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Nov 26 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2023-001766

Ex Parte: South Carolina Department of Mental Health, Appellant/Respondent

State of South Carolina ……..... Respondent,

v.

Jevon Kenneth Carter ..... Respondent/Appellant.

FINAL BRIEF OF APPELLANT JEVON KENNETH CARTER

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STATEMENT OF ISSUE ON APPEAL

I. Whether the circuit court erred in concluding that there was clear and convincing evidence that the Appellant needed hospitalization when the only evidence before the court was the expert testimony of two physicians and the SCDMH Discharge Request and Report that (1) Appellant 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.[1]

[1] The Appellant would incorporate by specific reference the entirety of the final brief of the SCDMH and would join and adopt any additional issues on appeal and arguments related to the same.

STATEMENT OF THE CASE

The Appellant is a patient at the South Carolina Department of Mental Health Services (hereinafter "SCDMH"), who was previously found Not Guilty By Reason of Insanity (hereinafter "NGRI"). He was admitted to the SCDMH hospital on August 16, 2022, and, therefore, has been there for almost two years. (See R. p. 366.) He was 19 years old when he was arrested and is now only 22. *Id*. He is appealing the Order of the Honorable Alex Kinlaw, Jr. that his continued hospitalization is necessary. (See R. pp. 1-2.)

On August 28, 2020, Appellant was arrested, for murder, burglary, and possession of a weapon during the commission of a violent crime. (See R. pp. 337-38.) Thereafter, he was evaluated by the South Carolina Department of Mental Health Services (hereinafter "SCDMH") for criminal responsibility and capacity to conform conduct to the requirements of the law, on July 5, 2021. (See generally R. pp. 337-46.) At that time, he was diagnosed with Schizoaffective Disorder, Bipolar Type. (R. p. 22 lines 5-6, 344-45.) 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." (R. p. 346.)

Following the NGRI evaluation, then Chief Administrative Judge, Perry H. Gravely conducted a bench trial, on June 8, 2022. (R. p. 3.) Assistant Solicitor Andrew Miller represented the State. Attorney D. Josev Brewer represented Appellant Jevon Carter. By consent and stipulation of both the Respondent and the Appellant and on presentation of testimony, the Court adjudicated the Appellant Not Guilty By Reason of Insanity ("NGRI"), pursuant to S.C. Code § 17-24-40. (R. pp. 4-5.) Pursuant to that Order and by statute, Mr. Carter was admitted to the SCDMH on August 16, 2022. (R. p. 366.) 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 Appellant was no longer in need of inpatient treatment pursuant to the standards set forth under S.C. Code §44-17-580. (R. pp. at 357-63.)

Judge Gravely held a hearing, pursuant to S.C. Code §17-24-40(C)(1), on December 8, 2022. (R. p. 7.) In an Order dated, January 9, 2023, Judge Gravely declined to accept that recommendation. (R. p. 10.) While Appellant and SCDMH disagreed with the basis of that decision, they did not to appeal at that time.

On July 7, 2023, and in accord with its statutory obligations, SCDMH renewed its medical recommendation that Mr. Carter was no longer in need of hospitalization. (R. p. 370.) Then Chief Administrative Judge Honorable Alex Kinlaw, Jr. held a hearing on August 30, 2023, and took testimony from two SCDMH witnesses in support of its recommendation that the Appellant is no longer in need of hospitalization and that he must, therefore, be discharged as a matter of law. (See generally R. pp. 14-125.) Those witnesses included SCDMH's Dr. Jennifer Alleyne, Attending Psychiatrist, and a second independent examiner, 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. (R. p. 19, line 23–p.20, line 1, p. 79, line 12–p. 80, line 3.) Both individuals were qualified as experts in forensic psychiatry without objection. *Id*. Both experts, testified that the Appellant (1) had sufficient insight and capacity to make responsible decisions with respect to his treatment, (R. p. 26, line 7–p.27, line 8; p. 33, lines 2-5; p. 87, lines 6-17; p. 89, lines 3-22; p. 91, lines 7-8); (2) was not violent and was not a danger to himself or others, (R. p. 27, line 10–p.28, line 1; p. 33, lines 6-10; p. 35, lines 6-9; p. 92, line 17-p.93, line 5); and (3) was no longer in need of hospitalization, (R. p. 65, lines 5-7; p. 99, lines 13-17; p. 369).

