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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
The Honorable J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2025-000914

THE STATE .....APPELLANT,

v.

CASEY DOUGLAS .....RESPONDENT.

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Whether the lower court's order must be vacated because the circuit court exceeded its authority under S.C. Code Ann. § 44-23-460 in determining treatment of the incompetent defendant charged with two counts of murder could continue in a non-secure, outpatient facility when the fitness-to-stand-trial statutory provision only allows for continued inpatient care for restoration efforts or release from inpatient treatment?

II. Whether the state evaluators' misapprehension regarding the scope of permissible action when an inmate is held under the fitness-to-stand-trial provisions to opine that such inmate may be deemed ready for release from secure, inpatient care to a non-secure placement setting hopelessly skewed the recommendation to such an extent that the circuit court's reliance on same renders its order devoid of any probative factual support?

STATEMENT OF THE CASE

On December 7, 2018, a Spartanburg County Grand Jury returned two true-billed indictments against Douglas for the brutal murders of Stephanie and Craig Jenkins, and possession of a knife during the commission of the crime. (R. p. *). Douglas was evaluated for competency to stand trial pursuant to S.C. Code Ann. § 44-23-410. On June 22, 2019, after a hearing conducted pursuant to § 44-23-430, the circuit court found Douglas unfit to stand trial, but that it was likely his competency could be restored. Douglas' status remained largely the same after his 60-day hospitalization.[1] Douglas was returned to detention but then recommitted to Bryan Psychiatric Hospital. Since then, he has been periodically re-evaluated. *See generally* S.C. Code Ann. § 44-23-220 ("No person who is mentally ill or who has an intellectual disability shall be confined for safekeeping in any jail.").

The basis of the State's appeal begins with proceedings occasioned by a Department of Mental Health ("the Department")[2] petition based on its assertion that Douglas was still unfit for trial but no longer needed inpatient care. The Honorable J. Mark Hayes, II, held hearings on the petition on August 18, 2023, and November 22, 2024. The judge determined at the November hearing that Douglas was still not competent to stand trial. (Tr. 52, R. p. *, Order, at 2 n. 2). Judge Hayes subsequently issued a written order on November 26, 2024, allowing transfer to a non-secure facility for continued treatment. (R. p. *, Order, at 2-3). Both the Department and the State moved for reconsideration and both motions were denied. (R. p. *). This appeal follows.

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[1] The statute was later amended to increase this initial restorative period to 180 days. *See* S.C. Code Ann. § 44-23-430.

[2] By legislative change effective April 28, 2025, the Department of Mental Health is now part of the Department of Behavioral Health and Developmental Disabilities, as the "Office of Mental Health." Because the statutory provisions discussed herein still have "Department of Mental Health" referenced, this brief will also use that same reference, or simply "the Department."

RELEVANT FACTS

As noted, Douglas stands charged with two counts of murder and one count of possession of knife during the commission of the crime. The murders were committed on or about October 24, 2018. (*See* R. p. *, Indictments). Both victims, Stephanie and Craig Jenkins, were stabbed to death in their home. Stephanie had been Douglas's girlfriend; Craig was Stephanie's father. Douglas stayed on the front porch after the murders and confessed to his crimes. (Tr. 24, 26, 28, 30-31). Douglas has delusions about gang(s) out to get him and reported that he killed the Jenkins believing them to be "gangster," with the killings spurred on by his belief that the victims were in a conspiracy against him. (Tr. 22-24, 140; Aug. Tr. 36).

Douglas's competency to stand trial[3] has been at issue and he has not yet been found competent to be tried. The Department has consistently found Douglas not competent. Douglas was initially evaluated on May 7, 2019. Based on that evaluation, on June 22, 2019, Douglas was found unfit to stand trial and referred for restorative treatment. (R. p.*). On November 5, 2019, he was admitted to inpatient treatment. (R. p. *). At the end of his 60-day treatment period, Petitioner, still incompetent, was returned to the detention center. (R. p. *). Douglas was admitted again to psychiatric hospital. (R. p. *). On January 7, 2022, Douglas was reassessed. After reassessment, the Department's examiner found Douglas understood the "charges and legal procedure," but, in the examiner's view, "lacked a rational appreciation of the proceedings and an ability to work with an attorney in forming a defense." (R. p. *). By petition filed in August 2021,

[3] The test for determining competency to stand trial is [1] whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and [2] whether he has a rational as well as a factual understanding of the proceedings against him." *State v. Weik*, 356 S.C. 76, 81, 587 S.E.2d 683, 685 (2002). *But see* S.C. Code Ann. § 44-23-410 (A) (requiring evaluation when there is "reason to believe that a person … lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity").

the Department sought an order releasing Douglas from inpatient treatment under the provision of S.C. Code § 44-23-460. (R. p. *).

An initial hearing was held on August 18, 2023,[4] before the Honorable J. Mark Hayes, II, at which time the Department presented Dr. Matthew Gaskins. Dr. Gaskins opined that Douglas lacked the capacity to be found competent for trial. (Aug. Tr. 12, 26, 31-32). He explained that Douglas held a belief in "divine intervention" concerning the trial, and that belief in a favorable, "predetermined outcome" would interfere in participation. (Aug. Tr. 19). Further, Douglas insisted that his attorney base a defense on Douglas's "delusions which can't be done would interfere with the ability to work appropriately with his attorney." (Aug. Tr. 19; *see also* Aug. Tr. 50-51). After multiple evaluations, Dr. Gaskin was of the opinion that capacity to be found competent "to stand trial was unlikely to be restored." (Aug. Tr. 23).

