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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

General Sessions

Alex Kinlaw, Jr., Presiding Judge, 13th Circuit

Appellate Case No. 2023-001766

Ex Parte: South Carolina Department of Mental Health,

Appellant/Respondent

In re:

The State of South Carolina,

Respondent,

v.

Jevon Kenneth Carter,

Respondent/Appellant.

APPELLANT/RESPONDENT DEPARTMENT OF MENTAL HEALTH'S PETITION FOR REHEARING *EN BANC*

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant/Respondent hereby files this Petition for Rehearing *En Banc* on Unpublished Opinion No. 2026-UP-022, which was filed January 28, 2026.

Appellant/Respondent respectfully requests rehearing on the basis that this Court "overlooked," Rule 221(a), SCACR, the critical question raised on appeal of whether the State's reliance on years' old data constituted "clear and convincing evidence" in light of the current assessments of medical experts in satisfying its burden of proving by "clear and convincing evidence" that Carter was in need of continued inpatient hospitalization?

Additionally, rehearing should be granted on the basis that this Court "misapprehended" a point of fact or law, Rule 221(a), SCACR, in that this Court, like the Court below, misplaced the burden of proof in its analysis of S.C. Code Ann. § 44-17-580; this Court misstates the lower court's obligations under S.C. Code Ann. § 17-24-40; and this Court inappropriately considered placement concerns as supportive of continued inpatient commitment.

LEGAL STANDARD

A petition for rehearing should be granted whenever it shows that the Court has "overlooked" or "misapprehended" a point of fact or law. Rule 221(a), SCACR; see also *Protestant Episcopal Church in Diocese of S.C. v. Episcopal Church*, No. 2020-000986, 2022 WL 1 3560664, at *1 (S.C. Aug. 17, 2022) (granting petition for rehearing in part); *S.C. Coastal Conservation League v.*

Dominion Energy S.C., Inc., 432 S.C. 217, 219, 851 S.E.2d 699, 700 (2020) (granting petition for rehearing).

ARGUMENT

1. This Court overlooked the central question by the Appellants: was the "clear and convincing" evidentiary standard met?

The bulk of the argument presented by the South Carolina Department of Mental Health (SCDMH) in its briefs centers on the central question in this case: whether the State satisfied its burden of proving by clear and convincing evidence that Carter was in continued need of involuntary inpatient hospitalization. This Court, like the court below, summarily concludes that that burden has been met without grappling with the actual inquiry.

Overlooked in this Court's opinion is any analysis of the 'clear and convincing' standard of proof and its application to the evidence presented by the State below. The standard of proof for continued inpatient commitment is "clear and convincing evidence." S.C. Code Ann. § 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.") Clear and convincing evidence has been defined as "that degree

of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. It is an intermediate measure of proof, i.e., more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." *Anderson v. The Augusta Chronicle*, 355 S.C. 461, 473, 585 S.E.2d 506, 512 (Ct. App. 2003) (internal citations and quotation marks omitted).

The circuit court's decision rests on the premise that the clear and convincing evidence standard had been met. (R. pp. 1-2). The evidence in the record can largely be broken down into three categories: Carter's medical and criminal records from before his diagnosis; records from after his diagnosis; and contemporary records. The State relies almost entirely on records from the first category: the underlying crimes, elopements, and lack of insight of Carter before he was diagnosed. (R. pp. 408-409). The State also refers to medication "refusals" in 2022. (R. pp. 408-409). The only contemporaneous evidence raised by the State concern Carter's placement, notably *not* his insight or likelihood of harm. (R. pp. 48-50, 54-55, 57, 73-76; 407-408, 411, 414-416, 418-419). While the State asserts that it vigorously cross-examined the admitted expert witnesses, almost the entirety of the questions concerned pre-diagnosis and pre-DMH treatment events/records, while the rest of the questions dealt with placement concerns.

This Court found that there was "sufficient" evidence to support the circuit court's decision, noting that the lower court's "hesitation to release Carter to his grandmother's care" is "understandable… ." Opinion, pp. 9-10. This Court notes Carter's "history of elopements from custody;" "history of refusing his medications" that "he committed an extremely violent offense during a previous elopement." Id. Notably, the only evidence discussed by this Court bearing on the § 44-17-580 inquiry regarding insight and dangerousness refers entirely to pre-diagnosis and pre-treatment events.