The Respondent offered no witnesses of its own.

The Circuit Court entered an Order on October 31, 2023. (R. pp. 1-2.) The entirety of

the substantive portion of that Order reads as follows:

> 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.

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*., 660 S.E.2d 271, 272 (S.C. 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 circuit court erred in denying the Appellant's discharge where there was clear and convincing evidence that his hospitalization was no longer necessary and no evidence to the contrary.

As an initial matter, the death of Ms. Frances Mattison, the victim in this case, was extraordinarily sad and tragic and has obviously been a great sorrow for her family. Neither the Appellant nor counsel have ever lost sight of that fact and nothing on appeal is intended to imply differently. In fact, she was Appellant's paternal great aunt. (R. p. 121, lines 6-9.) And, so the case has been additionally tragic for Appellant's familial relationship to, and affection for, Ms. Mattison and for the onset of his own personal mental health issues. (R. p. 89, lines 14-15.) At all stages, it has been a hard case for everyone involved and impacted. And, the solicitor's office, law enforcement, and the court's concerns have not been illegitimate – insofar as it is their statutory roles.

But, Appellant is being unconstitutionally held, as of at least August 30, 2023. And, this State's own mental health department and hospital, the SCDMH – now, court ordered to hold him improperly so -- emphatically agrees. (See Final Brief of SCDMH.) The circuit court's refusal to discharge Appellant, notwithstanding undisputed evidence that he is no longer in need of hospitalization, is working an unconstitutional and irreparable harm to Appellant that is neither legally permissible nor consistent with the ends of our NGRI system as established by the General Assembly of this State. Appellant is precisely the kind of individual our NGRI statute and process, as prescribed by the South Carolina Supreme Court in its April 24, 2014, Administrative Order, was intended to serve. Appellant is the quintessential beneficiary – a devastating victim of his own mental health issues yet receptive to treatment and rehabilitation in a way that ought to afford him a future and a life. As the South Carolina Supreme Court has recognized, Appellant is "***not considered [a] 'prisoner[],'*** *as [he] ha[s]* ***not been found guilty of a crime***." (S.C. S. Ct.

Administrative Order, *Re: Interagency Protocol for Defendants Found Not Guilty by Reason of Insanity*, dated April 24, 2014, at 2 (emphasis added).)

Indeed, Appellant is an extraordinary young man. It is the view of SCDMH staff and physicians, that he is one of the most "responsible," "compliant," "polite" and high-functioning patients they have ever treated. (R. p. 34, lines 20-25; p. 35, line 4; p. 97, lines 16-22; pp. 368-69.) Verbatim, "He is described as a model patient." (R. p. 351.) Prior to the onset of his mental health issues, Appellant was an honor roll student, multi-sport athlete, and was enrolled in the Clemson Bridge program for the Fall of 2020. (R. pp. 343, 353.) He had no history of antisocial behavior or violence, outside the index offense. (R. p. 90, lines 9-13; p. 91, lines 2-3; pp. 349-50.) There was no preexisting context for any violence or aggression in his life.

Until the incident in this case, no one knew he was sick; he had no treatment. (R. p. 87, line 24-p. 88, line 17.) He was 19 years old and had only just graduated high school. (R. pp. 366-67.) His mental health issues did not manifest until the Spring of 2020, when Appellant's genetic predisposition was triggered by the horrific death of his girlfriend who fell to her death from a waterfall in Sunset, South Carolina (at a time when Mr. Carter was not yet present). (R. pp. 339-40, 344.) This disease, latent in him, manifested very unexpectedly and without any prior context or behavioral precedent whatsoever. (R. p. 90, lines 9-13; p. 91, lines2-3; pp. 339-40, 344.)