On cross-examination by the State, Dr. Gaskins testified that Douglas understood his charges, and the facts alleged in support of the charges, along with "an excellent understanding" of the legal system and the role of the participants. (Aug. Tr. 25, 35). In fact, Douglas had pled guilty to armed robbery and burglary charges in the past. (Aug. Tr. 35). Dr. Gaskins agreed that he was aware Douglas has confessed and was "on the front porch at the house where the murders occurred." (Aug. Tr. 24, 26, 28, 30-31). According to Dr. Gaskins, Douglas holds "fixed false belief[s]" or delusions that cannot be changed with confrontation of evidence to the contrary and those beliefs interfere with his ability to assist in his defense. (Aug. Tr. 37-38).

On cross-examination by defense counsel, Dr. Gaskins agreed that Douglas's delusions prevent Douglas from assisting in his defense. (Aug. Tr. 42-43). At the completion of this

[4] The State recognized the delay in securing a hearing on the petition and noted at the conclusion of the August hearing that no one was at fault; there were simply scheduling difficulties for Dr. Gaskins. (*See* Aug. Tr. 52-53).

testimony, Judge Hayes allowed a short continuance for the State to complete some preparations based on late received information. (Aug. Tr. 52).

The remainder of the hearing was held on November 22, 2024. Counsel for the Department set out its position that Douglas was not competent to be tried. (Tr. 6-7).[5] Further, counsel advised that the Department had determined that "Mr. Douglas [was] ready to integrate into a supervised but outpatient area." (Tr. 7, lines 23-24). In support of that position, the Department again presented Dr. Matthew Gaskins. Dr. Gaskins, largely following his prior testimony, testified that he had conducted several evaluations of Douglas, and in his opinion Douglas

> …continued to lack capacity to stand trial due to the presence of persistent persecutory, hyper-religious and frank - - a bit bizarre delusions that he wished to apply to the defense of his case.

(Tr. 12, lines 5-9). Dr. Gaskins examined Douglas again, on October 9, 2024, in anticipation of the hearing and his opinion remained consistent. (Tr. 12; see also R. p. *). Dr. Gaskins opined the lack of competency stemmed from

> The presence of symptoms of schizophrenia that have been difficult to control despite three years or more inpatient treatment with psychiatrists including the use of long acting injectable antipsychotics, which are medicines that, as the name implies, are injected once a month or once every couple of months to ensure compliance so we know that the patient is taking it … [and]… despite him continuously receiving medicines … he's continued to have … delusional thinking related to his schizophrenia.

(Tr. 12-13).

Dr. Gaskin opined that Douglas's "delusions are persecutory in nature," a "battle between good and evil" is afoot, and that "he is on the side of good[.]" Further, he believes that his defense

[5] Defense counsel for Douglas was present but deferred to the Department during the November proceedings. (Tr. 9). Defense counsel specifically agreed on the record with the Department's finding that Douglas "remain[ed] not competent to stand trial." (Tr. 9, lines 21-22).

should be based on explaining the battle and that counsel could present evidence to show the "delusional beliefs to be accurate." (Tr. 14, line 7). Douglas also believes there are "videos of the alleged incidents" being kept from him. (Tr. 14, lines 11-13). Dr. Gaskins opined that he did not believe Douglas could be restored to competency "in the foreseeable future." (Tr. 14-15).

On cross-examination by the State, Dr. Gaskins testified that Douglas "is still actively experiencing delusions and occasional hallucinations." (Tr. 17, lines 17-19). However, he agreed that Douglas "basically … knows the difference between right and wrong," and has an "excellent understanding" of the criminal justice system. (Tr. 18, lines 7-18). The doctor confirmed again that Douglas is delusional and disagrees with "his defensive strategy." (Tr. 20, line 2 – p. 21, line 6). The doctor also confirmed that Douglas's delusions –i.e., struggle between good and evil and conspiracy – figured into his belief that the murder victims were "against him too[.]" (Tr. 27, lines 6-14).

The State called Dr. Robert Nelson, a qualified forensic psychologist. (Tr. 36). Dr. Nelson reviewed the prior reports regarding competency, and stated, in his opinion, there were key limitations to the Department's conclusions:

> … looking back at all of the different assessments that have been done, the one that stood out to me as concerning was there was a period of time where the was found able to be restored, and the most recent report suggests that that is no longer the case.
>
> …my concern would be if there is some remediation that could be done as part of the restoration that would make him capable of participating in his defense. That is what the - - that is what he prefers. But it also would be - - it would also be useful for us to understand the nature of the crimes.

(Tr. 37, line 15-p. 38 line 1).

Dr. Nelson further testified:

> Going back a, a few periods now, initially the reports of his delusional thought process were related to religious issues and I made a differentiation, based on my training, of the difference between bizarre versus non-bizarre delusions. And, initially, most of his delusions that I was reading and was reported to me or that I was reading were of the non-bizarre, non-bizarre nature.
>
> …
>
> The belief in God, the belief in hearing from the Holy Spirit, the belief that if God chose to send a message to the judge that, you know, or that would - - the Holy Spirit would be present with him during this process. Those are perhaps delusional but they're not bizarre delusions.

(Tr. 38, lines 6-21).

