RECEIVED
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 REPLY BRIEF OF APPELLANT JEVON KENNETH CARTER

---

D. Josev Brewer
650 E. Washington Street
Greenville, South Carolina 29601
(864) 383-5250
joe@joebrewerlaw.com
*Counsel for Appellant Jevon Kenneth Carter*

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### CASES



### RULES AND STATUTES



### OTHER AUTHORITIES

## ARGUMENT

Appellant Jevon Carter should no longer be hospitalized. There is no evidence to the contrary and only strong and compelling evidence in support. Respondent's own summary admits it. (Resp. Final Brief at 8-13.) And, the Co-Appellant South Carolina Department of Mental Health ("SCDMH") – who is tasked with treating and custodying Appellant, literally around the clock – emphatically agrees. Undersigned counsel intends at all times to maintain and portray to this honorable Court the respect and decorum our system deserves and so is slow to sound in any dramatics. But, Appellant is being illegally and improperly held. It is a cruel and active injustice that is hurting the Appellant, who is not a prisoner but a patient, in irreparable ways.

It is incredible that it has come to an appeal. Not only is it routine for individuals like the Appellant to be released in this State (R. p. 35, lines 20-25), but he is also probably one of the safest and most compelling such cases (R. p. 34, lines 20-25; p. 35, line 4; p. 97, lines 16-22; pp. 368-69). 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.) This appeal does not constitute some wishful or generic lawyering effort on behalf of the Appellant – the error is deeply believed. It was reasonably assumed that Appellant's incredible performance and medical remediation would have resulted in a fairly uncontroversial release upon hearing; of course, Ms. Mattison's family would always be resistant and angry. But, the undersigned never could have anticipated the systemic resistance. It simply does not comport with the treatment of individuals similarly situated in this State or the law or the medical and expert assessment of the Appellant. (See R. p. 35, lines 20-25.) SCDMH's presence in this appeal is some indication of the injustice at hand.

It is not an overstatement of advocacy that essentially the entirety of the Respondent's arguments in its Final Brief relate to either:

1. facts that occurred prior to his admission to the SCDMH for treatment (see Resp. Final Brief at 21, 23, 25-26, 28, 31, 34);

   or

2. did not form any basis of the Circuit Court's ruling denying Appellant's release (see Resp. Final Brief at 18, 27-28).

The Respondent has still not identified any evidence, much less to a clear and convincing degree, from which the circuit court could have legally required Appellant's continued hospitalization. In response, to its specific arguments, Appellant would rejoin as follows.

## I. Appellants were not required to file any motion pursuant to S.C. R. Civ. P. 59(e) because every argument was before the circuit court and the circuit court addressed every argument; its conclusion was simply wrong.

No motion pursuant to S.C. R. Civ. P. 59(e) was required. There is no issue raised by the Appellant, on appeal, for which the circuit court did not rule. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 526 S.E.2d 716, 724 (S.C. 2000). Indeed, large portions of the Appellant's Final Brief were cribbed directly from Appellant's post-hearing brief, requested and reviewed by the circuit court prior to its ruling. (Cf. R. pp. 372-91.) The testimony of the two experts and all relevant discharge reports were summarized for the circuit court. And, the identical relief was requested – a determination that Appellant is no longer in need of hospitalization. There is not anything the lower court failed to rule upon. The Circuit Court's order was "facially deficient" insofar as it is just patently wrong. That obvious "wrongness" is quintessentially appealable. Any Rule 59(e) motion would have, therefore, made the exact same arguments originally made and rejected by the Court, which is not an appropriate basis of any such motion, *see* S.C. R. Civ. P. 59(e).[1]

[1] And, to be clear, Appellant does not believe any remand is appropriate. The record speaks of only one conclusion – Appellant is no longer in need of hospitalization. Any Rule 52 reference was made anticipatorily to reject any procedural strategy by Respondent to argue it should be remanded.

## II. The Respondent relies almost exclusively on behavior and incidents occurring before the Appellant's hospitalization and treatment by the SCDMH and are, therefore, not relevant to the effectiveness of the NGRI process and the condition of Appellant as of August 30, 2023.