It was the testimony of Drs. Alleyene and Frierson, however, that his medical diagnoses has been completely remediated through medicine and treatment and that Appellant has been stable for at least his entire period of hospitalization with the SCDMH and for, at least, the entire year prior during his pretrial detention, if not more. (See R. p. 58, lines 16-24; p. 64, lines 1-25; p. 92, lines 4-6.) Accordingly, very shortly after an effective diagnosis and a period on appropriate medicines through today, Appellant's mental health diagnoses have been remediated and fully controlled. As will be discussed in more specific detail below, Drs. Alleyene and Frierson

testified exclusively to consistent and good behavior and a total absence of physical threats or violence or other aggressiveness exhibited by Appellant in well over two years. *See id*. In other words, the NGRI process, to which Respondent and Appellant assented, has worked.

The NGRI process, outlined in S.C. Code § 17-24-40 and by the South Carolina Supreme Court in its Administrative Order, dated April 24, 2014, expressly anticipates Appellant's release. Indeed, the entire point of our NGRI statute and procedure is that an individual, previously suffering from a severe mental health condition, would not be legally characterized as a "prisoner" and would, therefore, be released once hospitalization is no longer required. *See* S.C. Code §17-24-40(C)(2)(c); S.C. S. Ct. Administrative Order, dated April 24, 2014, at 2; s*ee also Olmstead v. L.C.*, 527 U.S. 581, 582 (1999) ("Unjustified 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.").

Appellant is not a detainee or prisoner. He is a patient. And, he is legally *not guilty* of any crimes. The South Carolina Supreme Court has emphatically stated, "Defendants adjudicated NGRI are not committed to the South Carolina Department of Corrections and ***are not considered 'prisoners,'*** *as they have* ***not been found guilty of a crime***." (S.C. S. Ct. Administrative Order, dated April 24, 2014, at 2 (emphasis added).)

A. The circuit court failed to find that the undisputed testimony of two experts was clear and convincing evidence that Appellant is no longer in need of hospitalization.

There were two distinct and chronological statutory questions before the circuit court: First, is Appellant "in need of continued hospitalization"? *See* S.C. Code 17-24-40(C)(2)(c). Second, if he is not, on what conditions should he be released? *See* S.C. Code 17-24-40(C)(2)(c) & (D). The South Carolina Supreme Court has ordered, "After conducting the hearing, if the Judge determines that the Defendant **IS NOT** in need of continued hospitalization, he shall issue an Order releasing the Defendant to the custody of the SCDMH for care and treatment under such

terms and conditions as shall be appropriate." (S.C. S. Ct. Administrative Order, dated April 24, 2014, at 3 (emphasis in original).)

i. The only evidence before the circuit court was 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.

Continued hospitalization of an individual, committed for NGRI, is governed by S.C. Code § 44-17-580, as explicitly outlined throughout S.C. Code § 17-24-40(C). To keep Appellant at SCDMH, the circuit court has to find that there is "clear and convincing evidence" that a patient still "needs involuntary commitment." S.C. Code § 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.")

Very respectfully, there was no evidence whatsoever that Appellant needed further hospitalization. As quoted in full above, the circuit court cited no specific evidentiary basis for any of its ruling. And, it could not have. There was actually no evidence in the record that the Appellant was "mentally ill; need[ed] involuntary treatment; and because of his condition lack[ed] insight or capacity to make responsible decisions regarding treatment; and there [was] a likelihood of serious harm to himself or others" as the court summarily concluded. (R. pp. 337-38.) The Respondent offered no competing testimony, expert or otherwise. Literally, the only evidence before the court was two expert opinions, and the SCDMH Discharge Request and Report, that he had insight regarding his treatment decisions; was not a threat to himself or others; and should no longer be hospitalized. (See generally R. pp. 14-210; pp. 366-71.)

As outlined above, on June 28, 2023, the SCDMH rendered a Request for Discharge under Section 17-24-40(B) and thereafter, on July 7, 2023, relayed to the Court that Appellant is no longer in need of inpatient treatment pursuant to the standards set forth in S.C. Code §44-17-580.

(See R. pp. 366-71.)

By statute, the circuit court was required to make a two-pronged inquiry:

> Does the patient
>
> (1) have insight or capacity to make responsible decisions with respect to his treatment; and
>
> (2) is there a likelihood of serious harm to himself or others,

S.C. Code § 44-17-580.

