STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2023-001766

Ex Parte: South Carolina Department of Mental Health, ...Appellant-Respondent.

In re:

The State, ...Respondent,

v.

Jevon Kenneth Carter,.....Respondent-Appellant.

RESPONDENT'S RETURN TO APPELLANT-RESPONDENT'S PETITION FOR REHEARING & REQUEST FOR REHEARING EN BANC

On January 28, 2026, this Court issued an unpublished opinion that affirmed the circuit court's order denying Appellant-Respondent South Carolina Department of Mental Health's (DMH)'s request to discharge Respondent-Appellant Jevon K. Carter (Carter) from inpatient treatment. *Ex Parte: SCDMH (Jevon K. Carter)*, Op. No. 2026-UP-022 (S.C. Ct. App. filed January 28, 2026). Carter was committed to DMH following a bench trial where he was found not guilty by reason of insanity (NGRI) for the murder of his 93-year-old great aunt. In affirming the lower court's decision, this Court correctly found "no error in the circuit court's decision to require Carter to have a longer period of psychiatric stabilization before he is

released." This Court appropriately concluded that: "Given the high stakes for both Carter and his family, we believe the court's caution was justified." In reaching these conclusions, this Court applied the proper standard of review in reviewing an action at law which was on appeal of a case tried without a jury. It refused to disturb the judge's findings of fact where they were reasonably supported by the evidence but recognized it could make its own determination on questions of law with no need to defer to the trial court's rulings in that regard.

At the outset, Respondent (the State) recognizes that this Court made a detailed recital of the underlying facts and procedural history, specifically referencing Judge Kinlaw's finding, by clear and convincing evidence, that Carter was still in need of inpatient treatment because he was "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." (Opinion, p.5). Then, in applying the standard of review, this Court referenced the controlling language from the relevant statutes and the arguments advanced by the parties on appeal before concluding: "We find there is sufficient evidence to support the circuit court's decision." (Opinion, p.7). The Court reasonably recognized that, when considering all the evidence in the record, which included Carter's history of elopements from custody, history of refusing his medications, and the fact that the extremely violent offense was committed during a period of elopement, the trial court's hesitation to release Carter after only a short period of compliance was understandable. (Opinion, p.7-p.8). This Court also noted the paucity of information in the record about Carter's maternal grandmother and her home—where DMH recommended Carter be discharged to live upon his release. (Opinion, p.8). All of these considerations led this Court to find no error in the circuit court's decision and to therefore affirm its order denying the requested discharge from inpatient treatment.

Based on this ruling, the State respectfully asks this Court to deny DMH's "Petition for Rehearing *En Banc*" pursuant to Rules 219 & 221(a), SCACR. This Court simply did not misapprehend or overlook any salient points in affirming the circuit court's decision. As explained above, this Court, in a fairly straightforward manner, applied the correct standard of review, reviewed the controlling language from the relevant statutes, considered the arguments advanced by the parties on appeal, and appropriately concluded it must affirm because there was sufficient evidence to support the circuit court's decision. Thus, rehearing is not warranted. Rule 221(a), SCACR.

Similarly, rehearing *en banc* is not warranted where: (1) consideration is not necessary to secure or maintain uniformity of the Court's decision and (2) the proceeding does not involve a question of exceptional importance. Rule 219, SCACR. Indeed, the circuit court's analysis and decision appear routine where, as recognized by this Court, "the statute contemplates that the hearing judge will consider the expert testimony and then exercise independent judgment." (Opinion, p.8). As the Court noted, if DMH was free to make decisions regarding treatment and release without court approval, "there would be no need for a judicial hearing." (Opinion, p.8). Here, exactly as contemplated by the statute, there was a judicial hearing where Judge Kinlaw considered the expert testimony offered and all of the evidence presented before making a decision which was supported by the evidence before him. This was neither exceptional nor unusual, and does not support rehearing *en banc*.

Under the circumstances presented and the reasons more fully addressed below, the State submits this Court should not reconsider its decision either as a panel or *en banc*.

A. Relevant Facts & Procedural History

As thoroughly set forth by this Court in its opinion:

