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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.

APPELLANT JEVON CARTER'S MOTION FOR RECONSIDERATION AND FOR REHEARING *EN BANC*

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ARGUMENT

Appellant Jevon Kenneth Carter, through undersigned counsel, hereby respectfully moves the honorable Court of Appeals, pursuant to S.C. R. App. P. 221, 240, to reconsider its Order affirming the circuit court, dated January 28, 2026, and/or to rehear the matter *en banc*. It is believed that this matter is "one of exceptional importance" both as to the Appellants and the proper future functioning of the Not Guilty By Reason of Insanity (NGRI) process, prescribed by S.C. Code § 17-24-40 and S.C. Code § 44-17-580, respectively, and further effectuated by the Administrative Order of the South Carolina Supreme Court, dated April 24, 2014. S.C. R. App. P. 219(a). Future application of the January 28, 2026, Order of this Court would appear to expand the discretion of the circuit courts in the application of the NGRI statutory process beyond permissible constitutional and statutory dimensions and in violation of the South Carolina Supreme Court's Administrative Order.

1. The Discharge Plan Cannot Be a Basis for Affirming the Circuit Court's Order Because That is Not what the Circuit Court Ruled and the Discharge Plain is Not Relevant to Whether or Not the Appellant Needs Additional Hospitalization.

In its January 28, 2026, Order, this Court concluded that "[c]onsidering all the evidence in the record, the court's hesitation to release Carter to his grandmother's care after only a short period of compliance is understandable . . . ." (Jan. 28, 2026, Order at 7.)

First, the proposed conditions of the Appellant's release were not any basis for the circuit court's order. 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.

(R. pp. 1-2.)

Instead, based on no evidence, cited or presented, the circuit court concluded that the Appellant "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." *Id*. That conclusion was against the *entirety* of the sworn testimony at the hearing that the Appellant had unprecedented insight into his illness to make responsible treatment decisions and that he was not likely a serious harm to himself or others. (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).) As can be immediately observed by even a cursory review of the above circuit court order, there is no rationale given by the circuit court for its erroneous conclusion. It is a bald ruling.

Critically, there is no mention of the discharge plan; its effectiveness; or the Appellant's grandmother. This Court's concerns about any assessment of her home or age (Order at 8) appear nowhere in the circuit court's order. Instead, the circuit court made its ruling exclusively on a belief that the Appellant somehow 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 only complete and comprehensive evidence to the abject contrary. The circuit court nowhere referenced any concerns about the discharge plan and so it cannot possibly be any basis to affirm its decision.

Second, even if the circuit court had attempted to justify its ruling on some deficiency in

the discharge plan, such a basis is impermissible by statute and the United States Constitution. *See Foucha v. Louisiana*, 504 U.S. 71, 77 (1992). Our statute and South Carolina Supreme Court have outlined a clear two-step process: (1) is Appellant "in need of continued hospitalization"? S.C. Code 17-24-40(C)(2)(c) and (2) 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 expressly ordered this exact process, "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, *Re: Interagency Protocol for Defendants Found Not Guilty by Reason of Insanity*, dated April 24, 2014, at 3 (bold emphasis in original; italics bold added).)

In other words, once a circuit court concludes that hospitalization is no longer required, the Appellant *must* be released on some conditions. *Id*. It is unconstitutional to do otherwise. *See Foucha*, 504 U.S. at 77 ("[T]he State is no longer entitled to hold him on that basis.") More importantly here, the second inquiry, necessarily, cannot inform the first – because it is not implicated until the first is resolved. Once clear and convincing evidence, as was presented here, establishes that the patient has sufficient insight into his condition and treatment and is not a likely harm to himself or others, *see* S.C. Code § 44-17-580, – the circuit court is both required and free to fashion whatever conditions of release it prefers. The conditions of release themselves, however, plainly cannot be a basis for the first inquiry, which is preceding – that he lacks sufficient insight into his condition and treatment or is a harm to himself or others, *see id*.

And, the circuit court, itself, is tasked with ordering such conditions. To the extent, the circuit court had reservations about the Appellant's grandmother or the discharge plan, as proposed by SCDMH, in any respect, it could have (1) ordered other conditions, including the placement of

the Appellant in a residential living facility or (2) ordered the parties to propose additional plans from which to choose. But, once Appellant satisfies the first prong – that he has sufficient insight and is no longer a danger – it is unconstitutional to hold him in the hospital. That is what United States Supreme Court precedent like *Foucha*, 504 U.S. at 77 and *Olmstead v. L.C.*, 527 U.S. 581, 582 (1999) teaches, and, our Supreme Court have made express, (S.C. S. Ct. Administrative Order, dated April 24, 2014, at 3).