Dr. Nelson testified that the concept of being "recorded by … gangs" and the like are not in the bizarre delusion category, explaining further that

> The difference, in my training, between delusional - - bizarre delusions and non-bizarre delusions is non-bizarre delusions may not be present but they can happen. Give you the example, you know, the FBI is following me and tapping my phone. We all know they're not but, but they can.

(Tr. 39, lines 1-6).

Dr. Nelson testified that the most recent "threat assessment" indicated a worsen of condition with "more of what would be considered bizarre delusions," though Douglas had not been given specific testing to rule out malingering. (Tr. p. 40, line 20 – p. 42, line 3; *see also* Tr. 50). Dr. Nelson testified to the inconsistent arc of the presentation from the treatment: "The concern I have is it looks like, over the course of his treatment there, he got better and then got worse and , and I'm … wondering … what the precursor to that was or … how that fits to a prognosis… for future outcome." (Tr. 42, lines 9-13). Dr. Nelson clarified that he had not evaluated Douglas for competency but would do so if the court entered an appropriate order. (Tr. 42, 49, 50).

At the conclusion of this portion of the testimony, Judge Hayes ruled: "Based upon the information that's been received by the Court, I can make that finding that he is not competent to stand trial." (Tr. 52, lines 3-5). The hearing continued then into risk assessment.

The Department presented Dr. Jennifer Alleyne, who supervised the nurse practitioners providing care to Douglas at the inpatient facility. (Tr. 54). The doctor described Douglas's progression:

> When he was admitted, he was experiencing visual and auditory hallucinations. He had religious preoccupations as well as paranoid delusional beliefs. I would say, at this point in time, he's demonstrated significant improvement in those symptoms.
>
> He experienced - - does not experience visual hallucinations currently. He experiences auditory hallucinations a few days per week and his delusional beliefs do not predominate his thought process anymore. He's got a better understanding of his symptoms and I would classify them as controlled at this point in time.

(Tr. 57, lines 2-12).

The doctor confirmed that no "negative symptoms" were noted currently. (Tr. 58, lines 1-9). Further, Douglas was on medication and the doctor noted, while he would occasionally refuse a dose of oral medication, Douglas was overall "medically compliant." (Tr. 58, line 10-p. 59, line 20). Douglas also has other therapy and has gained "insight into his mental illness." (Tr. 60, line 13 – p. 61, line 14). Douglas was then "co-facilitating a [therapeutic] group" in another part of the facility and "he is able to engage in thoughtful discussion with his treatment provider about his symptoms and the recovery process." (Tr. 61, lines 15-23). Dr. Alleyne testified that Douglas "had to, with his peer that he is leading this group with, come up with a set of groups to teach, what the common goal for the groups would be, and then he chooses the content - - the two them together choose the content of what they are going to teach in group each week" all of which "absolutely" demonstrates "good insight[.]" (Tr. 62, lines 1-10). Dr. Alleyne confirmed that

Douglas has "more positive" auditory hallucinations described as prompts to "be mindful, be watchful that people are - - might have, have his best interests at heart and that he should be, you know, keeping an eye out for what other people's ill will toward him could be." (Tr. 62, line 19-p. 63, line 1). The doctor opined that auditory hallucinations did not require hospitalization for treatment, that they could not be cured, and acknowledged that one can act on auditory hallucinations at any time. (Tr. 63, lines 2-17). She opined that he was not "likely to be a danger to himself or others due to his mental illness if he were to continue a similar medical regime" as he was then currently prescribed. (Tr. 65, lines 1-4). The doctor added that

> So, Mr. Douglas is, is a very intelligent man, for lack of a better way to say it, and he uses the information that he has learned … during his hospital stay in his interactions with the treatment team.
>
> …
>
> … he understands that … these voices are a product of mental illness and that the medications help decrease the frequency and intensity of the voices and he's able to express that very clearly when you talk to him about his symptoms.

(Tr. 68, line 18 – p. 69, line 6).

She had noted no documented concerns about malingering. (Tr. 70). Dr. Alleyne opined that he had "likely maximized his benefit from hospitalization" though he should continue treatment in a "less restrictive" setting. (Tr. 70, lines 11-19).

On cross-examination, Dr. Alleyne agreed that certain delusions could "set off" violent incidents, but voiced a concern that "you can't keep a person in a hospital against the law because you are concerned about what he may do because he's not acing on that part. You're currently trying to treat him in the least restrictive environment, which would not be in a psychiatric - - locked psychiatric facility." (Tr. 76, line 23-p. 77, line 6). She noted though that he had two altercations with patients without any reference to delusions causing the conflict. (Tr. 76, 82-83).

On redirect the doctor opined that his discussions about his delusions "is, to [her], a testament to Mr. Douglas' stability that he is able to discuss his delusional beliefs and discusses them openly." (Tr. 84).

The Department next called forensic psychiatrist, Dr. Richard Frierson. (Tr. 87). Dr. Frierson conducted a violence risk assessment at the Department's request in considering whether Douglas "could be discharged to a community residential care facility." (Tr. 87, line 25 – p. 88, line 4). Dr. Frierson opined that

> Mr. Douglas' insight into what he needs to do to remain outside of a hospital, should he be released, is quite good.
>
> Like a lot of patients with schizophrenia, he has some ambivalence to the actual diagnosis. But he does believe, because the medication has got rid of the visual hallucinations, the medication is substantially improved his auditory hallucinations to the point that he's only experiencing very briefly three times a week and they don't bother him that it's likely that he has some underlying condition that is being benefitted by the medication.