> Carter was nineteen years old and had no criminal record when his mental health issues manifested. He was first admitted for inpatient psychiatric treatment on July 2, 2020. The same day, Carter demanded to leave, jumped over the nurse's station, barricaded the door to his room, and tried to break out the window.
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> On July 4, 2020, Carter successfully eloped from inpatient treatment by walking out of an open door to the patio area of the hospital and scaling the surrounding fence. The same night, Carter broke into the home of his elderly great aunt and fatally stabbed her in the neck with a knife from her own kitchen. Carter fled the scene without being detected, but reappeared the following day at the emergency room. He was returned to inpatient treatment where he again attempted to elope by trying to break out his bedroom window. On July 8, 2020, Carter successfully eloped from inpatient treatment a second time by forcing open a glass door. Law enforcement located him at his father's house and transported him to the ER, where he was recommitted for inpatient treatment. His treating physicians ordered treatment staff to observe Carter one-on-one due to his high risk of elopement and his "poor insight and poor compliance with medications." Nurses noted during this time that Carter was regurgitating his prescribed psychiatric medications.
>
> Carter stabilized enough to be discharged on July 22, 2020, with a diagnosis of bipolar disorder "with mood congruent psychotic features." Five days later, police brought Carter to the ER with an altered mental status after he was pulled over for driving erratically and found in possession of cannabis. Carter was admitted to the hospital and discharged on July 29, 2020.
>
> Carter was arrested for the murder of his great aunt on August 28, 2020, after police matched his palm print to a broken window and found his DNA at her home. Carter was subsequently indicted for murder, first-degree burglary, and possession of a weapon during the commission of a violent crime. He remained in the Greenville County Detention Center (GCDC) until he was found NGRI at his bench trial on June 8, 2022. In his final six months at GCDC, jail records indicate he refused his medications on fifty separate occasions.

The DMH review board met on November 4, 2022, and subsequently recommended that Carter be discharged from inpatient services and returned home to live with his mother. On December 8, 2022, a discharge hearing was held in front of Circuit Court Judge Perry Gravely. Dr. Jennifer Alleyne testified as Carter's treating psychiatrist. She testified Carter had "very good insight" into his mental illness, and demonstrated an understanding of his symptoms, his medications, and their potential side effects. Dr. Alleyne described Carter as kind, caring, and polite. She testified he had been compliant with taking his medications since his admission and had not had any incidents of aggression or behavioral disturbances either at the jail or during his hospitalization. She further testified to a reasonable degree of medical certainty she did not think Carter presented a danger to himself or to others. Dr. Alleyne recommended that he be discharged to live with his mother and receive outpatient therapy. She testified he would need a structured and supervised living environment, meaning a "stable home with people to support him and assist him in getting to his appointments and making sure he is participating in treatment properly." The proposed discharge order required Carter to remain compliant with taking his medications, to abstain from the use of alcohol or illegal drugs, and to be subject to random drug screens. Dr. Alleyne did not believe Carter would benefit from remaining in inpatient treatment and she did not recommend placing Carter in a supervised community residential care facility (CRCF) because she felt he was higher functioning than most of the other residents.

Judge Gravely denied DMH's request to discharge, citing Carter's prior noncompliance with prescribed medications, his history of elopements from custody, and his commission of a violent offense during one such elopement. Judge Gravely further noted that Carter had been housed at DMH for only eighty days before the review board recommended his discharge, that his mother had previously failed to supervise him, and that she had significant mental health, substance abuse, and legal issues of her own. The order stated, "If []DMH determines [Carter] should be released at some point in the future, then a more appropriate treatment plan regarding supervision of [Carter] will need to be provided, including the consideration of transitional housing and a more stable environment with appropriate monitoring and supervision."

Following a subsequent review board meeting on June 23, 2023, DMH again petitioned the court requesting Carter's discharge. A hearing took place on August 30, 2023, before Circuit Court Judge Alex Kinlaw. At the second discharge hearing, Dr. Alleyne

> testified substantially the same as in the first hearing. She told the court that Carter continued to be a model patient and remained compliant with his medications. She testified to Carter's good insight into his mental health condition and that he would be able to treat his mental health condition on an outpatient basis. She also testified he was not likely to cause serious harm to himself or others if discharged.
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> In response to the circuit court's prior refusal to discharge Carter to his mother, DMH recommended in the second proposed order that he be discharged to live with his maternal grandmother, Cynthia Chapman. Chapman lives directly next door to Carter's mother. Dr. Alleyne performed a virtual tour of Chapman's residence and found it a fit residence for Carter. DMH provided the court with no further information about Chapman.
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> Dr. Richard Frierson also testified on behalf of DMH. Dr. Frierson, a professor of psychiatry at the University of South Carolina School of Medicine, performed a forensic violence risk assessment on Carter. He testified that out of any of his patients he assessed for DMH, Carter was the least prone to violence. Dr. Frierson agreed that Carter's discharge to his grandmother's house, rather than a CRCF, was appropriate because Carter was very high functioning: he had social skills, could make conversation, and could maintain his own hygiene and grooming. Dr. Frierson opined that Carter would function better in an environment that offered him opportunities to socialize with others who had similar social skills and allowed him to continue his education.
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> Judge Kinlaw denied DMH's request for discharge and ordered Carter's continued inpatient treatment, finding by clear and convincing evidence that he was still in need of inpatient treatment because he was "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." Neither Carter nor DMH filed a motion to alter or amend the judgment. This appeal followed.