The term "likelihood of serious harm" is expressly defined:

> . . .
>
> (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 § 44-23-10(13).

Based on both the June 2023 SCDMH Discharge Request and Report, in-court expert testimony, and the independent violence risk assessment of Dr. Frierson, both prongs were satisfied by clear and convincing evidence, indeed emphatically more.

Dr. Jennifer Alleyne has been Appellant's supervising and evaluating psychiatrist and a signatory to the SCDMH report. (R. p. 21, lines 9-10; p. 371.) She is a doctor with the SCDMH. (R. p. 20, line 3-p. 21, line 2.) She is not a privately retained expert, and she works directly for the State of South Carolina. *Id*. She was qualified as an expert and testified in front of the circuit court at the Discharge Hearing, on August 30, 2023. *Id*.

Likewise, Dr. Frierson with the University of South Carolina School of Medicine, was

asked by the SCDMH to perform an independent violence risk assessment. (R. p. 81, lines 12-25.) Dr. Frierson was also qualified without objection as an expert and testified in front of this Court at the Discharge Hearing, on August 30, 2023. (R. p. 79, line 18-p. 81, line 4.)

The June 2023 SCDMH Discharge Request and the in-court testimony of Drs. Alleyne and Frierson demonstrated the following with respect to the recommendation that Appellant is no longer in need of hospitalization and should be discharged:

1. **Appellant has sufficient insight and capacity to make responsible decisions with respect to his treatment going forward.** (R. p. 26, line 7-p.27, line 8; p. 33, lines 2-5; p. 87, lines 6-17; p. 89, lines 3-22; p. 91, lines 7-8; pp. 368-69.)

   Among other things, Dr. Alleyne testified:

   > Q: Understood. Do you believe Mr. Carter has sufficient insight with which to treat himself on an outpatient basis?
   >
   > Dr. Alleyne: I do.

   (R. p. 27, lines 5-8; p. 33, lines 2-5 (repeating same answer).)

   Among other things, Dr. Frierson testified:

   > Dr. Frierson: 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.

   (R. p. 88, lines 11-17.)

   Dr. Alleyne testified that Appellant demonstrated insight insofar as

   > [h]e communicates clearly and effectively with the treatment team. He makes his needs known at all times. He is able to describe in detail the symptoms he experienced, as well as warning signs and triggers might indicate that he is decompensating should he become ill in the future, as well as identify his supported how to utilize the support system effectively.

(R. p. 26, line 23-p.27, line 4.)

Dr. Frierson testified that Appellant demonstrated insight insofar as

> . . . he realizes from the past that were symptoms of mental illness that he didn't realize at the time, his understanding of the medicines and what they are used for, his ability to understand his need for ongoing monitoring and treatment, his understanding that he likely will need lifelong treatment for this illness, that -- and the risk that could happen if he were to fail in that or to become, let's say, noncompliant.

(R. p. 89, lines 4-12.)

2. **Appellant is not a serious harm to himself or others when properly treated.** (R. p. 27, line 10-p.28, line 1; p. 33, lines 6-10; p. 92, line 17-p. 93, line 5; pp. 368-69.)

Dr. Alleyne testified:

> Q: Thank you, Doctor. The flip side of that same statute is regarding a person's propensity for harming themselves or others by virtue of a mental illness. When you are analyzing that for a patient of yours, what kind of things are you looking for?
>
> Dr. Alleyne: We look at self-report. We look at mood. We look at their behavior on he unit and interactions with other people.
>
> Q: And in Mr. Carter's case, has he exhibited any of these signs you would be concerned about regarding harm to self or others?
>
> Dr. Alleyne: He has not.
>
> Q: Do you believe that he is likely to be a danger to himself or others if he's discharged under the terms of the current order?
>
> Dr. Alleyne: I think that he would be safe to be discharged under the current order under his current treatment regimen.

(R. p. 27, line 9-p. 28, line 1.)

Dr. Frierson testified:

> Someone that harbors a history of engaging in fights, or wanting to get back at somebody, or having thoughts about wanting to harm anybody. He doesn't have that. He has not been in altercations at all with -- and that, actually, says something in the forensic hospital. Because you can encounter some persons or other patients that are very difficult to deal with and that are rude or themselves engage in violent behaviors. And he's been able to demonstrate the skills to stay clear of that or getting involved in that.

