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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

LEGAL SERVICES

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STATE OF SOUTH CAROLINA,)
v.)
ROCKY A. LINKHORN,)
DEFENDANT.)

BETH A. LARIBIGG
CLERK OF COURT
LEXINGTON SC

Indictment Nos.: 2011-GS-32-0242;
2011-GS-32-0243; 2011-GS-32-0244

**ORDER GRANTING SOLICITOR'S RULE
TO SHOW CAUSE; REQUIRING DDSN TO
ACCEPT INVOLUNTARY COMMITMENT;
AND PROHIBITING FUTURE REFUSAL BY
DDSN IN SIMILAR CASES**

I. INTRODUCTION

This matter came before the Court pursuant to a petition for a Rule to Show Cause filed by Rhonda W. Patterson, Esq., Assistant Solicitor for the Eleventh Judicial Circuit. The motion asked that the South Carolina Department of Disabilities and Special Needs ("DDSN") be required to show cause as to why it has not provided services to Defendant Rocky A. Linkhorn. Both DDSN and the South Carolina Department of Mental Health ("DMH")¹ were served with the Rule to Show Cause and participated in the hearing in this matter.

JWB

The Rule to Show Cause hearing was conducted August 20, 2013 at the Lexington County Courthouse. Present and participating at the hearing were: Assistant Solicitor Rhonda W. Patterson, Esq. and Deputy Solicitor C. Dayton Riddle, Esq. of the Eleventh Circuit Solicitor's Office; the Defendant, Rocky A. Linkhorn, accompanied by his counsel Elizabeth C. Fullwood, Esq.; (3) Monique M. Lee, Esq., Office of General Counsel for DMH; and (4) Tana G. Vanderbilt, Esq., General Counsel for DDSN. Based on the testimony and arguments presented, the Court makes the findings of fact and conclusions of law contained herein, grants the Rule to Show Cause, and hereafter prohibits DDSN from engaging in similar conduct.

¹ DMH was dismissed from the Rule to Show Cause by the Court at the hearing on August 20, 2013 as Defendant is not mentally ill.

II. PROCEDURAL HISTORY

The Defendant was arrested on July 14, 2010, on warrants charging him with Criminal Sexual Conduct with a Minor in the First Degree, Lewd Act on a Minor, and Disseminating Obscene Material to a Minor. Specifically, Defendant Linkhorn is alleged to have committed a sexual battery by attempting intercourse on his four year old niece, which was witnessed by her ten year old brother. On February 8, 2011, the Honorable R. Knox McMahon ordered DMH to examine the Defendant for fitness to stand trial. The Defendant was ultimately examined in a joint evaluation by both DMH and DDSN. The examiners found him incompetent to stand trial but likely to attain competency in the foreseeable future.

Job 2
A *Blair*² hearing was held pursuant to S.C. Code Ann. § 44-23-430 on June 21, 2011, before the Honorable Edward B. Cottingham, Jr. At the hearing, Judge Cottingham ordered that the Defendant be committed for restoration to DMH for up to a 60 day period. *See* S.C. Code Ann. § 44-23-430(3). At the expiration of the 60 day period, DMH and DDSN produced a joint report that concluded the Defendant remained incompetent and would not attain competency to stand trial in the foreseeable future. A subsequent *Blair* hearing was then held before the Honorable William P. Keesley on November 2, 2011. Judge Keesley found the Defendant incompetent to stand trial and ordered the Solicitor's office to initiate involuntary commitment proceedings in the Probate Court pursuant to S.C. Code Ann. § 44-17-510, *et seq.*

On November 7, 2011, Assistant Solicitor Rhonda W. Patterson filed an involuntary commitment petition in the Lexington County Probate Court. On December 12, 2011, the Probate Court dismissed the proceedings upon receipt of the report of the designated DMH examiners because the report found that the Defendant was not mentally ill.


² *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981).