(Tr. 95, lines 9-20).

Dr. Frierson opined that Douglas' then-present condition did not require hospitalization. (Tr. 98). He also opined that, even with his history of violence and "other antisocial behavior" among other factors, he has improved to include lessened auditory hallucinations, has complied with his treatment, "has developed coping skills[,]" and even had the ability for input into his choice of residence placement. (Tr. 101, line 1 – p. 102, line 23). The doctor noted in discussing his opinion that Douglas should be involved in choice of "discharge placement" that "Mr. Douglas is smart. … he has a, a fairly high intelligence compared to a lot of our patients." (Tr. 104, line 20 – p. 105, lines 3). Dr. Frierson explained further

> And so, I think he needs to be placed in a community residential care facility that has other relatively higher functioning patients. Otherwise there's not gonna be anybody for him to interact

> with, to have meaningful, engaged conversations about a variety of topics, that, you know, more intelligent people might want to talk about.

(Tr. 105, lines 4-9).

Dr. Frierson did believe, however, that any release should be monitored. (Tr. 106). The Department asked Dr. Frierson whether residential care facility "with outpatient treatment, constitutes the least restrictive means by which Mr. Douglas can be treated," to which he responded, "Yes." (Tr. 106, lines 19-24).

On cross-examination, Dr. Frierson explained that he did not conduct a competency evaluation and could neither "agree or disagree with Doctor Gaskins competency assessment." (Tr. 110, lines 1-3). Moreover, the doctor confirmed that Douglas has not had command hallucinations "in the past two years." (Tr. 112, lines 15-18).

The State called forensic psychiatrist Dr. Donna Maddox. (Tr. 115). Dr. Maddox opined about threat assessment. (Tr. 116-117). In forming her opinion, Dr. Maddox spoke with Douglas who she found was "cooperative" and "very forthcoming." (Tr. 117, lines 19-22). The doctor testified that Douglas "has benefited from treatment" but was experiencing "active symptoms she believed "could get better." (Tr. 117, line 24-p. 118, line 1; *see also* Tr. 118, lines 21-25, "the simplest thing to do is continue treating him and I saw that there's room for improvement of his symptoms."). Dr. Maddox testified that due to Douglas' known "triggers" prompting paranoia, especially with use of social media, she was concerned a new location, where cellphone or media use could not be limited, could trigger paranoia tied to his delusions. (Tr. 118-119; *see also* Tr. 120-121, 131 and 133).[6] She also opined a change of psychiatrist would be detrimental, noting

[6] Dr. Maddox explained that Douglas had tried living in a county environment before to potentially avoid stressors, but even that his issues were still intrusive, "it kind of crept up on him." (Tr. 121, lines 6-10; 125, lines 15-18).

his trust of Dr. Alleyne. (Tr. 119; *see also* Tr. 121-122 and 125, suggesting a GAL so that he would have someone consistent to speak to). Dr. Maddox reiterated, "the simplest thing to do is to have DMH go back and, and give him some more treatment so he doesn't have these active symptoms anymore." (Tr. p. 119, line 25- p. 120, line 2). To sum up, she opined, "in my opinion, he still has symptoms and it's just not time to release him yet." (Tr. 120, lines 5-6; *see also* Tr. 122). Further, she concluded, considering the murder charges still pending, that there was a significant danger to others if he should "act on one of [his] delusions or commands[.]" (Tr. 122, lines 19-23; *see also* Tr. 128, lines 3-9). Dr. Maddox was firm that she believed Douglas "can continue to improve." (Tr. 128, line 17). The Department's attorney questioned whether it was true that hospitalization was "not the least restrictive means" for treatment, to which she respondent that while Douglas was compliant, "there's more the hospital can do for him[.]" (Tr. 129, line 22 – p.130, line 5).

The State also called risk assessment expert Capt. Michael Prodan of SLED's behavioral science unit. (Tr. 136-137). Capt. Prodan testified that an analysis of the crime scene revealed that someone attempted to stage the scene with a barricade and signs of the door being forced from outside the home. (Tr. 139-140). Further, Douglas' gave a statement that he escaped the home by window, and indicated unknown individuals came to the home, suggesting "the police … should be looking for someone other than" Douglas. (Tr. 140, lines 6-12). In the mental health evaluations, Douglas asserted he "killed them because they were gangster and that the was being spied on" and reported "all kinds of delusion[.]" (Tr. 140 lines 19-24). While Capt. Prodan could not speak to formal intelligence measures, he opined that Douglas was "criminally sophisticated" such as to have the "experience and intelligence on how to commit crimes and not get caught." (Tr. p. 141, lines 8-15). Capt. Prodan continued

> … this appears to be a, a personally motivated domestic murder. Based on the crime scene and the first statement that the defendant gave to the police, it appears to have begun over an argument and the argument was reported over quality of marijuana.
>
> Now, there was also a reference in the records of a similar argument two days prior to the date of the murders. This argument escalated up into the murder of two individuals, the multiple stab wounds. The focused stabbing of both victims show a reaction to a loss of control which led to anger and rage and then the floor - - the focused violence.
>
> And so, because of that, if this individual was in similar circumstances, it is likely that he would act out in a similar way, which would be using violence to achieve his goals.