Respondent has primarily emphasized Appellant's elopements from, and medicinal compliance at, Marshall Pickens, in the summer of 2020, *prior to his arrest and two years prior to his admission to the SCMDH,* as evidence from which the circuit court could somehow conclude that he both lacked insight into his condition and treatment and posed a substantial risk of harm, *as of the discharge hearing on August 30, 2023*. It is the core, indeed almost exclusive, "evidence" of the Respondent throughout its brief – the Marshall Pickens records.[2] (Resp. Final Brief at 21, 23, 25-26, 28, 31, 34.)

It is not an appropriate consideration even had it been relied upon by the circuit court, which it was not. It is the SCDMH, pursuant to the NGRI statutory scheme, which assesses and remediates the mental health condition – not the temporary treatment of a private institution years prior to any arrest and legal process. *See* S.C. Code Ann. § 17-24-40. The idea that the circuit court could rely on the condition of the Appellant's disease and behavior at the time of, and near to, the incident offense to undermine the professional judgment of two expert physicians and the opinion of the SCDMH that *three years later* he no longer needs hospitalization would eviscerate the entire point of NGRI.

Respondent's argument is evidence of the *wrong* moment in time. Of course Appellant was sick and non-compliant in July of 2020, when he committed the incidents crimes; it is what NGRI means. But, the circuit court's statutory obligation was to evaluate Appellant's need for

[2] Respondent also makes passing reference to Appellant's alleged refusal to take prescribed medications while being detained at the Greenville County Detention Center *prior* to his admission to SCDMH. (Resp. Final Brief at 22.) As an initial matter, these records, from February 2022 through July 2022) were given no interpretation by any witness of the Respondent with personal knowledge of their meaning. More importantly, Appellant had obviously not gone through the NGRI process – he was still a detainee.

hospitalization as of August 30, 2023, after his treatment and evaluation by SCDMH. The NGRI statute explicitly states: "***If at a later date*** it is determined by officials of the State Hospital that the person is no longer in need of hospitalization, the officials must notify the chief administrative judge . . . ." S.C. Code Ann. § 17-24-40(c) (emphasis added). The phrase "[i]f at a later date" modifies "no longer in need of hospitalization" and presupposes that there may be a change in the patient's condition, during the course of his hospitalization with SCDMH, different from that which existed *before* the initial hospitalization.

*All* of the compliance and behavioral issues cited by Respondent are before his commitment to SCDMH – all of them. (Resp. Final Brief at 21-23, 25-26, 28, 31, 34.) All of the Respondent's citations to "MIP Records" or "GCDC Medication Records" reference behavior and incidents occurring before his hospitalization at SCDMH. By contrast and as tediously outlined in the Final Brief of Appellant, there have been *no* compliance issues; behavioral problems; violence; threats; elopements; delusions; suicidal ideations; or even generic rudeness during his over year's time at SCDMH – none. (R. p. 30, lines 7-23; p. 34, lines 4-5; p. 40, lines 1-2; p. 87, lines 21-23; p. 92, lines 4-6; p. 369.)

As undersigned has tried to contextualize for the court below and then in the Final Brief, Appellant's disease was latent in him as of July 3, 2020, when he was admitted to Marshall Pickens. (R. p. 87, line 13-p. 88, line 5; pp. 339-40, 344.) It manifested very unexpectedly. (R. pp. 339-40, 344.) He literally did not know he was sick. (R. p. 88, line 2.) The first elopement, which Respondent would try to highlight, happened within *one* day of his admission to Marshall Pickens, and the second, four days later. (See R. pp. 340-41.) And, so Marshall Pickens had been treating him for less than three days total (excluding time away from the facility) when both elopements occurred. A full diagnosis, understanding, and treatment by Marshall Pickens, the Appellant, or any healthcare provider was impossible. It is much more than an inapposite "apples

and oranges" comparison for Respondent to equate Appellant's ability to be treated and comply on July 4 and 8, 2020, after three days of treatment at Marshall Pickens, with his ability to comply, after over a year of treatment at SCDMH, three years later, on August 30, 2020, it is wrong and inconceivable.

The only "evidence" Respondent could cite in alleged support of the circuit court's decision – dating from any time during his hospitalization with SCDMH – relates to its contention that somehow Dr. Alleyne had not observed Appellant sufficiently to know whether continued hospitalization was necessary. It is a mischaracterization in every respect. Appellant had been at SCDMH over a year as of the August 30, 2023, discharge hearing. (R. p. 64, lines 1-2.) Respondent, would attempt to circumscribe Dr. Alleyne's time with Appellant to "a few hours". (Resp. Final Brief at 24.)