Ex Parte: SCDMH (Jevon K. Carter), Op. No. 2026-UP-022 (S.C. Ct. App. filed January 28, 2026).

B. Clear and Convincing Evidence

In its petition for rehearing, DMH first argues this Court "overlooked" the critical question raised in this appeal—whether the clear and convincing evidentiary standard was met where the State and the circuit court relied on "years' old data" rather than relying exclusively on "the current assessments of medical experts" at DMH. DMH claims this Court, like the court below, summarily concluded the burden was met without grappling with the actual inquiry or any analysis of the clear and convincing standard itself. (Petition, p.2; p.3-p.6). But this is simply not the case.

Judge Kinlaw explained he reviewed and considered the briefs and memoranda submitted by the parties, arguments made at the hearing, the violence risk assessment and supporting documents, and the testimonies of Dr. Alleyne and Dr. Frierson in making his determination. He then specifically ruled: "The Court finds **by clear and convincing evidence** that [Carter] is still in need of inpatient treatment pursuant to the standard of §44-17-580(A). The Court finds that [Carter] 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." (R.p.1-p.2) (emphasis added). By recognizing the proper burden of proof to which he was held, Judge Kinlaw necessarily determined the State had met a degree of proof which produced in the mind of the trier of facts [Judge Kinlaw], a firm belief as to the allegations sought to be established. No further analysis or explanation was required where there was evidence in the record to reasonably support this finding. As set out above, that extensive evidence appeared in the record on appeal, was described in the State's brief, and was recounted by this Court in its opinion affirming the circuit court. It constituted clear and convincing evidence to find both that Carter lacked sufficient insight or capacity to make reasonable

decisions with respect to his treatment and that his discharge would pose a likelihood of serious harm to himself or others. Thus, circuit court's order was properly affirmed and the petitions for rehearing and rehearing *en banc* should be denied.

C. Points of Fact or Law

DMH next argues this Court "misapprehended" several points of fact or law in issuing its opinion, each of which warrants a grant of rehearing *en banc*. First, DMH contends this Court "misplaces the burden of proof in its analysis of the relevant statutes" by framing DMH's argument on appeal as one that: "there was clear and convincing evidence that his hospitalization was no longer required." DMH argues this restatement was "a complete inversion of the burden of proof" because Appellant was "not required to prove *anything* at the court below." (Petition, p.6-p.8). The State disagrees with this characterization and its impact.

Rather than an inversion of the burden of proof, the allegedly problematic statement appears to simply be this Court's attempt to capture DMH and Carter's inability to accept the reasoned decision of the circuit court where they argued there was a lack of clear and convincing proof to support continued hospitalization. In other words, it is merely a matter of semantics. The concepts are simply logical contraries, meaning statements that cannot both be true, but can both be false (e.g., "All apples are red." and "No apples are red."). In a similar vein, the statements that: "The court finds by clear and convincing evidence that Carter *is* in need of continued hospitalization because . . . ." and "The court finds by clear and convincing evidence that Carter *is not* in need of continued hospitalization because . . . ." would be contraries, and could both be false. Thus, the description used by this Court does not undermine the Court's decision in any fashion, particularly where the circuit court explicitly applied the proper burden of proof.

Furthermore, DMH's position is somewhat undermined by the procedure set forth in the statute itself, which requires as a first step that: "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 chief administrative judge, upon notice to all parties, must hold a hearing to determine whether the person is in need of continued hospitalization." S.C. Code Ann. § 17-24-40(C)(2)(c) (emphasis added). Where the evidentiary hearing cannot even happen without some preliminary determination by DMH, presumably based on evidence, it defies logic to suggest the circuit court is prohibited from considering the propriety of that determination in light of the evidence later produced at the hearing. This consideration does not alter or shift the burden of proof, but is simply a part of the statutorily mandated process.

DMH goes on to complain that this Court's reference to the lack of information about Carter's grandmother somehow demonstrated the misplaced burden of proof. It argues that the amount of information provided or not provided about Carter's grandmother is entirely irrelevant to the inquiry at hand. (Petition, p.7-8). However, for the reasons discussed in more detail below, placement *was* an appropriate consideration under the parameters of the statute and the burden of proof required. For all of these reasons, this Court did not misplace the burden of proof, the circuit court was properly affirmed, and rehearing is not warranted.

Second, DMH contends this Court "misstates the lower court's obligations following a hearing," arguing it "appears to endorse an error the State makes in their brief by misunderstanding the use of the word 'may' in –(C)(1)(c)." (Petition, p.8). Yet, this Court merely referenced the State pointing out—correctly—that the legislature decided to use the mandatory "must" in one provision followed immediately by the discretionary "may" in the next. The Court, however, then noted the State's *core* argument, that Judge Kinlaw's order is

supported by the record. (Order, p. 7). In ultimately concluding: "We find there is sufficient evidence to support the circuit court's decision," this Court did *not* rely on the "must" versus "may" statutory language at all. Thus, this Court could not have misstated the lower court's obligations following a hearing.