The Solicitor reinitiated Probate Court proceedings on January 5, 2012, seeking involuntary commitment of the Defendant as a person with intellectual disability or a related disability. DDSN expressed concern that Judge Keesley's Order of November 2, 2011 did not give it authority to proceed because the Order did not specifically reference S.C. Code Ann. §44-20-450. As a result, Judge Keesley issued an Amended Order on February 27, 2012, ordering judicial commitment proceedings under S.C. Code Ann. §§ 44-17-510, *et seq.*, or § 44-20-450. DDSN then moved to dismiss the petition on August 6, 2012, on grounds that the Defendant does not have an intellectual disability or related disability as defined in S.C. Code Ann. § 44-20-30(12) and (15). The Solicitor's petition was administratively dismissed by the Probate Court on January 3, 2013, without notice to DDSN, with the Probate Judge making a handwritten notation on the petition that the matter was being returned to the Circuit Court for review.

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The Eleventh Circuit Solicitor's Office then filed the present motion for a Rule to Show Cause on January 2, 2013. The Solicitor asked that DDSN be required to show cause for its failure to provide services to the Defendant. On March 12, 2013, the Honorable Jean Hoefler Toal issued an Order vesting exclusive jurisdiction in this matter to this Court. DDSN filed its return to the Solicitor's motion on July 29, 2013. The return alleged: (1) that this Court does not have jurisdiction to hear the matter, as the case is still pending in the probate court and there has been no Order appealed from that Court to the Circuit Court; (2) that the Defendant cannot be involuntarily committed to DDSN because he does not have an intellectual disability or related disability; and, (3) the Defendant is eligible for voluntary DDSN services in its Head and Spinal Cord Division and involuntary commitment is not permitted for persons in the Head and Spinal Cord Division as a matter of law.

III. FINDINGS OF FACT

This Court reviewed records in this case from the Lexington County Court of General Sessions and Probate Court. These included the reports of the designated examiners who evaluated the Defendant before his *Blair* hearings. Defense counsel also obtained some of the Defendant's medical records related to his disability. These records were distributed to the Court and to counsel for all interested parties. The defense retained Richard L. Frierson, M.D., as an expert in the field of forensic psychiatry. Dr. Frierson reviewed the Defendant's medical records, interviewed Defendant's sister, and examined the Defendant. He was qualified as an expert witness and testified at the hearing before the Court on August 20, 2013.

The Defendant is a thirty-eight year old white male. Prior to 1998, he lived independently and did not have cognitive impairments. He suffered an anoxic brain injury in 1998 when he tried to hang himself while he was incarcerated in a county jail. This event substantially and permanently impaired his cognitive functioning. His thinking is concrete. He has significant memory impairment and difficulty retaining information. He can no longer live on his own, as he has problems with executive functioning. He cannot handle money, cook, or wash clothes. He must be reminded to tend to basic personal hygiene. Prior to his arrest, he lived in a camper trailer located adjacent to his sister's residence. At the time of the hearing, he was still incarcerated at Lexington County Detention Center from the date of his original arrest, a total of 1,133 days.

Dr. Frierson and the designated examiners diagnosed the Defendant with dementia due to general medical conditions and specifically as a result of the anoxic brain injury in 1998. The diagnosis of dementia encompasses those with memory impairment and other cognitive

disturbances that show a significant decline from previous level of functioning. There is also a substantial impairment in the ability to function socially and/or occupationally.

Dr. Frierson testified that in his professional opinion the Defendant's condition falls within the definition of "[p]erson with intellectual disability" set forth in S.C. Code Ann. § 44-23-10(21). The Defendant's treatment needs are placement in a facility with twenty-four hour supervision where he can obtain assistance with the activities of daily living. The placement should not permit him to have contact with children. Dr. Frierson also testified that the Defendant's clinical presentation is similar to that of an individual with an "intellectual disability" or "related disability" as defined in S.C. Code Ann. § 44-20-30(12) and (15). The Defendant's treatment needs would be the same regardless of whether his cognitive impairments were due to a development disorder or from physical brain injury.

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The Court finds Dr. Frierson's testimony credible. His diagnostic impressions are consistent with those of the DMH and DDSN examiners who evaluated the Defendant for competence to stand trial. Based on the testimony of Dr. Frierson, the Court makes the following findings: (1) the Defendant suffers from dementia that resulted from a 1998 anoxic brain injury that occurred when the Defendant was twenty-four years old; (2) Dr. Frierson's conclusions about the Defendant's treatment needs are persuasive based on his experience in the care and treatment of incompetent persons in a forensic environment; (3) the Defendant should receive the type of treatment described by Dr. Frierson's testimony; and, (4) the Defendant requires the same treatment as an individual who suffers from an intellectual disability or related disability, and such treatment should be provided by DDSN.