(Tr. 142, lines 2-17).

Capt. Prodan also noted he would "assume that a group home kitchen would have knives, weapons, similar to how these murders occurred and those knives were obtained from the residence." (Tr. 143, lines 7-20). He opined Douglas' "threat level to people outside" his current restricted environment "would be high" and he would not recommend release to a less restrictive home. (Tr. 143, line 21- p. 144, line 2).

As a final witness, the State offered Jim Cawood, also as an expert in threat assessment. (Tr. 147-148). Mr. Cawood opined that the formal "risk assessment" utilized by Dr. Frierson is not directed toward assessing risk to victims but "the risk posed solely by the individual of concern." (Tr. 151, lines 12-14). Further, it was his opinion the Dr. Frierson misused the test by not actually assessing a risk level or discussing "risk scenarios that he considered," and assumed that release would occur. (Tr. p. 151, line 19 – p. 152, line 1; *see also* Tr. 152, line 25 – p. 153, line 16). Mr. Cawood opined Douglas' threat level was "significant," with a "high probability that he will actually engage in further interactions with people that would then lead to the possibility of harm and risk to them." (Tr. 153, line 17 – p. 154, line 8). Mr. Cawood also noted a reported

threat by Douglas: "he killed his former girlfriend because she was a Blood and he was planning to kill his current girlfriend when he got out because he also believed that she was a Blood." (Tr. 154, lines 15-23). Like Capt. Prodan, Mr. Cawood also agreed a less restrictive residence would be equipped with kitchen knives which is an often-used weapon against "family members or close intimate partners, which, again, would reflect what happened in this alleged offense." (Tr. 155, line 18- p. 156, line 12).

At the conclusion of the evidence, Judge Hayes expressed that he would like to further review certain materials and take the matter under advisement. (Tr. 167). The Department, in closing, argued that § 44-23-460 required "that the person shall be released," thus, "the rest of our determinations today has been whether or not he should be out on, on a bond under Section 430(d)." (Tr. 169, line 21 – p. 170, line 4). Even the Department agree that Douglas "should not be out absent some guardrails[.]" (Tr. 170, lines 5-6). The State argued that it was the Court's discretion whether to "keep him in the hospital," and emphasized the danger Douglas posed to others. (Tr. 171, lines 1-3).

As referenced above, Judge Hayes issued an order pursuant to S.C. Code § 44-23-460 on November 26, 2024, finding that Douglas could be allowed to go to a facility with certain restrictions in place, and the provision that if he violated any of the restrictions, he was to be taken back into custody and returned to Spartanburg County Detention Center. (R. *, Order at 6). Both parties moved for reconsideration, each challenging a different aspect of the order.

In its petition for reconsideration, the Department asserted, in part, that it is "statutorily obligated" to apply "the least restrictive appropriate care and treatment" with "minimally necessary" reduction in personal liberty. (R. p. *, Department's Motion at 1). Notably, the Department relied on statutory provisions outside those in Article 5, Fitness to Stand Trial

Provisions, and cited to a patients treatment rights under S.C. Code Ann. § 44-22-50 (A) and (B). (R.p. *, Department's Motion at 1).

The State, in its petition for reconsideration, highlighted its great "concern[] about the safety of other, older individuals living at the [suggested public] facility as well as the public in general based on the information" it discovered about the retirement/assisted living facility DMH had selected. (R. p. State's Motion at 4). The State argued, in part, "if Douglas is well enough to be released to the community, given his independence, and can control his delusions" it appears he could be deemed fit to stand trial under the statute provisions for competency to stand trial. (R. p. *, State's Motion at 5). Further, the State argued that "[g]iven the crimes perpetrated by Douglas both in his record and in the currently pending charges, the State's position is that Douglas cannot be integrated into the community to independent living unless he is competent," and competency restored should lead to trial. (R.p.*, State's Motion at 6-7). There is no in-between, which prompted the State's conclusion in its motion reflecting: "If Douglas is still incompetent and still has the same delusions that led him to kill Stephanie Jenkins and Craig Jenkins, he should not be released from Just Care." (R. p. *, State's Motion at 7). [7] Because of the confusion and/or bias demonstrated in the Department's opinions and motion, the State further requested independent evaluation. (R. p. *, State's Motion at 7).

Judge Hayes declined to alter or amend the restrictions and conditions placed on the transfer and denied the DMH petition. The judge also declined to alter or amend authorizing the transfer and denied the State's petition. (R. p., Order Denying Reconsideration).

[7] S.C. Code Ann. § 44-23-450 (providing for "reexamination" upon request by "two designated examiners").

STANDARD OF REVIEW

Appellate courts will "review questions of statutory interpretation de novo." *S.C. Workers' Comp. Comm'n v. WestPoint Home, LLC,* 446 S.C. 625, 632, 922 S.E.2d 231, 235 (Ct. App. 2025) (quoting *Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 437 S.C. 640, 642, 880 S.E.2d 476, 477 (2022)).

ARGUMENT

The trial court exceeded its authority to act as constrained by the specific statutory provisions of S.C. Code Ann. § 44-23-460.