(R. p. 92, line 21-p. 93, line 5.).

3. **Appellant has exhibited *no violence or aggression* during his time at SCDMH, since August 16, 2022** (R. p. 35, lines 6-9; p. 92, lines 4-15; p. 93, lines 1-5; p. 368 ("Mr. Carter . . . has had no verbal or physical altercations on the unit.").

4. **Appellant has had *no compliance or disciplinary issues* at the SCDMH**, (R. p. 92, lines 4-7; p. 368 ("Mr. Carter has consistently followed unit rules, interacts appropriately with staff and peers . . . .")).

5. **Appellant has no "current symptoms of mental illness."** (R. p. 91, lines 9-10.)

6. **Appellant has no** "**mood instability**." (R. p. 91, lines 10-11.)

7. **Appellant has no "violent ideations**." (R. p. 91, lines 8-9.)

8. **Appellant has been on the same medical regimen since, at least, the date of his NGRI evaluation on July 5, 2021, until now** (Compare R. p. 342 with p. 367); (R. pp. 30, 87).

9. **Appellant has been fully responsible and compliant with the self-administration of his medical regimen**:

> Mr. Carter was placed on self-administered medication protocol as of February 9, 2023. He has had no difficulty with presenting to the medication room at the appropriate times, informing the nurse what medication he is to take opening the blister pack, and taking the medication. Mr. Carter has demonstrated his ability to take responsibility for knowing what medications to take at what time of day which he will be responsible for once in the community.

(R. p. 30, lines 7-23; p. 34, lines 4-5; p. 40, lines 1-2 (affirming Appellant has never missed a dose); p. 87, lines 21-23; p. 92, lines 4-6; p. 369.)

10. **Appellant cannot derive any additional benefit from further hospitalization**. (R. 32, line 18-p. 33, line 1; p. 99, lines 13-25.)

11. **Appellant has good insight into his illness and the treatment regimen for that illness.** (R. p. 26, line 7–p.27, line 8; p. 33, lines 2-5; p. 87, lines 6-17; p. 89, lines 3-22; p. 91, lines 7-8; pp. 368-69 ("Mr. Carter is adherent with all prescribed medications and has expressed the importance of remaining on medications upon discharge.").)

12. **His medical regimen effectively rehabilitates his diagnoses and mental illness and can be properly maintained on an outpatient basis.** (R. p. 58, lines 16-21; p. 64; p. 92, lines 4-15; (see also R. p. 363 ("Mr. Carter is always well groomed and can engage in a coherent and linear conversation without voicing paranoid or delusional beliefs.").)

13. **Appellant advanced through each level of the SCDMH without incident and without the need to repeat a stage.** (R. p. 368-69); (see also R. p. 35, lines 2-3 (emphasizing "no band demotions").)

14. **Appellant has had no disciplinary issues and has been active with his group and individual therapy**. (R. p. 369 ("Mr. Carter has been active participant in treatment by attending all scheduled treatment team meetings, therapeutic groups, and activities on the unit as well as at Building One Treatment Mall."); (R. p. 32, lines 22-25 ("He has attended all the groups we have to offer."); (R. p. 35, lines 1-9; p. 92, line 4-p. 93, line 5.)

15. **Appellant is one of the most courteous, polite, highest functioning, and well-adjusted individuals Dr. Alleyne has ever treated at the Bryan Forensic Unit** (R. p. 34, lines 20-25; p. 35, line 4; p. 97, lines 16-22; pp. 351, 368-69.)

    She testified:

    Q: In your six years, how does Mr. Carter's responsibleness compare to other patients that have been there at the hospital?

    Dr. Alleyne: He is one of the more responsible patients I've taken care of.

    Q: And in his compliance, how does he compare to other patients you supervise?

    Dr. Alleyne: He is one of the most compliant patients. He is on top of his medications every day.

    Q: And in his behavior, how does he compare?

    Dr. Alleyne: He has had no behavioral incidents, no band demotions. I would say that he is one of the most well behaved. The staff always describe him as polite and respectful.