At the hearing, the Court called Beattie I. Butler, Esq. of the Ninth Circuit Public Defender's Office as the Court's expert witness. Mr. Butler is a public defender who has spent

the entirety of his sixteen years as an attorney in the area of criminal defense. Mr. Butler has represented many individuals whose competence to stand trial was in question due to mental illness or intellectual disability. Some of these individuals were in the same or similar situation as the Defendant – they had cognitive impairments but were denied involuntary treatment by DDSN because they did not fall within the narrow parameters of S.C. Code Ann. §44-20-30(12) and (15). In addition to his experience as a criminal defense trial attorney, Mr. Butler has provided extensive leadership to South Carolina Court Administration's efforts improve, monitor, and streamline the forensic mental evaluation process in this state.

The Court qualified Mr. Butler as an expert in the areas of statutory construction and the procedural and substantive law of the forensic mental process in the criminal courts of South Carolina. Mr. Butler provided the Court with a detailed explanation of how the relevant provisions of Chapters 20 and 23 of Title 44 can and must be reconciled and rendered harmonious in their application.

One of the legal defenses raised in the Return of DDSN is the argument that the director of the DDSN has exclusive authority over who can be admitted to the services of DDSN [see 44-20-390(C)]. At the hearing, Mr. Butler opined it would be illogical for DDSN to evaluate defendants for fitness to stand trial who fall within the definition of "intellectual disability" under S.C. Code Ann. § 44-23-10(21) when these same defendants cannot be involuntarily committed through probate proceedings if found incompetent to stand trial and unlikely to be restored to competency. Similarly, S.C. Code Ann. § 44-23-460 requires these defendants to return to Court before release from hospitalization when they no longer need supervision and treatment. However, a defendant can only be released if first committed. The process codified in Chapter 23, Article 5 begins by evaluating defendants using the broad definition of "intellectual

disability" in S.C. Code Ann. § 44-23-10(21). In Mr. Butler's opinion, it makes no sense to exclude some of these individuals from the involuntary commitment process, including only those who fall within the narrower definitions of "intellectual disability" and "related disability" contained in S.C. Code Ann. § 44-20-30(12) and (15).

Instead, S.C. Code Ann. §§ 44-23-430 and 44-20-450 cross reference each other and incorporate by reference the broader definition contained in Chapter 23. Specifically, S.C. Code Ann. § 44-20-450 lists eight classes of people who may initiate involuntary probate proceedings against a person. These range from a spouse, to a parent, to the director of the county DSS. Only the eighth category, the Solicitor in charge of criminal prosecution, references another statute, and the referenced statute is S.C. Code Ann. § 44-23-430. Thus, the narrower definition favored by DDSN may well apply to the categories outlined in S.C. Code Ann. § 44-20-450(A)(1) through (7), where involuntary commitment does not arise in the context of a criminal case. But where a criminal defendant has been referred to Probate Court by the Circuit Court, the broader definition in S.C. Code Ann. § 44-23-10(21) applies. Incompetent criminal defendants must fall under the responsibility of some agency. Unless a defendant is mentally ill, an incompetent defendant falls within the responsibility of DDSN.

Mr. Butler responded to DDSN's position that such a classification created an equal protection problem by pointing out that unlike individuals probated under S.C. Code Ann. § 44-20-450(1) through (7), those in subsection (8) had been accused of crimes where at least a magistrate has found probable cause and a grand jury has indicted that defendant for a criminal offense. Similarly, he responded to DDSN's position that under S.C. Code Ann. § 44-20-430 the agency has the power to make the final decision in all cases of whether to provide services by opining that this statute supported his position that involuntary commitments arising out of the

forensic evaluation process had to be treated differently than others. While perhaps DDSN can decline services in other contexts, it cannot do so in defiance of a Circuit Court order.

Mr. Butler also testified that in his experience it has been a common practice for many years for DDSN to deny treatment and services to criminal defendants when their cognitive impairments do not arise during the developmental period.

