released upon such terms and conditions, if any, as the chief administrative judge considers appropriate for the safety of the community and the well-being of the person.” Id. The statute limits the terms and conditions imposed upon the person to those “therapeutic in nature, not punitive.” S.C. Code Ann. § 17-24-40(D).

In this case, however, placement concerns may have been inappropriately used by the court to justify continued hospitalization. The court did not ask any clarifying questions of the two experts it admitted to testify as to the -580 standards. However, the court asked numerous questions of Carter's counsel and the assembled family members. (Tr. 105-111). While some of the questions were focused on sussing out the relationships between Carter, the family members, and the deceased victim, many of the questions concerned the recommended discharge placement with Carter's grandmother. (Tr. 106; 109-111). While these questions could appropriately been considered as part of determining terms and conditions of release, the Respondent's Brief in Opposition and a majority of their questions on cross examination sought to make the proposed discharge a basis for ordering continued hospitalization. (See State's Brief in Opposition, pp. 4-5, 8, 11-13, 15-16; Tr. 35-37,41-42, 44, 60-63).

Any concerns the court had about placement following release could be adequately addressed through the imposition of terms and conditions: “[t]hese terms may include provisions for the safety of the community in general and the victim in particular, including ... specific housing requirements.” *Interagency Protocol for Defendants Found Not Guilty by Reason of Insanity*; Administrative Order No. 2014-04-24-01, Supreme Court of South Carolina (2014). Respondent's urging, and the court's apparent application, of placement concerns as a basis for denying release were in error.

C. The court erred in ordering Carter's continued hospitalization when a more integrated environment is medically appropriate and mandated by the constitutional, federal, and state law.

The United States Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," *Addington*, 441 U.S. at 425, 99 S.Ct. 1804, and that "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992). "At the least, due process requires that the **nature and duration** of commitment bear some reasonable relation to the purpose for which the individual is committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (emphasis added).

The uncontroverted testimony indicates that Carter will not benefit from further hospitalization. Dr. Frierson indicated that the requested discharge "would be the most therapeutic option" and indicated that Carter is not "getting any additional therapeutic benefit by remaining inpatient." Tr. 86. Dr. Alleyne, too, indicated that discharge to his home would be therapeutic. Tr. 15-16. Continued inpatient commitment beyond maximum therapeutic benefit renders the court's order a violation of Carter's constitutional rights.

Statutory provisions also make explicit the duty of the Department (and the State of South Carolina) to provide treatment in the most integrated setting. "In the Americans with Disabilities Act of 1990 (ADA), Congress described the isolation and segregation of individuals with disabilities as a serious and pervasive form of discrimination. 42 U.S.C. § 12101(a)(2), (5)." *Olmstead v. L. C.*, 527 U.S. 581, (1999). Title II of the ADA provides protections for qualified individuals with disabilities against discrimination in the receipt of public services. Id. The implementing regulations for Title II include the "integration regulation," which requires a "public entity [to] administer ...programs ...in the most

integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). The *Olmsted* court noted that "[u]njustified placement **or retention** of persons in institutions severely limits their exposure to the outside community, and therefore constitutes a form of discrimination based on disability prohibited by Title II." *Olmstead v. L. C*, 527 U.S. 581, 582 (1999). The *Olmstead* court, continuing the line of cases that identify the stigma associated with commitment to an inpatient institution, notes that "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." *Id.* at 600. In assessing the appropriate level of care, the "**State generally may rely on the reasonable assessments of its own professionals** in determining whether an individual 'meets the essential eligibility requirements' for rehabilitation in a community-based program." *Id.* At 602. The reasonable assessment contemplated by the *Olmstead* court is one carried out by medical professionals.[2]

In requiring the continued inpatient hospitalization of Carter against the "reasonable assessments of its own professionals" the Court is requiring the Appellant SCDMH to violate the requirements of the Americans with Disabilities Act.

South Carolina also recognizes the need for treatment in the least restrictive appropriate environment, recognized as a Right of Mental Health Patients that a "patient receiving services for mental illness ... shall receive care and treatment that is suited to his needs and which is the least restrictive appropriate care and treatment." S.C. Code Ann. § 44-22-50(A). Mental health patients in South Carolina also "have a right to the least restrictive conditions necessary to achieve the purposes of treatment." S.C. Code Ann. § 44-22-50(E).

In ignoring the expert testimony of the forensic psychiatrists it admitted as experts, the court has ordered the Department to continue the unnecessary hospitalization of Carter in violation of his state

[2]"Courts normally should defer to the reasonable medical judgments of public health officials." *Olmstead v. L. C.*, 527 U.S. 581, 602 (1999) (cleaned up).

statutory right to receive treatment in the least restrictive appropriate setting.

No evidence was provided by Respondent that indicated the continued need for inpatient hospitalization, and the court offered no evidentiary basis for its finding that continued inpatient hospitalization was necessary, much less "clear and convincing evidence."

CONCLUSION

Based on the foregoing, the Appellant SCDMH respectfully requests this Court reverse the order of the Chief Administrative Judge and order the Appellant/Respondent Carter be released upon the recommended conditions.

Respectfully submitted,

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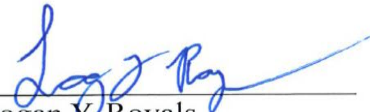

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
General Sessions

Alex Kinlaw, Jr., Presiding Judge, 13th Circuit

Appellate Case No. 2023-001766

Ex Parte: South Carolina Department of Mental Health,

Appellant,

In re:

The State of South Carolina,

Respondent,

v.

Jevon Kenneth Carter,

Respondent/Appellant,

PROOF OF SERVICE

I certify that I have served Appellant SCDMH's Initial Brief and Joint Designation of Matter by electronic means pursuant to SCACR 262 and authorized by a May 6, 2022 amended order of the South Carolina Supreme Court. Service was addressed to the attorneys of record at the email addresses listed in AIS on June 10, 2024.

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Date:	Monday, June 10, 2024 3:28:00 PM
Attachments:	Initial Brief of Appellant SCDMH DOM and Proof of Service 6.10.2024.pdf

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Good afternoon,

Attached please find the Initial Brief of Appellant SCDMH, Appellants' Joint Designation of Matter, and Proof of Service. Please let me know if you have any trouble opening the file or if there are any issues in accessing the materials.

Thank you,

Alex

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