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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,

REPLY BRIEF OF APPELLANT SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH

R. Alexander Pate, II
803.898.8314
Alex.pate@scdmh.org
SC Bar No. 101967

Logan Y. Royals 803.898.8558
Logan.royals@scdmh.org
SC Bar No. 101850

SC Department of Mental Health PO Box 456
2414 Bull St
Columbia, SC 29202

Attorneys for Appellant SCDMH

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INTRODUCTION

Appellant-Respondent South Carolina Department of Mental Health (SCDMH) joins and adopts by reference Respondent-Appellant Carter's Reply Brief as to Arguments II, III, and IV pursuant to Rule 208(b)(6), SCACR.

ARGUMENT

1. A Rule 59(e) motion was not required, and the SC Supreme Court has previously ruled in direct opposition to the State's argument.

The State contends that the deficiency in the lower court's findings of fact is beyond review on appeal because the parties below did not raise this issue to the lower court. The cases cited by Respondent State deal with issue preservation, with the exception of *USAA Property and Ca. Ins. Co. v. Clegg* which is the only case cited that deals with the issue of a 59(e) motion and the request for factual findings. 377 S.C. 643, 661, 661 S.E.2d 791, 800 (2008). However, the procedural posture of that case and the specific language that the court uses rebuts the Respondents' interpretation of this case.

In *Clegg*, the trial court granted summary judgment for the respondent. Id at 649, 661 S.E.2d at 794. The appellant then made a motion to reconsider the summary judgment, but this motion was made more than 10 days after the order was entered. Id. The respondent clarified that, while their motion was made more than 10 days after the order was entered, they did not receive notice of the final order until a later date, which was within 10 days of their motion to reconsider. Id. To determine the credibility of this claim, the court held a hearing and determined that the attorney was credible and deemed the motion to reconsider to be timely. Id. at 653, 661 S.E.2d at 795. There was no record of the hearing, and the circuit court gave no basis for its decision. Id. It is at this point in the procedural posture that the Supreme Court on appeal noted that it was incumbent upon the appellant to file a rule 59(e) motion. Id. The court only came to this conclusion "in light of [the] procedural posture." Id. at 652, 661

S.E.2d at 795. The unique procedural posture of this case distinguishes it from the instant matter.

Further, in a case cited by Respondent, the South Carolina Supreme Court appears to have rejected the State's argument. The dissenting opinion states that a Rule 52 "deficiency must first be raised by a Rule 59 motion in the trial court in order to be preserved for appeal. E.g., *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992) (Rule 52); *State v. City of Columbia*, 12 S.C. 370 (1879) (former statutes). Here, the State raised no objection to the sufficiency of the order below, and accordingly the issue is not preserved for our review. In the Matter of Luckabaugh, 351 S.C. 122, 152 (S.C. 2002) (Pleicones, J., dissenting). The majority, however, did not deem a Rule 59 motion necessary, stating:

> We do not require a lower court to set out findings on all the myriad factual questions arising in a particular case. But the findings must be sufficient to allow this Court, sitting in its appellate capacity, to ensure the law is faithfully executed below. The absence of factual findings makes our task of reviewing the court order impossible because the reasons underlying the decision are left to speculation. To leave the chore of sorting through the record to review contradictory testimony taxes the judicial system and is unfair to the litigants as well as the lower court to whose factual determinations we give deference.
>
> The order now before us fails to substantially comply with Rule 52(a), SCRCP, thus failing to accomplish these purposes. Our review of the record cannot save the order from its deficiencies *due to the contradictory testimony presented below*.
> *In the Matter of Luckabaugh*, 351 S.C. 122, 133 (S.C. 2002) (internal citations omitted, cleaned up) (emphasis added).

Subsequent cases have held similarly; *see In re Care and Treatment of Corley*, 365 S.C. 252, 256 (S.C. Ct. App. 2005).

The State undermines their argument by noting that "[t]he circuit court *likely* concluded that" adopting the recommendations of the SCDMH and expert witnesses "could set Carter up for failure… ;" (Respondent's Brief, p. 37 (emphasis added)); and "the circuit court here *appears* to have concluded… ." (Respondent's Brief, p. 40). While the State is certainly entitled to seek a basis in the record for sustaining the lower court's order, this speculation as to the rationale of the lower court's conclusory findings of fact are exactly the reason Rule 52(a), SCRCP exists.