Enforcement of the state's criminal law is a fundamental state function. *See, e.g., Engle v. Isaac,* 456 U.S. 107, 128 (1982) ("The States possess primary authority for defining and enforcing the criminal law."). However, a criminal defendant cannot be tried when he is found incompetent; therefore, when unable to meet competency requirements, "due process considerations require suspension of the criminal trial until such time, if any, that the defendant regains the capacity to participate in his defense and understand the proceedings against him." *Medina v. California*, 505 U.S. 437, 448 (1992); *McLaughlin v. State*, 352 S.C. 476, 481, 575 S.E.2d 841, 843 (2003) ("Due process prohibits the conviction of a person who is mentally incompetent.").

The Legislature, by the provisions of Title 44, Chapter 23, Article 5 of the Code, has decided how to address the treatment of criminal defendants who are not deemed competent to stand trial. The steps are measured and balanced considering the need to protect the community and the rights of the defendant, with an eye toward allowing the criminal justice system to be the ultimate means to resolve the charges. Under those provisions, Douglas was examined and found not to be competent to stand trial.[8] Douglas was referred to the South Carolina Department of Mental Health for treatment to regain competency. Opinions reflect that Douglas is not yet competent, but that is not the question here. This challenge is narrowly focused on the subsequent

[8] "A defendant may not be put to trial unless he ' "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding ... [and] a rational as well as factual understanding of the proceedings against him." ' " *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996)(quoting *Dusky v. United States,* 362 U.S. 402 (1960)); *see also State v. Kelly*, 331 S.C. 132, 148, 502 S.E.2d 99, 108 (1998) ("The test for competency to stand trial or continue trial is whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as a factual, understanding of the proceedings against him.").

order finding additional treatment warranted but not through inpatient treatment. That order cannot be squared with the applicable statutory provisions.

The State maintains there are multiple arguments that the probative facts of record do not support the critical fact findings in the order. Most specifically, it is not reasonable to find the defendant (who committed two murders) well-enough to be released from hospitalization and prepared to be integrated into the community on his own, but not competent to stand trial. That defies not only the structure of our Code's Article 5, Fitness to Stand Trial provisions, but also the very purpose for its restrictions to hospitalization for restorative treatment. Even so, one legal error is obviously present and that error goes directly to the danger to the community and infringement of the prosecutorial obligation: whether Judge Hayes applied the statutory provisions in S.C. Code Ann. § 44-23-460. The judge's order exceeds what he is authorized to grant and must be set aside.

Discussion:

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Connelly v. Main St. Am. Grp.*, 439 S.C. 81, 89, 886 S.E.2d 196, 200 (2023) (citing *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). "The first question of statutory interpretation is whether the statute's meaning is clear on its face." *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 346, 549 S.E.2d 243, 246 (2001). "When the statute's language is clear and unambiguous, the rules of statutory interpretation are unnecessary, as a court has no choice but to apply the statute as written." *Id,* (citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). Indeed, "[w]hen the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning." *State v. Blackmon,* 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991); *see also* S.*C. Workers' Comp. Comm'n v. WestPoint Home,* LLC, 446 S.C. 625, 632–

33, 922 S.E.2d 231, 235 (Ct. App. 2025) ("With any question regarding statutory construction and application, the court must always look to legislative intent as determined from the plain language of the statute.") (quoting *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 597-98, 654 S.E.2d 284, 289 (Ct. App. 2007)).

Further, "courts are constrained to assign words their plain and ordinary meaning[.]" *Wilson v. State*, 315 S.C. 158, 162, 432 S.E.2d 477, 479 (1993). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *In re Vincent J.,* 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted)).

As to specificity, a statutory provision that is directly applicable should control. *Hembree v. One Thousand Eight Hundred Forty-Seven Dollars (1,847.00), U.S. Currency*, 404 S.C. 241, 248, 743 S.E.2d 864, 867 (Ct. App. 2013) (resolving that "[t]he fact that the legislature specifically addresses" an issue directly in a portion of the statute, though there are other sections that arguably could apply, indicates its intent that only that specific section apply). While true that "[g]eneral and special statutes should be read together and harmonized if possible," if there is "any conflict between the two, the special statute must prevail." *Criterion Ins. Co. v. Hoffmann*, 258 S.C. 282, 293, 188 S.E.2d 459, 464 (1972).

"Section 44–23–460 outlines the procedure to be followed after the South Carolina Department of Mental Health acquires jurisdiction of such person under Article 3 of Chapter 23." *Wilson,* 315 S.C. at 162, 432 S.E.2d at 479. The statute is plainly written so that, when the court finds the defendant is still not competent for trial, and in the Department's opinion the incompetent defendant "no longer requires hospitalization," then the court must order release. This is precisely

what the Department argued to Judge Hayes. (Tr. 169-170). However, that release *must* be accompanied by one of two possible actions:

> (1) if upon the completion of the hearing, the court finds the person unfit to stand trial, it shall order his release from the hospital; **and**
>
> (2) if such a person has been hospitalized for a period of time exceeding the maximum possible period of imprisonment to which the person could have been sentenced if convicted as charged, the court shall order the charges dismissed and the person released; **or**
>
> (3) the court may order that criminal proceedings against a person who has been found fit to stand trial be resumed, or the court may dismiss criminal charges and order the person released if so much time has elapsed that prosecution would not be in the interest of justice.