The SCDMH relied upon the contemporaneous medical records, testimony from Carter's treating physician, and an outside analysis from an expert forensic psychiatrist. While this Court correctly notes that the statute does not require the State to present expert medical testimony and the hearing judge exercises independent discretion, that discretion is not unfettered. The State must prove, by clear and convincing evidence, that the person *presently* lacks insight or is a danger and is therefore in need of continued inpatient hospitalization. S.C. Code Ann. § 44-17-580 ("lacks sufficient insight;" "**is** a likelihood of serious harm…"). How, then, can reliance on years' old records, many of which pre-date Carter's diagnosis and commencement of his treatment, outweigh the contemporaneous records and expert testimony of his treating psychiatrist and an outside expert forensic psychiatrist? Even were the State's burden merely a preponderance of the

evidence, it would be hard to see how even that lower standard was met by the evidence in the record.

This Court overlooked this entirely in its opinion. It does not address the central question of whether the clear and convincing evidentiary standard was met and whether years' old records can so overwhelmingly outweigh contemporary records and medical experts' testimony in the context of § 44-17-580. These questions have not been addressed directly in South Carolina and are of public important to the State in knowing how it can meet its burden in future matters and to the SCDMH as an instrument of the State in being able to provide lower courts the necessary information to make informed and lawful decisions; and to both the public and Carter as knowing when the State can impinge on fundamental liberty is an ongoing concern for all in general and Carter in particular.

2. This Court misapprehended the law in its analysis of the relevant statutes.

A. This Court misplaces the burden of proof.

In its opinion, this Court described the Appellants' arguments:

> They argue there was clear and convincing evidence that his hospitalization was no longer required since the only expert testimony presented at the hearing supported his discharge. Opinion No. 2026-UP-022, p. 9.

This restatement of the argument is a complete inversion of the burden of proof. The Appellants' are not required to prove *anything* at the court below. The burden rests entirely on the State to prove, by clear and convincing evidence, the need for continued inpatient hospitalization. . See § 44-17-580; *Addington*, 441. This mistake was also made by the court below (R. p. 9) and the State (Respondent's Brief, pp. 38-39).

The State, including the SCDMH, is engaged in denying someone a fundamental liberty right when it involuntarily commits them to inpatient hospitalization. The United States Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," *Addington*, 425 and that "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992). It is for this reason that the burden rests on the State, on a continuing basis, to prove the need for commitment.

This Court opines that "DMH provided the court with very little information about his grandmother." Opinion, p. 10. The amount of information provided or not provided by DMH about Carter's grandmother is entirely irrelevant to the inquiry at hand: does Carter need continued inpatient commitment? That this Court presents some failure in providing information on the part of DMH as

supportive of the contention that the State met its burden is indicative of a misunderstanding of where the burden of proof rests in this matter.

That the State, the lower court, and apparently this Court have all misplaced this burden of proof is a serious error of law that directly contradicts United States Supreme Court decisions and result in an unwarranted and ongoing denial of a fundamental liberty interest.

B. This Court misstates the lower court's obligations following a hearing.

This Court, in assessing the obligations of the lower court under § 17-24-40, appears to endorse an error the State makes in their brief by misunderstanding the use of the word "may" in -(C)(1)(c). Opinion, pp. 8, 9; Respondent's Brief, pp. 21-22.

The "may" in that sentence is *not* indicative of the court's discretion to deny discharge altogether as a purely discretionary matter, as asserted by the State. Our Supreme Court has explicitly acknowledged that, following a hearing "if the Judge determines that the Defendant **IS NOT** in need of continued hospitalization, he shall issue an Order releasing the Defendant." *interagency Protocol for Defendants Found Not Guilty by Reason of Insanity,* Admin. Order No. 2014-04-24-01 (S.C. Sup. Ct. Order dated April 24, 2014) (emphasis in original). The Protocol makes clear that a

patient no longer in need of inpatient hospitalization *shall* be released. The permissive "may" in § 17-24-40(C)(1)(c) refers to the conditions of discharge, not the fact of discharge itself.

The United States Supreme Court has held: "At the least, due process requires that the *nature and duration* of commitment bear some reasonable relation to the purpose for which the individual is committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (emphasis added). Continuing to commit a person to inpatient hospitalization beyond the need for it is a violation of due process, and the idea that the lower court "may" release or not release someone found no longer in need of inpatient commitment flies in the face of the Protocol and relevant case law from the United States Supreme Court.

C. This Court errantly considers placement considers as relevant to the evaluation of the need for inpatient hospitalization.