It is important to note, though, that the *Luckbaugh* court was faced with "contradictory testimony presented below" which made the deficient order impossible to save and required a remand. In the instant matter, there is no contradictory testimony below, only that of two medical professionals admitted as experts to aid the court who both testified that continued inpatient hospitalization was no longer appropriate. As discussed by Respondent-Appellant Carter in his Reply and outlined below[1], the record overwhelmingly supports a conclusion that Carter's continued hospitalization is an error of law that can be addressed by this Court.

2. The lower court's conclusory statement that the clear and convincing evidentiary standard had been met is not sufficient to justify the continued deprivation of liberty associated with involuntary inpatient commitment

As noted above, SCDMH joins Respondent-Appellant Carter's Reply as it concerns evidentiary support (or lack thereof) in the record, but wishes to note the State's application of the "clear and convincing" evidentiary standard. While the State argues that a "clear and convincing" evidentiary standard was applied below (Respondent's Brief, pp. 19, 20, 22, 23, 26 32), the State does not provide any analysis of the "clear and convincing" evidentiary standard. Nor does the State provide any analysis for why the evidence they point to in the record from Carter's history prior to the index offense is sufficient to meet the evidentiary standard imposed at the hearing. Instead, the State merely asserts that Carter's behavior from the time that he was, by the State's own admission (Respondent's Brief, p. 2), so mentally ill as to be not held criminally responsible, was sufficient to meet the clear and convincing evidentiary standard years later, despite being in direct conflict with the contemporaneous expert testimony about Carter's current condition.

[1] See *Myers* discussion infra.

3. The State's interpretation of relevant statutes and case law wholly conflict with the text of those same sources of law

In its brief, the State asserts that "*Addington* is a purely civil commitment case, **with a far different standard** than that for a person found NGRI." (Respondent's Brief, p. 39 (emphasis added)). This is wholly unsupported by the relevant portions of the South Carolina Code. As noted in Respondent's Brief (pp. 21-22), the hearing for release of an NGRI acquittee is held "pursuant to the standard of Section 44-17-580." That section governs civil commitments in South Carolina.

The source of the State's confusion is apparent as they proceed to cite[2] to *Jones v. United States*, 463 U.S. 354 (1983) for the proposition that the burden of proof rests on an NGRI acquittee "to prove that they are no longer mentally ill or a danger to the community." (Respondent's Brief, p. 39). However, the *Jones* court was analyzing a District of Columbia code section, which includes a provision for an NGRI acquittee to be discharged early upon meeting that burden; this provision is **not** found in South Carolina's NGRI statute. Id. at 356. In fact, as noted above, the hearing contemplated by S.C. Code Ann. § 17-24-40(C)(2)(c) is explicitly held under the standards of § 44-17-580 dealing with civil commitment. For the State's assertion to be true, the burden of proof would rest on a potential committee in every civil commitment case in South Carolina, a result contradicted by the United States Supreme Court; *see Addington v. Texas*, 441 U.S. 418, (1979);

Similarly, the State's interpretation of *Olmstead v. L. C*, 527 U.S. 581, (1999) is unsupported by the text and subsequent jurisprudence.. As this Court has summarized it:

> In *Olmstead*, the plaintiffs were institutionalized women suffering from intellectual disability and mental illness. They sought community-based care. The United States Supreme Court concluded requiring the plaintiffs to be institutionalized and segregated from the population at large discriminated against them in violation of the ADA. Therefore, treatment for disabilities is to be provided in the most integrated, least restrictive setting possible.
> *Stogsdill v. S.C. Dep't of Health & Human Servs.*, Appellate Case No. 2013-000762, 9 (S.C. Ct. App. Sep. 10, 2014) (internal citations omitted).

[2] It is unclear what part of *Jones* at 368 the State was referencing.

While the State labors under the misapprehension that an NGRI acquittee committed to an inpatient facility is *sui generis* among the mentally ill, that distinction is without support. The State asserts that "Carter did not present a 'normal' case" in the context of a § 44-17-580 hearing. (Respondent's Brief, p. 40). However, the standard for involuntary inpatient commitment under -580 is the same for all the mentally ill in South Carolina. As in *Olmstead*, Carter suffers from mental illness; he seeks, and his doctors have recommended, community-based care; and his treatment must be made in the most-integrated, least restrictive setting possible.

The State acknowledges that "the *Olmstead* court recognized that courts 'normally' should defer to the reasonable medical judgments of public health officials." (Respondent's Brief, p. 40). In another case citing Olmstead, this Court reversed the lower court's decision because it "erred in disregarding the overwhelming evidence from Myers' treating physician and other qualified sources." *Myers v. S.C. Dep't of Health & Human Servs.*, 418 S.C. 608, 622 (S.C. Ct. App. 2016). The *Myers* court stated:

> Significantly, we find the Department failed to present *any* medical evidence to dispute the treatment decisions of [the treating physician]. While we do not suggest the ALC is required to absolutely defer to the treating physician's recommendations, we find no evidence in the record that the Department considered other medical testimony or other conflicting, yet credible, opinions regarding the necessary services for Myers' care.
> Id. at 624 (emphasis in original).

