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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No.: 2026-001422

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

In re:

The State, ...Respondents,

v.

Jevon Kenneth Carter .....Respondent-Petitioner.

PETITIONER SCDMH REPLY TO THE STATE'S RETURN TO SCDMH PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

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INTRODUCTION

"We have now sunk to a depth at which restatement of the obvious is the first duty of intelligent men."[1] George Orwell's words are an appropriate exhortation to this Court to pause and take a serious look at the factual record that has been and continues to be distorted by The State, especially in the Return to the Petition for Writ of Certiorari.

Here is the indisputable posture of this case as Jevon Carter and the SCMHD seek justice from this Court:

- With the exception of Mr. Carter, his counsel, and the undersigned, every single person who has been involved in this case is an employee of the State of South Carolina;
- The legislature created a statutory framework for the proper adjudication, commitment (if necessary), and release of commitment (if and when appropriate) of persons adjudicated to be Not Guilty by Reason of Insanity (hereinafter "NGRI") in the General Sessions Courts in the state;
- This Court issued its own Administrative Order to establish judicial proceedings in accordance with the statutory scheme;
- In order to ensure compliance with this statutory scheme, the State of South Carolina employs medical professionals to fulfill the duties and responsibilities imposed on The State by the statutory scheme and the concomitant judicial administrative order. One of those medical professionals is Dr. Jennifer Alleyne. At the hearing from which this appeal rose, she was qualified, without objection, as an expert in "forensic psychiatry". (ROA, p. 20, line 25 – p. 21, line 6). She is the chief psychiatrist for the forensic hospital" (ROA, pp.

[1] This quote is from Orwell's review of Bertrand Russell's book *Power: A New Social Analysis* published in *Adelphi* magazine in January 1939.

24-25). Her duties in this position at Bryan Psychiatric Forensic Hospital, a facility owned and operated by the State of South Carolina, are, *inter alia*, to evaluate, treat, and recommend for discharge (if she deems it appropriate) persons previously adjudicated NGRI and committed to Bryan Hospital.

- The State of South Carolina also owns and operates a medical school for the education and training of medical professionals. One of the members of the faculty at that school is Dr. Richard Frierson. He is a professor of psychiatry in the Department of Neuropsychiatry and Behavioral Science and the "training director for the forensic psychiatry fellowship program" at the University of South Carolina School of Medicine.
- The Attorney General of the State of South Carolina is charged with supporting and defending the statutes passed by the legislature of the State of South Carolina.
- In this case, since she was first in charge of Carter's care and treatment, Dr. Alleyne has complied in every way with the statutory and judicial framework for the commitment, treatment, and potential release of Jevon Carter. There is no evidence or suggestion to the contrary.
- In a particularly Orwellian twist in this matter, The State is *fighting the expert medical judgment of the doctors hired by the State of South Carolina charged with implementing and complying with the statutory and judicial framework for disposition of persons adjudicated NGRI.* The State does not fight the professionals by attacking their credentials (they were both admitted as experts without objection from The State) or by arguing that they have violated or failed to comply with the statutory and judicial framework. The State also does not fight them with opposing experts or with properly admitted evidence in a court of law. Rather, The State simply disagrees with the expert medical judgment of the

medical professionals hired by the State of South Carolina to administer and comply with the statutory and judicial framework and wants to supplant their expert medical opinions with his own. The State attempts to do this with guesses and hypothetical scenarios related to events and facts that ALL occurred prior to the adjudication of NGRI and civil commitments which occurred prior to the underlying offenses, *that are in direct opposition to the considered judgment and expert opinions of the medical experts*.