S.C. Code Ann. § 44-23-460.[9]

Here, there was a request by the Department to release Douglas from inpatient care. That requires the court to make a competency determination. Judge Hayes found Douglas was not competent. (Tr. 52). Because the court did not find Douglas competent to stand trial, nor was there a request for dismissal of charges, Subsection (3) was not applicable. Consequently, after the finding Douglas remained not competent to stand trial, Judge Hayes was limited by the provisions in Subsection (2); yet, (2) is not applicable because Douglas was under indictment for two murders

[9] Considering federal provisions for fitness to stand trial, the Fourth Circuit has recognized that potential civil involuntary commitment proceedings are not always required, but would be an option if "the sentence is about to expire," or – to cite one part of 18 U.S.C. § 4246 (d) – after addition "reasonable" period of time treatment or "the pending charges … are disposed of according to law," or, if the "charges have been dismissed solely for reasons related to the mental condition of the person" under § 4246(a). *See United States v. Carrington,* 91 F.4th 252 (4th Cir. 2024). The federal statute does have some differences, but the option of continued treatment for "a reasonable period of time" unless the pending charges are not still viable appears to be similar. Again, while a due process argument may challenge the length of time without further action, that is not an issue in this appeal.

meaning the maximum would be life if capital proceedings[10] were not pursued. Either way, the statutory provision for mandatory dismissal of the charges would not apply.

Thus, to be true to the statute, the court had only one option based on its findings of facts—to release Douglas from the hospital and require his transfer to the Spartanburg County Detention Center.[11] There is no provision under S.C. Code § 44-23-460,[12] to order continued treatment and/or care in an unsecure facility.[13] Thus, the circuit court had no authority under the statute to allow a step-down transfer to a non-secure facility.[14] Indeed, the transcript of record shows the

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[10] Capital proceedings are certainly an option given that the facts show "[t]wo or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct," a statutory aggravating circumstance. *See* S.C. Code Ann. § 16-3-20(A).

[11] Given the passage of time, should the order be vacated as the State argues it should be, the likely result would be another examination and hearing. However, that does not change the point here: the lower court has no statutory path to the relief granted. If the result is the same, and the Department maintains its assertion that hospitalization is not warranted, then release to the county detention center may create simply a loop back to the Department's inpatient facility under a separate legislative provision. *See* S.C. Code § 44-23-220. Even so, under no plain and logical reading of the statute can one be excused from detention or inpatient treatment for serious crimes carrying even the potential for the death sentence.

[12] The order was clearly based only on this provision, and, as the court noted in its order, the Department's motion was similarly based on S.C. Code Ann. § 44-23-460. (R. p. Order, pp. 1-2 and n. 1). No other provision in the Code could be considered as that was not before the court. Likewise, it is the only provision at issue in this appeal. *See, e.g., State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."). The court merely made reference to § 44-23-430(C), as to its restrictions. (*See* R. p. Order at 3 and n. 3).

[13] Again, courts are obligated to apply the plain provisions of the statute. *Wilson, supra.* The State submits that is the path to follow here. However, even if a court should find some "inconsistency" in treatment, "it is not within [the court's] province to amend the law to resolve [such] inconsistency, rather, [the court must] leave to the legislature the resolution of th[e] matter." *Blackmon*, 304 S.C. at 274, 403 S.E.2d at 662.

[14] The Department, in fact, noted in a November 18, 2022, assessment that Douglas had been approved for out-patient placement "but [that] requires his charges to be resolved first." (R. *, Report at 5). That was again noted in a November 20, 2023, assessment, (R. Report at *). The Department was correct in that initial concession.

Department was arguing for a bond to allow transfer to a facility pursuant to S.C. Code Ann. § 44-23-430(C). (Tr. 170). It was error to blend the provision of 430(C) into the analysis when the only question was the *Department's opinion* as to continued *hospitalization*. § 430 is referenced in § 460 only to the "the issue of fitness[.]" § 460 incorporates no more.[15] So once again, the specific provisions of § 460 must control.[16] And to be sure, that was the only issue before the circuit court.

Douglas has not challenged South Carolina's statutory provisions for competency to stand trial in any way, nor did he allege that his continued detention violates due process.[17] *See generally Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is

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[15] Again, demonstrating the impermissible blending of concepts among separate statutory provisions, the circuit court, at the hearing, made no finding as to "unlikely to become fit to stand trial the foreseeable future" or "likely to become fit in the foreseeable future." (*See* Tr. 52). This is also mirrored in the order which finds, "With the Department of Mental Health having established that Mr. Douglas is unfit to stand trial, the second issue to be addressed is the request that Mr. Douglas' be released from his present inpatient hospitalization and transferred to Monetta Community Residential Care Facility." (Order at 2). Technically speaking, if § 430 was in play, then that finding would be critical before advancing to the further statutory provisions there. While the general tone of the restrictions may be "consistent" with § 430(C), the path to such restrictions was not cleared for the circuit court to follow. (*See* Order denying reconsideration, at 2).

[16] This is further supported in that if § 460 would only be a reference back to the whole of § 430, what of the directions in (1), (2), and (3) of § 460? It cannot be that the Legislature intended this specific provision to be superfluous. That would defy reason and plain rules of statutory interpretation. *See Thompson v. Killian*, 447 S.C. 177, 191–92, 924 S.E.2d 606, 614 (2025) (recognizing that courts "must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous") (cleaned up).