First, that was not her testimony. (R. p. 36, line 19-p. 37, line 7.). Respondent has simply aggregated the time of her "formal meetings." (See R. p. 37, lines 2-7.) But, Dr. Alleyne testified that she could not actually identify a total time and that she observed Appellant "on the unit much more frequently" than scheduled meetings:

> **Q:** Okay. So between the last hearing and now, how often did you meet with Mr. Carter?
>
> **Dr. Alleyne:** I meet with him in a scheduled meeting once per month. ***I see him on the unit much more frequently than that***. I honestly couldn't tell you how many times I've talked to him between then and now.

(R. p. 36, lines 19-24 (emphasis added).)

Second, Dr. Alleyne was testifying to an entire evaluation and performance record at SCDMH. She stated that Appellant was under constant monitoring and treatment by staff and nurses "24 hours, seven days a week." (R. p. 64, line 6.). Nurses interacted with him "all day long." (R. p. 64, linew 7-9.) And, yet not a single compliance issue or missed dose of medication has been recorded in over a year. (R. p. 30, lines 7-23; p. 34, lines 4-5; p. 40, lines 1-2; p. 87,

lines 21-23; p. 92, lines 4-6; p. 369.)

By contrast, Appellant had been at Marshall Pickens less than a month upon discharge and the SCDMH has had much more information to make its risk assessment. (R. p. 63, line 15-p. 65, line 4.)

Lastly, Dr. Frierson, with the University of South Carolina School of Medicine, independently opined that the evaluation by Dr. Alleyne and SCDMH was "much more than adequate" to conclude that further hospitalization is not required:

Q: And you were present here today when Dr. Alleyne was testifying about her obligations and relationship to Mr. Carter?

Dr. Frierson: Yes.

Q: And you heard her detail the volume of interaction, the records under review, the supervision and observation that he was under during his time -- his time at the mental health hospital?

Dr. Frierson: Yes.

Q: And in your expert opinion, is -- the supervision, monitoring records, volume of time, therapy group and individual sessions that Mr. Carter has been subjected to over this year's time, is that a sufficient amount of observation to make a decision about his need for hospitalization going forward beyond a reasonable degree of medical certainty?

A: ***I think it's much more than an adequate amount, but, yes.***

(R. p. 100, line 9-p. 101, line 1 (emphasis added).)

Respondent would cast additional doubt by referring to Drs. Alleyne and Frierson's testimony as "predictive" opinions. They are not predictive. And, in fact, both doctors testified directly to the contrary. They predicted nothing. They guaranteed nothing. (R. p. 41, lines 19-21; p. 103, lines 2-8; p. 106, lines 17-21.) That is not their job; that is not the law. They are making a medical determination about his present condition based on their expertise and his *actual* performance about his current need for hospitalization.

Finally, Respondent attempts to link some of these pre-SCDMH records to his SCDMH

performance by using Appellant's desire to be released – and comply – against him. (Rep. Final Brief at 22.) It is literally what he *should* want. What every person would want. And, critically, exactly what the statute *requires* – insight into his illness and a capacity and desire to comply. It is exasperating for it to be characterized as nefarious. And, the fact that he can volitionally comply is only more proof of the effective remediation of his disease because – to the Respondent's point – in the Summer of 2022 he could not comply. Now he can.

And, nobody believes it is a ruse. The only testimony heard by the circuit court at the August 30 hearing was that Appellant was not faking and almost certainly could not fake his behavior for the length of time he had been hospitalized:

> **Q:** Do you have any reason to believe that he is faking any of those behavioral characteristics?
>
> **Dr. Alleyene:** No.
>
> **Q:** Do you believe that a patient could fake those behavioral characteristics and fool the Department of Mental Health?
>
> **Dr. Alleyene**: I think a patient could fake those behavioral characteristics for a short period of time. I don't think that they could be as consistently well behaved, respectful, and polite as Mr. Carter is.

(R. p. 35, lines 10-19.) The testimony is consistent – he is an exceptionally well-behaved and thoughtful young man who, yes, desperately wants to go home.

It is worth quoting again verbatim the Final Brief of Appellant. 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 14-22.) The record before the circuit court only spoke to one conclusion. – he is not a substantial risk of harm and no longer in need of hospitalization – certainly beyond clear and convincing evidence.