Lastly, this Court indicates that the Appellant was recommended for discharge after "only a short period of compliance . . . ." (Order at 8.) Respectfully, the Appellant had been in the care of the South Carolina Department of Mental Health since August 16, 2022, or 14 months as of the time of the circuit court's order denying discharge exhibiting literally unprecedented performance with zero altercations or violence or relapses. Moreover, the SCDMH is statutorily and constitutionally *required* to seek his discharge once hospitalization is no longer required: "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 17-24-40(B). It is unconstitutional to hold him a second longer. Moreover, while his performance is exceptional and essentially without precedent, Appellant Carter's discharge, even considering his underlying charge, would not be anomalous. 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.)

He should be immediately released on appropriate conditions.

2. **It is Not Permissible to Consider the Violence of the Underlying Crime and Circumstances When Assessing whether the Appellant is Currently in Need of Continued Hospitalization**.

To the extent this Court's January 2026 Order concluded that the circuit court may rely on the underlying incident conduct itself or conduct which precedes his commitment to the SCDMH

(such as elopement from another facility) to determine whether at some subsequent date hospitalization is still required, respectfully the Appellant believes that this conclusion is in error. Specifically, the Respondent and now this Court has relied generically on a "history of past elopements." (Order at 7.) Respectfully and very sincerely, the Appellant would beg this honorable court to recognize the impropriety of any such reliance.

First, the United States Supreme Court has made clear that you cannot make recourse to the underlying incident offense and surrounding circumstances to hold an individual indefinitely. *Jones v. United State*, 463 U.S. 354, 369 (1983) could not be any more direct: "There simply is no necessary correlation between severity of the offense and length of time necessary for recovery." *Id*. The United States Supreme Court has ruled that to conclude otherwise leads directly to the risk of indefinite confinement in essentially every instance, which is constitutionally impermissible:

> Here, in contrast, the State asserts that because Foucha once committed a criminal act and now has an antisocial personality that sometimes leads to aggressive conduct, a disorder for which there is no effective treatment, he may be held indefinitely. This rationale would permit the State to hold indefinitely any other insanity acquittee not mentally ill who could be shown to have a personality disorder that may lead to criminal conduct. The same would be true of any convicted criminal, even though he has completed his prison term.

Foucha, 504 U.S. at 82–83.

Second, it is the Department of Mental Health and not Marshal Pickens or some other entity that has the statutory NGRI mandate. *See* S.C. Code § 17-24-10; S.C. Code § 17-24-40; S.C. Code § 44-17-580. The continuing need for the Appellant's hospitalization is only evaluated after performance in the SCDMH hospital. *See id*.

Thirdly, and as stated, the statute is prospective: ***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 17-24-40(B) (emphasis added). The

relevant question is whether, at any present subsequent moment *after* initial hospitalization *with the SCDMH*, the Appellant is no longer in need of hospitalization and, if he is, he must be released on some conditions. And, this is the tragedy, it is anticipated, indeed hoped, by the entire statutory mechanism and the South Carolina Supreme Court that NGRI patients would be restored and no longer require hospitalization. The Appellant is "***not considered [a] 'prisoner[],'*** *as [he] ha[s]* ***not been found guilty of a crime***." (S.C. S. Ct. Administrative Order, dated April 24, 2014, at 2 (emphasis added).) And, "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." *Id*. at 3.

Lastly, the Appellant's elopements from Marshal Pickens happened at the very moment the Appellant was first diagnosed. (R. p. 87, line 13-p. 88, line 5; pp. 339-40, 344.) He had received essentially no treatment. *Id*. The 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. No one did. (R. p. 88, line 2.) The first elopement 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. *Id*. A full diagnosis, understanding, and treatment by Marshall Pickens, of the Appellant, or any healthcare provider was literally impossible.

By contrast, 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 and **who have the statutory mandate**. His need for hospitalization must be assessed now, in the subsequent care of the

SCDMH, and not as of the literal day he was diagnosed.

To allow circuit courts to perpetually make recourse to the severity of the underlying incident offense, in order to deny discharge, is repugnant to the holdings of the United States and South Carolina Supreme Courts and the legislative act inherent in the NGRI statute.

It is hard to overemphasize the injustice and horror that the Appellant's continued hospitalization represents. He is being psychologically brutalized for a crime which our law says he unequivocally did not, indeed could not, commit. It is especially difficult to watch considering he is essentially one of the best patients SCDMH has ever had (R. p. 34, lines 20-25; p. 35, line 4; p. 97, lines 16-22; pp. 368-69) and yet cannot find justified relief in a reasonable discharge.

CONCLUSION

Based on the foregoing, the Appellant respectfully requests that the Court reconsider and reverse its decision affirming the circuit court and order the Appellant be released upon the recommended conditions or in the alternative for the entire panel of the Court of Appeals to rehear the matter *en banc*.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the below date, I have caused the APPELLANT JEVON CARTER'S MOTION FOR RECONSIDERATION AND FOR REHEARING *EN BANC* to be submitted via email for filing and have served a true and correct copy of the same upon all counsel, via email.

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