[17] To be sure, if this Court agrees with the State, additional proceedings will follow and there will be continued detention (at least in some amount). But a specific amount of time that would give serious concern to a due process violation is difficult to identify. The Supreme Court in *Jackson v. Indiana* declined to "prescribe arbitrary time limits." 406 U.S. at 738. The Eighth Circuit has reasoned that where the "total time in confinement for purposes of the competency determination was far less than the possible sentence" then "[n]o due process violation exists[.]" *United States v. Ecker*, 30 F.3d 966, 969 (8th Cir. 1994). Even so, that is an argument for another day as no challenge based on a due process violation is before the court.

committed"). Douglas has not even appealed or otherwise challenged the adjudication finding once again that he is not competent to stand trial. Thus, the only issue is whether the trial court properly applied the relevant statutory provisions, specifically those provisions in S.C. Code Ann. § 44-23-460. The record shows the circuit court did not.

In sum, for the type of serious crimes at issue here with the potential of a life (or death) sentence where there will be continued restoration treatment there is only inpatient hospitalization, not outpatient independence. [18] Judge Hayes provided an option that the Legislature did not, and that is error. [19] The order must be vacated and the matter remanded for additional proceedings consistent with the statute.

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[18] The term "hospital" is restricted, by definition, to hospital settings, while a "mental health facility" is assigned a broader definition that may include "any hospital, clinic, or other institution maintained by the department." *See* S.C. Code Ann. § 44-23-10 (9), (14), (24) and (25).

[19] There is the possibility of involuntary commitment but only when unlikely to become fit in the foreseeable future while undergoing inpatient hospitalization or otherwise detained. *See* § 44-23-430(A)(2). The provision does not speak to being well-enough for release from hospitalization but not restored to competency. Moreover, the statutory section for restoration uniformly speaks to hospitalization or detention and only allows outpatient treatment if on bond. (*See* § 44-23-430(A)(3)). If not committed after further proceedings, defendants facing violent crimes are only released after considering "whether the person shall be released on bond with terms and conditions appropriate for the safety of the community and the well-being of the person." § 44-23-430(C)(1). However, for the reasons set out above, that section is not applicable to this specific appeal.

II. Because the state evaluators inaccurately considered an inmate held under the fitness to stand trial provisions could be medically assessed to be ready for release from inpatient care, their opinions based on same fail to provide any probative factual support for the order.

Two things were largely agreed upon: Douglas had benefited from his treatment, but Douglas should not be released without restrictions. (*See* Tr. 58, 62, 68-69, 84, 95, 112, 117-118, 170).[20] Yet, the decision on release in these circumstances was not simply a medical decision; it is a decision that must be informed and compliant with the Legislative provision in S.C. Code Ann. § 44-23-460. The Department meshed its responsibilities for treatment options outside the fitness-to-stand-trial provisions with its limited authority under the statute. (*See* Mar. 2025 Tr. 16-17, the Department arguing based on § 44-17-580; *see also* Mar. 2025 Tr. 13, the Department arguing in outpatient treatment the need for "job training" and learning the "ability to … live independently and to interact with the public"). In particular, it exceeded the scope of the narrow determination allowed the Department under § 44-23-460. That section only addresses the Department's determination on inpatient treatment. *Id.*

With the question under § 460 only being hospitalization or no hospitalization, the only decision the state evaluators could make would be to continue inpatient hospitalization restorative treatment or recommend release and no treatment. That is all. Going further, as the Department did, to opine that Douglas can be held on custody provisions for fitness-to-stand-trial and still receive treatment but in a non-secure facility, is not an option. If the Department's personnel deemed it important to continue the same treatment, as they apparently did, they have no authority

[20] Dr. Frierson also raised an issue that the wrong surroundings could negatively affect progress given that Douglas is intelligent and needs intelligent interaction, and Dr. Maddox expressed concern that access to certain communication programs/platforms by new individuals could be a trigger for Douglas. (*See* Tr. 105, 118-119). Regression is certainly not a desired outcome.

under the statute to demand release from hospitalization but transfer to a non-secure facility. The Department misapprehended the relevant statutes. The repeated references during the hearing on the responsibility to provide treatment in the less restrictive means is instructive. (*See* Tr. 70, 76-77, 106). That is not a phrase or duty under the fitness-to-stand-trial provisions and for good reason; the Department is not charged with general treatment, but specific compliance with restrictive statutes for individuals charged with a crime. This point is shown by the mirror image of the argument in *Wilson v. State*, 315 S.C. 158, 432 S.E.2d 477 (1993). In *Wilson*, our Supreme Court resolved that because Wilson's "hospitalization and subsequent out-patient treatment were not the result of a determination that he was unfit to stand trial," then "Section 44–23–460 [was] inapplicable[.]" *Id.,* at 163, 432 S.E.2d at 480. The reverse is most assuredly true. When custody derives from the fitness-to-stand-trial provisions, § 44-23-460 is specifically applicable.

Consequently, we return to the beginning. The Department opined that Douglas, though still unfit to stand trial, "no longer require[d] hospitalization," *see* § 44-23-460. As set out in Argument I, given the procedural posture and arguments in this case, that results in only one option remaining if the circuit court orders release: return Douglas to Spartanburg County Detention Center. The Department's opinions are hopelessly mired with inapplicable considerations of a third option–continued treatment in a non-secure facility—such that the circuit court's order relying on same lacks any probative factual support.

Again, this matter must be returned to the circuit court and a new hearing held with the limited options of § 44-23-460 understood by all parties before the relevant opinions are given and the proper decisions are made.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the lower court's order be vacated and this matter remanded for proceedings consistent with the statute.

Respectfully submitted,

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