(R. p. 34, line 17-p. 35, line 5.)

Dr. Frierson Testified:

> He is a very high functioning patient. And he doesn't display the sort of negative symptoms that a lot of patients with major mental illness have. What I mean by that, he has social skills. He can engage in joking conversations, enjoying life. He maintains his hygiene without any problem. He's able to physically take care of his grooming, that kind of thing.

(R. p. 97, lines 16-22.)

16. **Appellant has expressed repeated remorse for his involvement with Ms. Mattison's death and lives with that sober reality every day.** (R. p. 46, lines 7-8; p. 88, lines 2-17; p. 89, lines 14-15.)

17. **He has not been deceptive or malingering.** (R. p. 35, lines 10-23.)

18. **"[T]o a reasonable degree of certainty . . . <u>Mr. Carter is no longer in need of hospitalization</u>**." (R. p. 65, lines 5-7; p. 99, lines 13-17; p. 369.)

In addition, Dr. Frierson was also asked by the SCDMH to perform an independent violence risk assessment. He concluded:

> Throughout his nine month hospitalization, [Mr. Carter] has not experienced psychotic symptoms. **He has been compliant with treatment and presented no problems on the inpatient unit**. **He is described as a model patient**. He has been switched to self-monitoring and administration of his medications. In other words, he has to come to the nursing station at the time his medication is due to be taken and ask for his medication including name and dose, without being prompted by the nurses. He has demonstrated the ability to responsibly manage this task.
>
> **He has had no altercations or disputes with other patients**. He has also treated the nursing and mental health staff with respect.
>
> (R. p. 351 (emphasis added).)
> . . .
>
> Mr. Carter has complied with treatment, has not experienced psychotic symptoms in over a year, and has been described as a model patient. **<u>There is no indication for further hospitalization</u>**.
>
> (R. p. 356 (emphasis added).)

It is literally a landslide of evidence that Appellant should no longer be hospitalized. Appellant is not asking this Court to improperly reweigh evidence – *because there is no competing evidence to weigh.* The record speaks of only one conclusion – by the lights of the statutory inquiry, Appellant (1) has good insight into his illness and treatment regimen; (2) he is not a danger to himself or others; and (3) therefore, is no longer in need of hospitalization. *See* S.C. Code § 44-17-580.

Appellant has not for the entirety of his detention and hospitalization (1) made "threats of, or attempts at, suicide or serious bodily harm;" (2) engaged in "homicidal or other violent behavior and serious harm to them;" nor (3) is he "gravely disabled and that reasonable provision for the person's protection is not available in the community." *See* S.C Code § 44-23-10(13). The expert testimony is uniform and uncontroverted – he has made no threats, he has exhibited no violence, he has had no homicidal or suicidal ideations, and is only polite, participatory, well-behaved, and one of the highest functioning patients SCDMH has ever had.

There was no testimony or evidence to support the circuit court's finding that Appellant is "mentally ill." (R. pp. 1-2.) There was no testimony or evidence to support the circuit court's finding that "because of his condition lacks insight or capacity to make responsible decisions regarding treatment." *Id*. There was no testimony or evidence to support the circuit court's finding that "there is a likelihood of serious harm to himself or others." *Id*.

The circuit court simply rejected the naked and undisputed record that he should not be hospitalized.

B. The refusal to release Appellant is affecting a continual constitutional and discriminatory violation.

To confine Appellant, without evidence to the contrary, which is both clear and convincing, would be a serious civil rights violation. *See Addington*, 441 U.S. at 424 ("[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."); *see Foucha v. Louisiana*, 504 U.S. 71, 77 (1992).

Undoubtedly, this case involves a very serious crime and a very serious illness. But, the legal standard is *not* whether the underlying crime is sufficiently bad to detain Appellant indefinitely in a hospital out of generalized fears that it might happen again. Not only is that violative of the therapeutic purposes of Section 17-24-40(D), it is unconstitutional. *See Vitek v. Jones*, 445 U.S. 480, 493 (1980). The United States Supreme Court has stated:

> None of our decisions holds that conviction for a crime entitles a State not only to confine the convicted person but also to determine that he has a mental illness and to subject him involuntarily to institutional care in a mental hospital. Such consequences visited on the prisoner are qualitatively different from the punishment characteristically suffered by a person convicted of crime. Our cases recognize as much and reflect an understanding that involuntary commitment to a mental hospital is not within the range of conditions of confinement to which a prison sentence subjects an individual.