- In this case, there is undisputed evidence in the record that Jevon Carter has attained the maximum benefit attainable by being involuntarily committed as an inpatient to a mental hospital owned and operated by the State of South Carolina and that, in the opinion of two medical experts employed by the State of South Carolina, he is not a threat to himself or the community and his continued treatment should be as an outpatient. (ROA, p. 32, line 18 – p. 33, line10; and p. 99, lines 13-17).
- Dr, Alleyne testified that since his commitment pursuant to the statutory and judicial framework for persons found NGRI, Jevon Carter has complied in all regards with the treatment and medication plan developed by the medical professionals in Bryan Hospital. *There has not been a single "elopement" or failure to medicate since the adjudication of NGRI.* This undisputed fact has been ignored both by the circuit court and the Court of Appeals, both of which ignore Mr. Carter's current status.
- In its Return to the Petition for Writ of Certiorari, the State improperly includes in its Statement of Facts several matters that predate the adjudication and then focuses solely on facts occurring prior to adjudication to suggest that the medical experts are wrong. The fundamental precept of the statutory and judicial framework which controls this case is Mr. Carter's present condition and looking forward, not looking back, especially at matters that

occurred prior to inpatient commitment. The State completely ignores and omits the undisputed testimony of the medical professionals regarding Mr. Carter's condition since adjudication, which is that he has been completely compliant with all medication and treatment protocols required by the medical professionals. Having included them, the Attorney General should have candidly pointed out to this Court that during the cross-examination of Drs. Alleyne and Frierson, they both testified that *they were aware of each of those matters that predated the index offense and took them into consideration in forming their recommendation that Mr. Carter should be transferred to out-patient treatment.* If the State believes these doctors were deficient or wrong, it could have brought in a competing expert to point out any such deficiencies or errors. That no such opposing testimony was offered is telling and SCDMH believes is dispositive. The evidence in the record is uncontroverted that since the pre-commitment events, Mr. Carter has been compliant, has not missed any medications and is a healthy and changed man. The medical professionals are both completely comfortable recommending him for transfer to outpatient treatment pursuant to the statutory and judicial framework.

- In the Statement of Facts included in the Return to Petition for Writ of Certiorari, the State also states "his mental disorder still existed, and that it would always exist." The State suggests that this is a concession by the doctors that Mr. Carter is presently "mentally ill." Nothing could be further from the truth. Millions of people in this country have mental disorders which will "always exist."[2] That doesn't mean they are "mentally ill." If the State thought this was important *and valid* point, again, they could have offered a competing expert. Dr. Alleyne was clear in her testimony that Mr. Carter has been

[2] The National Institute of Mental Health reports that "[i]t is estimated that more than one in five U.S. adults live with a mental illness (59.3 million in 2022; 23.1% of the U.S. adult population). nimh.nih.gov/mental-illness.

psychiatrically stable for three years (ROA p. 41, lines 10-14; and p. 58, lines 16-21) and appropriate for transfer to outpatient commitment. (ROA p. 65, lines 5-7).

- In addition to the prior incidents which predate the commitment, the State relies heavily on a few questions asked in cross-examination of the medical experts that they could not "guarantee" that Mr. Carter will not harm someone in the community in the future. That is a standard that no competent medical professional could *or should* ever testify to. The statutory and judicial framework does not require that standard and this Court does not, and should not, require such a standard in any judicial setting. If that were the appropriate standard to adjudicate discharge for persons found NGRI, none of them would ever be discharged pursuant to the statutory and judicial framework. It would render the statutes and this Court's administrative order nullities. Permanent, life-time, inpatient commitment would be the standard.

Having stated the obvious, a brief, more substantive reply follows.

REPLY – ISSUE ONE[3]

The State erroneously argues that Mr. Carter's constitutional rights have not been violated, arguing that this is not a civil proceeding. However, a civil case is exactly what this proceeding was supposed to be.

The State's argument perpetuates a fatal flaw in these proceedings since Mr. Carter was originally committed.

The statutory standard for review after a conviction of NGRI provides that after the initial period of hospitalization, the proceeding converts to a civil commitment pursuant to S. C. Code §

[3] Issue One is "Has Mr. Carter's constitutional right to liberty been violated?" In its Response, the State only addressed two of the four issues raised in the Petition (although the State's Issue Two is somewhat jumbled).

44-17-580.

> If at a later date. . . no longer in need of [inpatient] hospitalization, . . . must hold a hearing . . . pursuant to the standard of § 44-17-580.

S. C. Code 17-24-40(C)(2)(c).

Petitioner SCDMH has already pointed out parenthetically that these proceedings were improperly captioned as general sessions proceedings for this proceeding and the prior proceedings. (Petition, footnote 4). The State's Return arguing this is not a civil proceeding, but a continuation of the criminal proceedings, makes it clear that both the circuit court and the parties have addressed this matter in a fundamentally flawed way ever since SCDMH initially sought to transfer Carter to outpatient treatment.