The *Myers* court reversed the lower court, rejecting the agency's assertions that they considered all the evidence to obtain a "holistic picture" of the case. While *Myers* dealt with reductions in services that might result in institutionalization in violation of the ADA, the analysis is the same. As in *Myers*, the court below failed to present any medical evidence to dispute the recommendations of the treating physicians, instead relying on a "holistic picture" of the case; in the instant matter, the State asserts that the court "considered the testimony in the context of the entire record." (Respondent's Brief, p. 37). Similarly, there's no evidence in the record that the court below considered the medical testimony or

credible opinions regarding the level of care Carter needs. While, as in *Myers*, there is no requirement to "absolutely defer" to the medical professionals, the record must clearly demonstrate that their recommendations are considered.

While the State is correct that the *Jones* court found that it was reasonable for "Congress to determine that the insanity acquittal supports an inference of continuing mental illness" (*Jones* at 366), the *Jones* court continues on: "Because a hearing is provided within 50 days of the commitment, there is assurance that every acquittee has prompt opportunity to obtain release if he has recovered." Id. While an NGRI adjudication can serve as the basis for an initial commitment, as reflected in *Jones* (50 days) and in the S.C. Code § 17-24-40(A) (120 days), it, alone, is insufficient to justify continued deprivation of liberty.

While the State attempts to distinguish *Foucha* on the basis that it dealt with an insanity acquittee who was no longer mentally ill, the *Foucha* court makes clear that it is a continuation of *Jones*:

> [W]e do not question, and fully accept, that insanity acquittees may be initially held without complying with the procedures applicable to civil committees. As is evident from the ensuing paragraph of the text, we are also true to the further holding of Jones ... that the period of time during which an insanity acquittee may be held in a mental institution is not measured by the length of a sentence that might have been imposed had he been convicted — rather, the acquittee may be held **until he is either not mentally ill or not dangerous.**
> *Foucha v. Louisiana*, 504 U.S. 71, 77 n.4 (1992) (emphasis added).

While the *Foucha* acquittee could no longer be constitutionally held because he was no longer mentally ill, the Supreme Court explicitly acknowledges that a patient who is no longer dangerous must also be released. In any event, *Foucha* was cited by the Appellants for the proposition that Due Process requires a civil commitment be based on more than a preponderance of the evidence (Respondent-Appellant Carter's Initial Brief, p. 20) and that freedom from bodily restraint is a core liberty protected by the Due Process Clause (Appellant-Respondent SCDMH's Initial Brief, p. 15); neither of these propositions hinge on the reason the NGRI acquittee needed to ultimately be released.

ANALYSIS

The South Carolina Department of Mental Health did not specifically raise the issue of Rule 52(a), SCRCP outside of a reference to the lower court's lack of findings of fact. (SCDMH's Initial Brief, p. 7). However, SCDMH did note that our Supreme Court has held: "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). (SCDMH's Initial Brief, p. 15). Where, as here, the purpose for which a patient is held is unclear, it is impossible to claim that the nature and duration of the commitment are reasonably related.

While this Court may be inclined to remand this for a more definite finding of fact below, that is unnecessary given the exceptionally lopsided nature of the evidence in the record. As noted in Carter's Reply Brief (p. 7), the State's concerns about dangerousness all stem from events years before, at or near in time to the index offense. All parties concur that Carter was mentally ill and dangerous at that time. But nothing in the record supports the State's contention that, as of December 8, 2022, Carter remained a danger to himself or others. The State notes dismissively that "SCDMH and Carter focus on the statutory definition of 'likelihood of serious harm,'" but this definition is exactly what the court below was required to consider in issuing its order. (Respondent's Brief, p. 33).

In some instances, this Court has found that evidence in the record is so overwhelming as to avoid a need for remand and new hearing:

> We do not find, however, that the deficient order requires reversal. Unlike the uncertainty that surrounded the circuit court's determination in *Luckabaugh*, a review of this record clearly documents a factual basis for concluding that probable cause was lacking. From the comments of and questions posed by the able circuit judge, we need not speculate as to the basis of his decision, for we clearly discern — as discussed below — the basis of his finding of no probable cause.
> *In re Care and Treatment of Corley*, 365 S.C. 252, 257 (S.C. Ct. App. 2005)

Alternatively, as discussed in *Myers*, supra, a determination can be so wholly without support in the record as to warrant a reversal without the need for a new hearing. The instant matter is much more of this

nature: the entirety of the testimony and contemporaneous reports regarding Carter recommended his continued treatment on an outpatient basis. While the lower court's factual findings were deficient, there is nothing in the record that could reasonably support the court's conclusion that Carter is in need of continued inpatient commitment by clear and convincing evidence.

