RECEIVED

Aug 28 2026

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

Unpublished Opinion No. 2026-UP-022
(S.C. Ct. App. January 28, 2026)

Jevon Kenneth Carter, Petitioner
In re:
State of South Carolina, Respondent,
v.
Jevon Kenneth Carter, Respondent/Appellant/Petitioner.

PETITIONER JEVON CARTER'S REPLY TO THE STATE'S RETURN TO JEVON CARTER'S PETITION FOR WRIT OF CERTIORARI

D. Josev Brewer
SC Bar No. 69680
650 E. Washington Street
Greenville, South Carolina 29601
(864) 383-5250
joe@joebrewerlaw.com
Attorney for Petitioner Jevon Kenneth Carter

OTHER COUNSEL OF RECORD:

Desa Ballard
Law Offices of Desa Ballard
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

ATTORNEY FOR PETITIONER
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH

Alan Wilson (S.C. Bar No. 71754)
J. Benjamin Aplin (S.C. Bar No. 8729)
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone 803.734.3727
agwilson@scag.gov
baplin@scag.gov

W. Walter Wilkins III (S.C. Bar No. 16740)
305 E. North Street
Greenville, South Carolina 29601
Telephone: 864.467.8647
walt@wilkinsdavis.com

ATTORNEYS FOR RESPONDENT
THE STATE OF SOUTH CAROLINA

INDEX

Argument 1

I. The Respondent relies almost exclusively on behavior and incidents occurring before the Petitioner's hospitalization and treatment by the SCDMH and are, therefore, not relevant to the effectiveness of the NGRI process and the condition of Petitioner as of August 30, 2023. 2

II. Respondent's reliance on deficiencies with the SCDMH's Discharge Plan and Recommendation does not save the circuit court's order. 5

III. The expert testimony that Petitioner is no longer in need of hospitalization was unequivocal. 7

III. It is unconstitutional for circuit courts to rely on the severity of the underlying crime. 8

Conclusion 11

ARGUMENT

As the South Carolina Department of Mental Health ("SCDMH") emphasizes in its own Reply, it is hard to watch the State so vociferously fight itself over the most obvious application of its own statutory scheme to the most obvious benefactor of our NGRI process, in Mr. Carter. And, to do so, it makes repeated recourse to only items which precede the evidentiary hearing at issue on this appeal; Mr. Carter's treatment by SCDMH; or both. To their credit, the Attorney General's Office was not present at these hearings and are simply tasked with its obligations in advocacy. But, its representations to this Court are, respectfully, tortured and do not reflect in, any way, a legally justifiable basis to affirm the circuit court or to continue to resist the expert opinion of *everyone* that Petitioner should no longer be hospitalized.

And, indeed he should not be. There is no evidence to the contrary and only strong and compelling evidence in support. Co-Petitioner SCDMH – who is tasked with treating and serving as custodian of Petitioner, literally around the clock – emphatically agrees. Petitioner is being illegally and improperly held. It is a cruel and active injustice that is hurting the Petitioner, who is not a prisoner but a patient, in irreparable ways.

Indeed, it is incredible that Petitioner has been forced to file this Petition. Not only is it routine for individuals like the Petitioner to be released in this State (R. p. 35, lines 20-25), but he is also probably one of the safest and most compelling such cases in the history of NGRI (R. p. 34, lines 20-25; p. 35, line 4; p. 97, lines 16-22; pp. 368-69). There are currently approximately 47 individuals who were charged with murder or attempted murder and who have been discharged from the SCDMH. (R. p. 35, lines 20-25.) This appeal does not constitute some wishful or generic lawyering effort on behalf of the Petitioner – the error is deeply actual. It was reasonably assumed that Petitioner's incredible performance and medical remediation would have resulted in a fairly

uncontroversial discharge to supervision, upon hearing. But, the undersigned never could have anticipated the systemic resistance. It simply does not comport with the treatment of individuals similarly situated in this State or the law or the medical and expert assessment of the Petitioner. (See R. p. 35, lines 20-25.) SCDMH's emphatic presence in this appeal and Petition is a plain indication of the injustice at hand.

It is not an overstatement of advocacy that essentially the entirety of the Respondent's arguments in its Return relate to either:

1. facts that occurred prior to his admission to the SCDMH for treatment (see Ret. to Writ at 17-20);

   or

2. did not form any basis of the circuit court's ruling denying Petitioner's discharge to outpatient treatment (see Ret. to Writ at 18, 21).