The Court finds that Mr. Butler's expertise and experience in this area of law is unquestionable and entitled to great weight. The Court further finds that DDSN has engaged in a long-standing pattern and practice of denying services to head, spinal cord, and/or brain-injured criminal defendants found incompetent to stand trial, even when those persons have identical clinical presentations and treatment needs as other defendants whom DDSN accepts as involuntary clients. DDSN has instituted the practice of only offering involuntary services to criminal defendants who are determined to be suffering from an "intellectual disability" or "related disability" as defined under S.C. Code Ann. § 44-20-30(12) or (15). These code sections require that the intellectual disability must manifest "during the developmental period" – before an individual reaches eighteen years of age – or if a "related disability," it must arise before the age of twenty-two. DDSN currently denies involuntary commitment care and treatment to those defendants whose cognitive impairments begin after the age of twenty-two, regardless of their treatment needs.

It appears to this Court that DDSN has used this legal argument to convince the various Probate Courts of this state that the Probate Judges do not have jurisdiction over individuals whose intellectual disability does not occur in the developmental period or in any case before the age of twenty-two, and thus the involuntary commitment petitions must be dismissed. The end result of this practice is that head, spinal cord, and/or brain-injured individuals find themselves

without care and treatment through involuntary commitment, potentially dangerous individuals are released to the general public, and potentially vulnerable individuals in need of care are warehoused in county jails in direct violation of S. C. Code Ann. § 44-23-220. In the present case, the solicitor refused to release Mr. Linkhorn to the general public, who languished in the Lexington County jail for 1,133 days and would likely be there yet but for the Rule to Show Cause petition.

IV. CONCLUSIONS OF LAW

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DDSN argues that the Court is without jurisdiction to issue an Order in this matter because an involuntary commitment proceeding is still pending against the Defendant in Probate Court. This argument is incorrect. Associate Probate Judge Julie H. Thompson testified at the hearing that the Solicitor's second involuntary commitment proceeding was dismissed on January 3, 2013. Even if this were not the case, this Court would have jurisdiction to rule in this matter by virtue of Chief Justice Toal's Order of March 12, 2013, vesting exclusive jurisdiction of this case with this Court.

In addition to the argument noted above, DDSN made additional arguments before the Court on August 20, 2013. Because the Defendant has a brain injury, DDSN acknowledges that the Defendant is eligible for services in DDSN's Head and Spinal Cord Division. However, an individual cannot be involuntarily committed to receive those services. Rather, the Defendant must consent to care and treatment before DDSN has a statutory obligation to offer services.

DDSN further argues, as previously discussed, that the Director of DDSN has final authority, under S.C. Code Ann. § 44-20-430, as to any person's eligibility for services and what services are to be provided by DDSN. The Court disagrees. The issues in this case require the Court to engage in statutory construction in an effort to harmonize the pertinent provisions of

law. The following excerpts from *State v. Sweat*, 386 S.C. 339, 688 S.E.2d 569 (2010) contain an excellent exposition of the rules of statutory construction available to a court:

All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.

The Court should give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.

Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.

The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Even so, an administrative construction affords no basis for the perpetuation of a patently erroneous application of the statute.

Id., at 350-351, 688 S.E.2d at 575-576 (citations and internal quotation marks omitted).

When the provisions of a general statute and a specific statute which deal with the same subject conflict, the specific statute is considered an exception to the general statute. *See Florence County Democratic Party, et al. vs. Florence County Republican Party, et al.*, 398 S.C. 124, 128, 727 S.E.2d 418, 420-421 (2012). Where a conflict arises, the specific statute prevails. *Fernanders v. State*, 359 S.C. 130, 133, 597 S.E.2d 787, 789 (2004).

This case requires the Court to interpret the provisions of Chapter 20, Articles 1 and 3, and Chapter 23, Articles 1 and 5, of Title 44. Title 44 is the portion of the South Carolina Code

that contains laws relating to matters of health. Relevant to this Court's inquiry are the provisions of S.C. Code Ann. §§ 44-20-30(12) and (15), 44-20-430, 44-20-450, 44-23-10, and 44-23-430. Chapter 20 establishes and governs the operation of DDSN. The legislative intent is specifically expressed in the Code:


The State of South Carolina recognizes that a person with an intellectual disability, a related disability, head injury, or spinal cord injury is a person who experiences the benefits of family, education, employment, and community as do all citizens. It is the purpose of this chapter to assist persons with intellectual disability, related disabilities, head injuries, or spinal cord injuries by providing services to enable them to participate as valued members of their communities to the maximum extent practical and to live with their families or in family settings in the community in the least restrictive environment available.