This is a civil proceeding governed by § 44-17-580, not an extension of the criminal proceedings which were terminated in Carter's favor. The State and the circuit court have treated these proceedings as a continuation of the criminal proceedings from the beginning and now attempt to differentiate precedent from the United States Supreme Court by suggesting this is not a civil commitment proceeding.

This was, in fact, a criminal proceeding at the time the original order of commitment was issued, after the adjudication that Carter was not guilty by reason of insanity. (ROA pp. 3-6). The criminal proceedings ended THEN. When SCDMH notified the Chief Administrative Judge that Carter no longer required inpatient hospitalization on November 10, 2022, the proceedings have continued to be tracked by the circuit court and the Attorney General using the original Indictment numbers and General Sessions case numbers. (ROA pp. 7-11; pp. 1-2). The entire proceedings have been handled as if Mr. Carter remains a defendant. He does not. This is a civil proceeding. What happened before the order of commitment is irrelevant and should not be considered at all.

SCDMH acknowledges that it has not previously made an affirmative objection to this structural flaw in these and prior proceedings. However, in light of the Attorney General arguing that this is not a civil proceeding, it now becomes paramount for the parties and the court to recognize this structural flaw. This structural flaw requires that the appellate court and this Court acknowledge the error despite a lack of contemporaneous objection because it compromises Mr. Carter's constitutional right to liberty. *See State v. Rivera*, 402 S.C. 225, 741 S.E.2d 694 (2013) (reversing a criminal conviction when proceedings were affected by a "structural error").[4] The constitutional rights affected here, and the resulting prejudice, are obvious.

The State's attempt to distinguish applicable law regarding Mr. Carter's constitutional rights is clear error. "SCDMH . . . [is] attempting to equate [Carter's] condition with that of the insanity acquittee in *Foucha v. Louisiana*, 504 U.S. 71 (1992). (Response to Petition p. 13). Carter is an "insanity acquittee." The Attorney General actually asserts that "it is undisputed that "Carter is still mentally ill and would always be mentally ill." *Id.* This is a complete misrepresentation of the record and is in direct contravention of the expert testimony that Mr. Carter has been psychiatrically stable for three years. (ROA p. 58, lines 16-21). If "is mentally ill and will always be mentally ill" is the proper standard in this civil proceeding, the State is overtly advocating for Mr. Carter's (and all other persons adjudicated NGRI) permanent commitment without providing him with constitutional protections to which he is guaranteed. *See also* Return to Petition p. 13 ("Addington is purely a civil commitment case, far different standard than that for a person found NGRI."). This IS a civil commitment case by statute. S.C. Code §17-24-40(C)(2)(c). The prior

[4] *Cf., Wright v. State of South Carolina*, __ S.C. __, 920 S.E.2d 17 (Ct.App. 2025) (ineffective assistance of counsel claim did not rise to the level of a "structural defect" under *State v. Riviera* because of lack of prejudice). The Court of Appeals recognized that the right not to testify in a criminal proceeding is a constitutional protection, but declined to reverse a PCR finding in the absence of prejudice). The prejudice of treating Mr. Carter as a *criminal* throughout these proceedings is apparent.

criminal proceedings are irrelevant and incredibly prejudicial. Even the Court of Appeals misunderstood this view, by reciting unauthenticated facts from medical records that predate the commitment.

The argument of the State, the order of the circuit court and the Court of Appeals opinion have created the truly Kafkaesque reality that Mr. Carter is now being punished (confined against his will) for completely complying with the treatment and medication plan created and administered by the State of South Carolina and for responding to the treatment provided to him by the commitment.

The State's Return[5] to SCDMH's Petition for Writ of Certiorari is itself "structurally flawed" and highlights the need for the Supreme Court to address these pervasive and pernicious issues.