### III. Respondent's reliance on deficiencies with the SCDMH's Discharge Plan and Recommendation does not save the circuit court's order.

Respondent next argues that SCDMH's proposed Discharge Plan justifies the circuit court's order. Respondent says two things about it. First, that it is insufficient. And, second, that it did not comport with Judge Gravely's January 9, 2023, Order denying release. Neither argument is relevant **because Judge Kinlaw did not rule based on any issue with the proposed Discharge Plan**.

As previously recited in the Final Brief, the entirety of the substantive portion of the circuit court's 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.

(R. pp. 1-2.) There is no mention of the discharge plan; its effectiveness; or its conformity with the Order of Judge Gravely. The circuit court made its ruling exclusively on a belief that Appellant lacked the insight to make decisions regarding his treatment and that there is a likelihood of serious harm to himself or others – conclusions for which there was no evidence. *See id.*

*But*, even had it, Appellant would argue that the Discharge Plan recommendation has no

bearing on the circuit court's first statutory inquiry. As the Respondent concedes (Resp. Brief at 29), 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).)

In other words, the second inquiry does not inform the first – because it is not implicated until the first is resolved. Respondent would use, what only it has characterized, as deficiencies in the SCDMH's discharge plan as some pretextual shield to argue additional hospitalization is required. But, as has been discussed, the hospitalization inquiry is a two-pronged test unrelated to conditions of release:

> 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. Once clear and convincing evidence, as was presented here, establishes that the patient has sufficient insight and is not a likely harm to himself or others – the Court is free to fashion whatever conditions of release it prefers. Respondent, paradoxically, argues that deficiencies in the recommendation of SCDMH somehow bind the court's hands to do differently than recommended with respect to discharge. In the one instance Respondent says that it is the circuit court's province to simply disregard the undisputed testimony of two experts on the hospitalization inquiry, but, in the other, that it cannot also reject those same expert's

recommendation as to conditions of discharge and fashion its own.

To say it differently, the circuit court, by statute, was free to order whatever conditions of release it preferred if it disagreed with SCDMH. Of course, here the circuit court never reached the issue at all.

## IV. Appellant's continued hospitalization is an obvious constitutional problem.

And, herein lies, the constitutional dimension, hand-waved by the Respondent, but which the United States Supreme Court has made clear and which should be plain to the conscience of any lawyer or layman. *See Foucha v. Louisiana*, 504 U.S. 71, 77 (1992). If he is not a prisoner, which the South Carolina Supreme Court says he is not,[3] and he is a patient but no longer in need of inpatient treatment, which the undisputed expert testimony establishes he does not -- then custody is unconstitutional and deeply, deeply offensive. Respondent tries to distinguish *Foucha.* And it is indeed incredibly distinguishable – namely, because the patient in that case was an active compliance and violence risk. *Id*. at 75, 78-80. Foucha literally suffered active 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.

Jevon Carter suffers none of those things and is only the most decent person for whom everyone who has ever actually met and spoken with him, in this process, vouches for unequivocally. His medications work. They have for a long time. He administers them. He is compliant, polite, and never a disciplinary issue. He has proper insight into both his condition and treatment. He is not a substantial risk to himself or others. For ease of reference and citation:

3 As stated and as the South Carolina Supreme Court has emphasized, 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.

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.)

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.)

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. p. 30, 87).

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

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; p. 363.)

13. **Appellant advanced through each level of the SCDMH without incident and without the need to repeat a stage.** (R. pp. 368-69; p. 35, lines 2-3.)

14. **Appellant has had no disciplinary issues and has been active with his group and individual therapy**. (R. p. 369; p. 32, lines 22-25; 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.)

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.)

Respectfully, "the State is no longer entitled to hold him on that basis." *Foucha*, 504 U.S. at 77 (emphasis added); 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.").

## CONCLUSION

Based on the foregoing, the Appellant renews its request that the Court reverse the decision of the circuit court and order the Appellant be released upon the recommended conditions.

Respectfully Submitted,

The Law Office of D. Josev Brewer, LLC

s/D. Josev Brewer
D. Josev Brewer
650 E. Washington St.
Greenville, SC 29601
864-383-5250
joe@joebrewerlaw.com
*Attorney for the Appellant Jevon Carter*

November 26, 2024