S.C. Code Ann. § 44-20-20. The articles of Chapter 20 establish DDSN; mandate its duties, responsibilities, and powers; provide for licensure and regulation of its facilities; and, provide for capital improvement to conduct mandated programs. The Court notes that one of the points raised by DDSN during these proceedings is that the agency does not operate a secure facility for housing individuals who may be criminally dangerous, an argument that this Court finds unpersuasive.

Section 44-20-30 defines the terms used in Chapter 20. "'Intellectual disability' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." S.C. Code Ann. § 44-20-30(12). "Related disability" is defined as "a severe, chronic condition found to be closely related to intellectual disability or to require treatment similar to that required for persons with intellectual disability and must meet the following conditions. . . ." S.C. Code Ann. § 44-20-30(15). The definition goes on to provide that a related disability must be due to a medical

condition other than mental illness that will likely continue indefinitely and cause functional limitations in three or more areas designated by statute before the age of twenty-two. *Id.*

Article 3 of Chapter 20 pertains to the organization and system for delivery of DDSN services. It contains provisions for involuntary commitment to DDSN in S.C. Code Ann. § 44-20-450. Proceedings may be initiated in the probate court by designated relatives, the head of public or private institutions where the individual resides, or the Department of Social Services. S.C. Code Ann. § 44-20-450(A). In addition, a solicitor responsible for a criminal prosecution may seek involuntary commitment "pursuant to Section 44-23-430(2)." See § 44-20-450(A)(8). If the examiners designated by the probate court find that the person sought to be admitted does not suffer an intellectual disability or related disability, the proceedings must be dismissed. § 44-20-450(D).

 The Director of DDSN is granted wide executive discretion. "The director or his designee has final authority over applicant eligibility, determination, or services and admission order, subject to policies adopted by the commission. S.C. Code Ann. § 44-20-430.

Chapter 23 of Title 44 contains laws that apply to the mentally ill and to persons with an intellectual disability. It governs the detention, confinement, and transfer of confined persons; fitness to stand trial; and the treatment, rights, privileges, and expenses of patients generally. Like Chapter 20, Chapter 23 also contains definitions of the terms, which apply "[w]hen used in this chapter . . . unless the context clearly indicates a different meaning[.]" S.C. Code Ann. § 44-23-10. Intellectual disability is defined as "a person, other than a person with a mental illness primarily in need of mental health services, whose inadequately developed or impaired intelligence and adaptive level of behavior require for the person's benefit, or that of the public, special training, education, supervision, treatment, care, or control in the person's home or

community or in a service facility or program under the control and management of the Department of Disabilities and Special Needs." § 44-23-10(21).

Article 5 of Chapter 23 addresses fitness to stand trial in the court of general sessions and family court. It establishes the procedures for obtaining a competency examination, conducting a competency examination, and reporting the results of these examinations. It provides for hearings in the circuit court on the issue of competency and sets forth procedures to follow dependent on the result of a *Blair* hearing. Where a court finds a person incompetent to stand trial and unlikely to become competent in the foreseeable future, the solicitor responsible for the criminal prosecution "shall initiate judicial admission proceedings pursuant to Sections 44-17-510 through 44-17-610 or Section 44-20-450[.]" S.C. Code Ann. § 44-23-430(2).

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The Court finds that Chapter 20 is general in nature. It establishes a comprehensive system to provide services and assistance to persons with cognitive disabilities. Its express purpose is to recognize that the cognitively disabled are valuable members of the community and are entitled to a certain minimum quality of life commensurate with their needs. Chapter 20 also provides for their social welfare.

In contrast, Article 5 of Chapter 23 specifically addresses the concerns that rise when mentally ill or intellectually disabled persons are charged with the commission of a criminal offense in circuit or family court. The legislative intent here is twofold. First, the article seeks to protect the rights of the individual, and safeguards are codified to achieve this end. *See, e.g.*, S.C. Code Ann. § 44-23-410(C) (person may request additional examiner of his own choice); §44-23-430 (persons against whom criminal charges are pending but who are not involuntarily committed shall be released); and §44-23-440 (finding of unfitness to stand trial shall not preclude defense on the merits).