REPLY – ISSUE TWO[6]

The State and the Court of Appeals ignore the fundamental premise that the Chief Administrative Judge is required to examine: Is Mr. Carter in need of continued [inpatient] hospitalization? S.C. Code § 17-24-40(C)(1)(c) states, in pertinent part that the Chief Administrative Judge ". . . must hold a hearing to determine whether the person is in need of continued hospitalization pursuant to the standard of § 44-17-580." That is the first and only threshold inquiry to be made by the Chief Administrative Judge. Both expert medical professionals testified that Mr. Carter would no longer receive any additional therapeutic benefit

[5] The State actually invokes the State's "police power" in its argument citing *Matter of Oxner*, 449 S.C. 5, 889 S.E.2d 586 (2023). (Return to Petition for Writ of Certiorari (Re: DMH), p. 14).

[6] The State posits that Issue Two is "The Court of Appeals did not err affirming the circuit court's decision nor denying DMH's notification. . . because the decisions were based on a clear and convincing evidentiary standard and its findings of fact are supported by evidence in the record and not controlled by an erroneous conception or application of law." (Response p. 15. Issue Two is actually: "The Court of Appeals erred in denying DMH's notification for transfer to outpatient treatment, when the evidence was undisputed [that Mr. Carter is no longer in need of inpatient hospitalization]." (Petition p. i and p. 7).

from continued inpatient hospitalization. (ROA p. 32, line 18 – p. 33, line1; and ROA p. 99, lines 13-17).

The terms of transfer to outpatient commitment and any appropriate post-release outpatient treatment plan can be considered *only after* this threshold determination. The treatment plan is not to be conflated with the issue of transfer to outpatient hospitalization.

The State argues that the Chief Administrative Judge may consider the terms of transfer to outpatient hospitalization in order to determine *if* the person is in need of continued inpatient hospitalization. That directly contradicts the statute and is nonsensical. The State suggests that the Chief Administrative Judge balances the factors of (1) the need for continued inpatient hospitalization *with* (2) the proposed terms of outpatient treatment *in order to come up with the right decision*. That is obvious error. The terms of outpatient treatment cannot be considered unless the finding of the need for continued inpatient treatment is addressed first. The only medical evidence presented to the circuit court and the Court of Appeals is that Jevon Carter should be discharged from inpatient treatment.

In the first paragraph of the Court of Appeals' *per curiam* opinion, the Court states, "At both hearings, undisputed expert testimony was that Mr. Carter had insight and capacity to make reasonable decisions with respect to his treatment and was not likely to cause serious harm to himself or others if he was released." The inquiry and analysis should have ended right there, instead of entertaining and giving credence to the Attorney General's improper spinning of the matters that predated the order of commitment. Instead, the Court of Appeals engaged in the same folly as the State and the Circuit Court in citing to unproven, unauthenticated precommitment facts and without addressing the credibility or voracity of either of the only medical experts in the record in this case.

REPLY – ISSUE THREE

Not addressed by the State.

REPLY – ISSUE FOUR

Not addressed by the State.

CONCLUSION

As pointed out in the original Petition, these entire proceedings have been flawed and Mr. Carter is being held in violation of his constitutional rights. Mr. Carter was a victim of crippling mental illness, and now he is a victim of the circuit courts and the Court of Appeals, all of which have treated him like a criminal.

This Court's intervention to clarify the civil nature of these proceedings and the standards required to end Mr. Carter's deprivation of liberty (and likely that of many others) is desperately needed and compelling. It is respectfully submitted that the most direct way to accomplish that is to grant the Petition, dispense with further briefing, reverse the Court of Appeals and order Mr. Carter's transfer to outpatient treatment on such terms as are deemed appropriate under S.C. Code 44-17-580.[7] SCDMH would also welcome an update to this Court's 2014 Administrative Order, which makes no distinction between inpatient and outpatient commitment.

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[7] "An order for in-patient treatment at a mental health facility does not raise a presumption of incompetency and no rights may be denied a person unless specifically ordered by the court." Section 44-17-580(B). It is beyond the scope of these proceedings to analyze whether the treatment of Mr. Carter as a "defendant" in a criminal proceeding, as was done here, is a violation of § 44-17-580(B). SCDMH urges that the complexity and inconsistency of Title 17, Chapter 24 of the South Carolina Code, particularly juxtaposed against § 44-17-580, has most certainly contributed to the tyranny of civil proceedings for Mr. Carter and other victims like him.

Respectfully submitted,

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