

SAMUAL B. JOHNICAN

APPLICANT

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DEC 04 2024

S.C. SUPREME COURT

 FILED FOR RECORD
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 RHONDA D. McELVEEN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

 THE STATE OF SOUTH CAROLINA
 RESPONDANT
 BARNWELL COUNTY.

Pursuant to Rule 243

The final order in case # 2022-CP-06-00382 does not contain fact and conclusion of law pursuant to S.C. code 17-27-80.

The state claims that my mental competency was solved in my Post-conviction hearing. This is false. An independant mental examination is not a hearing. Eventhough I did not get the independant mental examination, which I was not entitled to. I was entitled to the competency hearing pursuant to S.C. code of law 44-23-430. which states upon receiving the report of the designated examiners the court shall set a date for a hearing. The hearing was to take place after I was evaluated pursuant to S.C. 44-23-410.

The S.C. Supreme court ruled in Blair v. State 273 S.E.2d 536 that the statute 44-23-430 used the wording "shall". The word "shall" in a S.C. statute means the action is mandatory. The courts have to follow the law. Also see Robertson v. State 278 S.E.2d 770 (1981) The competency hearing in Mr. Johnican's claim was provided by S.C. state law. The courts are not above the law. Therefore the appeal should be granted.

An examination and a competency hearing are two different procedures. Below are the Black's Law definitions

Respectfully submitted.

Hearing) A formal scheduled setting in which an affected person presents arguments to a decision maker.

Competency hearing (1958) criminal law. A hearing to determine the ~~psy~~ physical and mental fitness of a defendant to be tried for a crime see Pate Hearing.

Independant mental evaluation (1979) an assessment of a person's mental and emotional condition that is made by an independant mental health professional.



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