Second, the statute evinces the intent to protect the public from the actions of persons who have been charged with crimes who cannot control their conduct. This intent can be discerned throughout Article 5. Persons with a mental illness or with an intellectual disability are defined, in part, as those whose behavior needs supervision for the benefit of the general public. S.C. Code Ann. § 44-23-10(20) and (21). A defendant may be committed by a court to a treatment facility for up to 15 days prior to a competency exam. S.C. Code Ann. § 44-23-410(A)(2). If the designated examiners believe a defendant is in need of hospitalization, the court may order him confined prior to a *Blair* hearing. S.C. Code Ann. § 44-23-430. Likewise, a defendant found unfit to stand trial may be detained before initiation of involuntary commitment proceedings in probate court. § 44-23-410(2). Persons involuntarily committed to facilities after being found unfit to stand trial cannot be released until a hearing takes place in circuit court. S.C. Code Ann. § 44-23-460. Examining Article 5 of Chapter 23 as a whole, and in conjunction with statutes that address related matters, the Court finds that Article 5 of Chapter 23 is specific in nature.

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The plain language of S.C. Code Ann. §§ 44-20-450 and 44-23-430 illustrates that the General Assembly intended that they be read in concert. Each statute cites the other. Section 44-23-430 requires the solicitor to file an involuntary commitment proceeding under either the mental health commitment statutes or Section 44-20-450. Section 44-20-450 permits the solicitor to initiate involuntary commitment proceedings "pursuant to Section 44-23-430(2)[.]"

While the statutory framework might be inelegant, the legislative intent is clear. After a circuit court order is issued pursuant § 44-23-430(2), and commitment proceedings are commenced under § 44-20-450, the probate court and its designated examiners must use the statutory definition of "intellectual disability" contained in § 44-23-10(21) to determine whether

an individual should be committed to the care of DDSN. This interpretation harmonizes the statutes so that they complement each other. If interpreted as DDSN argues, not all persons who fall within the definition of intellectual disability contained in § 44-23-10(21) would be eligible for involuntary services. Those with head, brain, or spinal cord injuries could only receive treatment on a voluntary basis and would not be supervised by the court. The General Assembly did not intend to exclude these defendants from involuntary commitment and judicial oversight and instead offer them a choice as to whether or not they will receive treatment. To find otherwise would render § 44-23-10(21) superfluous within the statutory framework established in Chapter 23.

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After respectful and careful consideration, the Court concludes that adoption of DDSN's arguments lead to an absurd result. An entire subgroup of criminal defendants could not be involuntarily committed for DDSN services, even though their clinical presentation and treatment needs are identical to those who suffer a narrowly defined "intellectual disability" or "related disability." This group includes, but is not limited to, defendants with head, brain, and/or spinal cord injuries. The Court does not believe the General Assembly intended to exclude this group from receiving involuntary treatment after the circuit court finds them incompetent to stand trial. Equally important, accepting DDSN's analysis overlooks the legislature's intent in Chapter 23, Article 5, to provide for protection of the general public. Some persons in this subgroup, as in this case, are charged with serious crimes. The Court is confident that the legislature did not intend for these persons to escape the judicial oversight otherwise provided for by Chapter 23, Article 5. It also did not intend to leave treatment within the discretion of these defendants. This conclusion is illogical and cannot be the result intended when enacting this legislation.

The Court further finds that S.C. Code Ann. § 44-20-430 does not allow the Director of DDSN to refuse to provide treatment and services to criminal defendants involuntarily committed to its custody in a case that originated in the circuit court as a result of proceedings under § 44-23-430. The legislature clearly intended that all criminal defendants with an "intellectual disability," as defined in § 44-23-10 be eligible for involuntary admission to the jurisdiction of the DDSN pursuant to § 44-20-450(E). It also intended that such defendants remain subject to the jurisdiction of the circuit court. To allow the director to arbitrarily deny treatment usurps the power of the courts by the executive branch and violates the separation of powers doctrine. S.C. Const. art. I, §8; *see, e.g., State v. Archie*, 322 S.C. 135, 137, 470 S.E.2d 380, 381-382 (Ct. App. 1996) (finding probation department invaded the power of the courts when it imposed additional conditions of probation).