While the State suggests that an NGRI has a different standard than a civil commitment (Respondent's Brief, p. 39); that the burden rests on the patient to prove they are no longer mentally ill or a danger to the community (Id.); that Carter's commitment is not a "normal" commitment (Id. at 40); that it is "common sense" for the court to conclude Carter posed a risk (Id. at 26); and that "here, inpatient treatment was determined to be the most medically appropriate and least restrictive environment" (Id. at 38), none of those propositions is accurate. In point of fact, an NGRI acquittee is committed under the civil commitment standards; the burden rests with the state in depriving Carter of his liberty; an NGRI commitment is treated the same as a "normal" civil commitment; the "common sense" language in *Jones* was explicitly about the initial time of commitment; and not a single medical expert suggested that any continued inpatient commitment was warranted in Carter's case.

CONCLUSION

Based on the foregoing and the incorporated portions of Carter's Reply Brief, the Appellant-Respondent SCDMH respectfully requests this Court reverse the order of the Chief Administrative Judge and remand this case to the lower court for an order releasing the Appellant/Respondent Carter upon such therapeutic terms as the Chief Administrative Judge considers appropriate for the safety of the community and the well-being of the person consistent with S.C. Code § 17-24-40(D).

Respectfully submitted,

R. Alexander Pate, II
SC Department of Mental Health
PO Box 456
2414 Bull St
Columbia, SC 29202
803.898.8314
Alex.pate@scdmh.org
SC Bar No. 101967

Logan Y. Royals
SC Department of Mental Health
PO Box 456
2414 Bull St
Columbia, SC 29202
803.898.8558
Logan.royals@scdmh.org
SC Bar No. 101850
Attorneys for Appellant SCDMH

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Jevon Kenneth Carter,

Respondent/Appellant,

PROOF OF SERVICE

I certify that I have served Appellant SCDMH's Reply Brief 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 October 7, 2024.

[signature page follows]

R. Alexander Pate, II
803.898.8314
Alex.pate@scdmh.org
SC Bar No. 101967

Logan Y. Royals
803.898.8558
Logan.royals@scdmh.org
SC Bar No. 101850

SC Department of Mental Health
PO Box 456
2414 Bull St
Columbia, SC 29202

Attorneys for Appellant SCDMH

Other Counsel of Record:
J. Benajamin Aplin
Assistant Attorney General
BAplin@scag.gov
P.O. Box 11549
Columbia, SC 29211

W. Walter Wilkins, III
Solicitor, Thirteenth Judicial Circuit
wwilkins@greenvillecounty.org
305 E. North St.
Greenville, SC 29601

Attorneys for Respondent

D. Josev Brewer
650 E. Washington St.
Greenville, SC 29601
864.383.5250
joe@joebrewerlaw.com
Attorney for Respondent/
Appellant Jevon Carter

From:	Alex Pate
To:	Joe Brewer; Logan Royals; Ben Aplin
Cc:	Elizabeth Hutto
Subject:	RE: [EXTERNAL] Ex Parte: SCDMH (Jevon Carter) (2023-001766)
Date:	Monday, October 7, 2024 7:55:00 PM
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Good evening,

Attached please find SCDMH's Reply Brief in this matter. It will be filed electronically with the Court of Appeals shortly.

Thank you,

Alex

From: Susan Spencer <susanspencer@scag.gov>
Sent: Wednesday, September 25, 2024 12:45 PM
To: Joe Brewer <joe@joebrewerlaw.com>; Alex Pate <alex.pate@scdmh.org>; Logan Royals <logan.royals@scdmh.org>
Cc: Ben Aplin <BAplin@scag.gov>
Subject: [EXTERNAL] Ex Parte: SCDMH (Jevon Carter) (2023-001766)

Good Afternoon,

Attached please find the Amended Initial Brief of Respondent and Amended Designation of Matter in Ex Parte: SCDMH (Jevon Carter) (2023-001766). This document will be filed today to the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

SUSAN SPENCER, Legal Assistant
South Carolina Attorney General's Office
Criminal Appeals | Office 803-734-3219 | susanspencer@scag.gov
P.O. Box 11549 | Columbia, SC 29211
scag.gov