This Court found that there was "sufficient" evidence to support the circuit court's decision, noting that the lower court's "hesitation to release Carter to his grandmother's care" is "understandable… ." Opinion, pp. 9-10. This Court, like the circuit court, spends the bulk of its analysis on placement concerns, noting that

> DMH provided the court with very little information about his grandmother. Dr. Alleyne performed only a "virtual tour" of her residence and gave no information to the court about how she might be equipped to provide the "stable environment" Carter requires.

> The record contains no information about her age or health condition, whether she works or is retired, or whether she has a positive relationship with Carter. These are facts which would seem of obvious importance to the court for both her safety and Carter's.
>
> Opinion, p. 10.

None of those facts address the actual inquiry required by § 44-17-580 concerning the need for continued inpatient commitment. Inpatient commitment under the section requires a finding:

> upon clear and convincing evidence, that the person is mentally ill, needs involuntary treatment and because of his condition:
>
> (1) lacks sufficient insight or capacity to make responsible decisions with respect to his treatment; or
>
> (2) there is a likelihood of serious harm to himself or others, the court shall order in-patient or out-patient treatment at a mental health facility, public or private, designated by the Department of Mental Health and may order out-patient treatment following in-patient treatment.
>
> § 44-17-580(A).

The placement concerns this Court highlights as supportive of the lower court's "hesitation to release" are wholly irrelevant to the actual inquiry required by the statute and the relevant caselaw. "Different considerations underlie commitment of an insanity acquittee. As he was not convicted, he may not be punished. His confinement rests on his **continuing illness and dangerousness.**" (*Jones* at 369 (emphasis added)).

That this Court and the circuit court improperly considered placement concerns in addressing whether Carter had "continuing illness and dangerousness" is clear error of law.

The Department of Mental Health is not blind to placement concerns, in Carter's case or generally, and takes great pains to provide ongoing treatment plans and placements that provide therapeutic benefit to patients and safety to patients and the public. So, too, does the Interagency Protocol contemplate the likely need for terms and conditions of release. However, these concerns are not part of the initial inquiry required by the statute and case law: does the patient need continued inpatient hospitalization as a result of their mental illness and a lack of insight or dangerousness? Only after that question is answered does an inquiry and consideration of placement concerns take place, both under the statute and in the Interagency Protocols. (See § 17-24-40(C)(1)(c); Protocol § III(B)).

Both this Court and the circuit court have again inverted the inquiry by finding that post-release placement concerns are grounds for ordering continued inpatient hospitalization. This result clearly contradicts SCOTUS mandates: "His confinement rests on his **continuing illness and dangerousness**," (*Jones*, 369 (emphasis

added); "due process requires that the **nature and duration** of commitment bear some reasonable relation to the purpose for which the individual is committed," (*Jackson*, 406). Carter was not committed because of his grandmother's health or because her house might not be "stable" enough. Carter was committed to an inpatient hospital for *treatment* of a mental illness. When the need for commitment, that is, treatment, is no longer present, the State, including SCDMH, are affecting a continued violation of federal and state law when they continue to deny a fundamental liberty interest on the basis of factors irrelevant to the need for treatment.

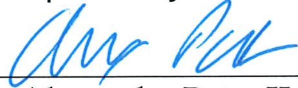
The circuit court has ample authority under the statute and Protocol to impose such terms and conditions upon release as are therapeutic and necessary in the discretion of the court. What the court may not do, and what this Court has signed off on in its opinion, is deny a person- otherwise no longer in need of inpatient commitment- a discharge based on concerns about placement.

CONCLUSION AND RELIEF REQUESTED

These issues are novel in this state and present significant questions of constitutional law, raising concerns about conflict with existing United States Supreme Court decisions. This Court should rehear this matter *en banc* and fully address the overlooked question of application of the clear and convincing standard to the present inquiry mandated by the statute, as well as take the opportunity to readdress the misapprehensions of law present in its assessment of the burden of proof; the obligations of the lower court; and the misuse of placement concerns in analyzing the need for continued inpatient hospitalization.

For these reasons, we request that this Court grant the petition to rehear this matter, *en banc*.

Respectfully submitted,



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PROOF OF SERVICE

I certify that I have served the Petition for Rehearing *En Banc* in this matter by electronic means pursuant to SCACR 262 and authorized by a May 6, 2022 amended order of the South Carolina Supreme Court. Service was addressed to the attorneys of record at the email addresses listed in AIS on February 12, 2026.

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