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For the reasons outlined herein, the Court also finds that DDSN's practice of defending probate commitments against criminal defendants on grounds that their cognitive impairments do not fall within the narrow definitions contained in S.C. Code Ann. § 44-20-30(12) and (15) is contrary to the language and intent of Chapter 23 of Title 44. The issues presented in this case are capable of repetition yet evading review, and it is imperative that this Court extend the holding in this case to similarly-situated future defendants. *Cf., Treasured Arts, Inc. v. Watson*, 319 S.C. 560, 564, 463 S.E.2d 90, 91 (1995). Further, by Order of Chief Justice Toal of the South Carolina Supreme Court dated August 14, 2003, this Court was vested with broad enforcement jurisdiction over criminal defendants with mental health or related issues. The Court therefore concludes it is appropriate to issue an Order prohibiting DDSN taking a similar position in any case in the future.

V. CONCLUSION

Based on the foregoing, the Court finds it appropriate to make the following rulings:

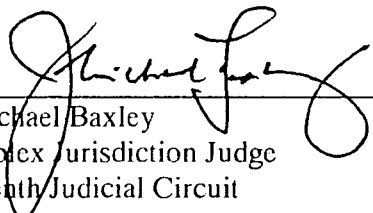
1. The Eleventh Circuit Solicitor's Petition for a Rule to Show Cause is GRANTED. It shall file involuntary commitment proceedings against the Defendant, pursuant to S.C. Code Ann. § 44-20-450, in the Lexington County Probate Court. DDSN shall, within five (5) days of August 20, 2013, take custody of the Defendant, remove him from the Lexington County Detention Center, and house him in a secure facility. If DDSN does not possess a secure facility, it shall bear the expense of obtaining the ordered placement.
2. DDSN is enjoined and prohibited from raising as a defense in the Defendant's involuntary commitment proceeding that a defendant determined incompetent to stand trial due to an intellectual disability pursuant to § 44-23-430 cannot be involuntarily admitted to its jurisdiction because he has a head, brain and/or spinal cord injury rather than an "intellectual disability" or a "related disability" as defined by S.C. Code Ann. § 44-20-30(12) and (15).
3. DDSN has engaged in a pervasive pattern and practice of denying involuntary services to otherwise eligible criminal defendants found incompetent to stand trial by a circuit court of competent jurisdiction. These defendants include, but are not limited to, defendants who have suffered head, brain, and/or spinal cord injuries. This practice violates state law and infringes upon the powers of the circuit courts. The issue is one that it is capable of repetition yet evading review. *Nelson v. Ozmint*, 390 S.C. 432, 434-435, 702 S.E.2d 369, 370 (2010). This Order shall have statewide application in probate court

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proceedings initiated by solicitors after a finding that a defendant is unfit to stand trial under S.C. Code Ann. § 44-23-430(2), and DDSN is henceforth enjoined and prohibited from opposing petitions for involuntary commitment on the basis that a defendant is eligible for voluntary services in its head and spinal cord injury division. It is also enjoined and prohibited from opposing petitions for involuntary commitment on the basis that a defendant does not have an "intellectually disability" or "related disability" as defined by S.C. Code Ann. § 44-20-30(12) and (15). The applicable threshold for involuntary commitment to DDSN services for criminal defendants who are unfit to stand trial is whether that defendant suffers from an "intellectual disability" as defined in S.C. Code Ann. § 44-23-10(21).

4. Either the Director of DDSN, or the South Carolina Commission on Disabilities and Special Needs pursuant to § 44-20-430, shall develop admission and intake procedures consistent with this Order for all criminal defendants found to be suffering from an "intellectual disability" as defined in S.C. Code Ann. § 44-23-10(21), and further shall provide for the development of secure facilities necessary thereto; or in the alternative, shall provide funds and necessary contractual arrangements to henceforth house such defendants in secure facilities operated by other entities.

IT IS SO ORDERED.



J. Michael Baxley
Complex Jurisdiction Judge
Eleventh Judicial Circuit

September 17, 2013

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