To the extent DMH suggests the circuit court and this Court relied on the discretionary term "may" in denying Carter's release *and* that such reliance violated Carter's right to due process, DMH appears to continue minimizing the fact that "the likelihood of serious harm to himself or others" is one of two conditions which *must* inform the ultimate determination of whether the person is mentally ill and needs [continued] involuntary treatment. S.C. Code Ann. § 44-17-580(A). As recognized in the State's brief, the terms of the statute appear intended to ensure release will *not* be ordered until the circuit court is satisfied that the conditions of that release ensure the safety of the community. S.C. Code Ann. § 17-24-40(C)(2)(c). This was not a misstatement of the lower court's obligations following a hearing. For all of these reasons, there was no misstatement of this point of law, the circuit court was properly affirmed, and rehearing is not warranted.

Third, DMH contends this Court "errantly considers placement concerns as relevant to the evaluation of the need for inpatient hospitalization." It argues, "The placement concerns this Court highlights as supportive of the lower court's 'hesistation to release' are wholly irrelevant to the actual inquiry required by the statute and the relevant caselaw." DMH seems to suggest that the circuit court must take a two-part or bifurcated approach, first determining if Carter was in need of continued hospitalization and only after making this decision, then examining the conditions of release and ordering the release conditions it finds appropriate. (Petition, p.9-p.12). The State disagrees.

As recognized by DMH's own experts, the circuit court's consideration of "placement concerns" was entirely appropriate in the context of the required statutory determinations which the court had to make in deciding whether continuing inpatient hospitalization was required. Indeed, the clean, bifurcated separation posited by DMH is neither mandated by the statute nor practical in the context of the decision the court had to make. The circuit court was required to determine whether Carter would be in an environment: (1) where he would be able to continue making responsible decisions with respect to his treatment, and (2) that could create a likelihood of serious harm to himself or others. Completely removing Carter's proposed "placement" from this determination is impossible. The circuit court must consider the safety of the community where the person will live upon release in regard to dangerousness, which necessarily relates back to the decision to release itself.

This connection was explicitly recognized by the DMH experts on direct examination. In regard to Carter's likelihood of harming himself or others, Dr. Alleyne said they look at self-reporting, mood, and behavior, that Carter had not exhibited any signs that were concerning to her, and that she thought *he would be safe to be discharged under the plan.* (R.p.27-p.28). She then discussed the proposed discharge plan itself, including the *residence* where Carter would be placed, *the support system* Carter would have from family and friends, and the *supervision* he would be under from Greater Greenville Mental Health Center, the DMH forensic outreach clinic, and the Department of Probation, Parole and Pardon Services, *all of which she claimed supported her conclusions.* Dr. Alleyne opined the discharge plan was likely to be therapeutic for Carter and that he would not derive any additional benefit from staying in the hospital for further inpatient treatment. (R.p.28-p.33). (emphasis added).

Similarly, Dr. Frierson addressed whether he believed Carter was a danger to himself or others. He detailed the things he considered, including historical risk factors, clinical factors, and risk management factors. Dr. Frierson specifically noted he considers the patient's *living situation* and whether he or she has *personal support* and an *involved family* when assessing risk. (R.p.89-p.91). Thus, it was both appropriate and wise for the circuit court to consider "placement" when making its decision on the statutory factors.

Interestingly, DMH claims it "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 benefits to patients and safety to patients and the public." (Petition, p. 11). But this claim clashes with DMH's contention that placement concerns are "wholly irrelevant" to the lower court's determination. Why would DMH bother taking great pains to do something irrelevant? Either placement concerns are relevant under the statute or they are not. The State, the circuit court, and this Court seem to agree that they are relevant. For all of these reasons, there was no misstatement of this point of law or fact, the circuit court was properly affirmed, and rehearing is not warranted.

D. Conclusion

For all the foregoing reasons, combined with the reasons articulated in the State's brief and during oral arguments before this Court, the State respectfully requests that this Court deny DMH's petition for rehearing and his suggestion for rehearing *en banc* pursuant to Rules 219 & 221(a) of the South Carolina Appellate Court Rules.

Respectfully submitted,

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PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Return to Appellant-Respondent's Petition for Rehearing En Banc*, dated March 9, 2026, on R. Alexander Pate, II, and Logan Y. Royals, Esquires, counsel of record for Appellant-Respondent and on D. Josev Brewer, Esquire, counsel of record for Respondent-Appellant, by sending electronic copies via email to, and at the addresses listed for counsel in AIS.

I further certified that all parties required by Rule to be served have been served. This 9th day of March, 2026.

Susan Spencer

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