Id.

In *Foucha v. Louisiana*, the United States Supreme Court stated that once the mental illness is regulated, "**the State is no longer entitled to hold him on that basis**." *Foucha*, 504 U.S. at 77 (emphasis added); s*ee also Olmstead*, 527 U.S. at 582 ("Unjustified 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.").

Indeed, the United States Supreme Court held, in *Foucha*, that the State could not hold the patient once the mental illness was remedied, even where he suffered antisocial personality disorder, had been in "altercations" at the facility, and the treating doctor, himself, was not comfortable stating that he was not a danger to himself and others. *Id*. at 75, 78-80.

Here, there is *no* evidence that Appellant has committed even a single aggressive act since August 28, 2020, and certainly not since his commitment to the SCDMH over a year ago – because he has not. And, the only expert evidence is that his medicines fully remediate his mental illness

and that he has very good insight into that illness and necessary treatment. Accordingly, it was plain and unequivocal error to refuse to discharge him. *See Foucha*, 504 U.S. at 77.

This disease was latent in him. (R. p. 87, line 13-p. 88, line 5; pp. 339-40, 344.) He was essentially still a child. (R. p. 337.) It manifested very unexpectedly. (R. pp. 339-40, 344.) But, now it has been diagnosed and properly and effectively treated. (R. p. 58, lines 16-21; p. 64; p. 92, lines 4-15; (see also R. p. 363 ("Mr. Carter is always well groomed and can engage in a coherent and linear conversation without voicing paranoid or delusional beliefs.").) This is not a situation where physicians and experts have tried repeatedly to treat his conditions with numerous and repeated violent relapses. For well over two years (and unequivocally over the last two years in the SCDMH), he has been responsive to medical treatment and now at the corroboration of experts – designated by the State of South Carolina -- who do this every day. Appellant is quintessentially the kind of individual, receptive to treatment and rehabilitation, for which the NGRI process was designed to benefit. He has plans for a future and to return to school; a clinically beneficial good. (R. p. 98, lines 9-22.) The record before the circuit court of appeals only spoke to one conclusion. – he is no longer in need of hospitalization – certainly beyond clear and convincing evidence.

C. The circuit court's order is facially deficient pursuant to S.C. R. Civ. P. 52(a) but there are no facts in the record to support its legal conclusions and, therefore, Appellant should be released.

Certainly, the circuit court's order does not meet the requirements of Rule 52(a) of the South Carolina Rules of Civil Procedure that its order "find the facts specially." *See In re Treatment & Care of Luckabaugh*, 568 S.E.2d at 343. Rule 52(a) states in relevant part:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58 . . . .

S.C. R. Civ. P. 52(a). Remand is a typical remedy for such deficiencies but only when

there is "contradictory testimony below" to be resolved. *See, e.g., Luckabaugh*, 568 S.E.2d at 343 (involving the Sexually Violent Predator Act and a record involving three experts against discharge and one testifying in favor).

As stated, here, there is no contradictory evidence to resolve or any evidence that could ever support the conclusions of the circuit court's order.

The Appellant should be immediately released on the conditions recommended. There are currently approximately 47 individuals who were charged with murder or attempted murder and who have been discharged from the SCDMH. (R. p. 35, lines 20-25.). If the undisputed medical and clinical testimony in this case does not constitute clear and convincing evidence it is hard to imagine a corpus that would.

With respect to any other arguments or issues on appeal, as stated, *supra* n.1, Appellant would incorporate by specific reference the entirety of the final brief of the SCDMH and would join any additional issues on appeal and arguments related to the same.

CONCLUSION

Based on the foregoing, the Appellant respectfully requests that this Court reverse the decision of the circuit court and order the Appellant be released upon the recommended conditions.

Respectfully Submitted,

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November 26, 2024