The Respondent has still not identified any evidence, much less to a clear and convincing degree, from which the circuit court could have legally required Petitioner's continued hospitalization. In reply, to its specific arguments, Petitioner would rejoin as follows.

I. The Respondent relies almost exclusively on behavior and incidents occurring before the Petitioner's hospitalization and treatment by the SCDMH and are, therefore, not relevant to the effectiveness of the NGRI process and the condition of Petitioner as of August 30, 2023.

Respondent has primarily emphasized Petitioner's elopements from, and medicinal compliance at, Marshall Pickens, in the summer of 2020, *prior to his arrest and two years prior to his admission to the SCMDH,* as evidence from which the circuit court could somehow conclude that he both lacked insight into his condition and treatment and posed a substantial risk of harm, *as of the discharge hearing on August 30, 2023*. It is the core, indeed almost exclusive, "evidence"

of the Respondent throughout its Return.[1] ((Ret. to Writ at 17-20.). It is not an appropriate consideration even had it been relied upon by the circuit court, which it was not. It is a kind of inanity to continue to emphasize Mr. Carter's medicinal compliance at Marshal Pickens within days and months of a diagnosis for which no prior context existed. (Ret. to Writ at 17-18.)

It is the SCDMH, pursuant to the NGRI statutory scheme, which assesses and remediates the mental health condition – not the temporary treatment of a private institution years prior to any arrest and legal process. *See* S.C. Code Ann. § 17-24-40. The idea that the circuit court could rely on the condition of the Petitioner's disease and behavior at the time of, and near to, the incident offense to undermine the professional judgment of two expert physicians and the opinion of the SCDMH that *three years later* he no longer needs hospitalization would eviscerate the entire point of NGRI.

Respondent's argument is simply evidence of the *wrong* moment in time. *Of course* Petitioner was sick and non-compliant in July of 2020, when he committed the incidents crimes; it is what NGRI means. But, the circuit court's statutory obligation was to evaluate Petitioner's need for hospitalization as of August 30, 2023, after his treatment and evaluation by SCDMH. The NGRI statute explicitly states: "***If at a later date*** it is determined by officials of the State Hospital that the person is no longer in need of hospitalization, the officials must notify the chief administrative judge . . . ." S.C. Code Ann. § 17-24-40(c) (emphasis added). The phrase "[i]f at a later date" modifies "no longer in need of hospitalization" and presupposes that there may be a

[1] Respondent also makes passing reference to Petitioner's alleged refusal to take prescribed medications while being detained at the Greenville County Detention Center *prior* to his admission to SCDMH. (Ret. to Writ at 22.) As an initial matter, these records, from February 2022 through July 2022) were given no interpretation by any witness of the Respondent with personal knowledge of their meaning. More importantly, Petitioner had obviously not gone through the NGRI process – he was still a detainee. Bluntly, it is an abject distortion of Petitioner's conduct that he was ever being manipulative of a process or resistant to treatment subsequent to his arrest.

change in the patient's condition, during the course of his hospitalization with SCDMH, different from that which existed *before* the initial hospitalization. The relevant question is whether, at any subsequent moment after initial hospitalization with the SCDMH, to wit "the State Hospital", *id*., the Petitioner is no longer in need of hospitalization. In other words, the continuing need for the Petitioner's hospitalization is only evaluated *after* admission to, and evaluation by, the SCDMH. *See id*.

All of the compliance and behavioral issues cited by Respondent occurred before his commitment to SCDMH – all of them. (Ret. to Writ at 17-21.) All of the Respondent's citations to "MIP Records" or "GCDC Medication Records" reference behavior and incidents occurring before his hospitalization at SCDMH. By contrast and as tediously outlined in the Petitioner's Writ, there have been *no* compliance issues; behavioral problems; violence; threats; elopements; delusions; suicidal ideations; or even generic rudeness during his over year's time at SCDMH – **none**. (R. p. 30, lines 7-23; p. 34, lines 4-5; p. 40, lines 1-2; p. 87, lines 21-23; p. 92, lines 4-6; p. 369.)

Maybe the most distorted fact is the Respondent's insistence that Mr. Carter's expressed desire to go home *in 2022* is nefarious and strategic. (Ret. to Writ at 18.). Whether intentional or not, the Respondent is defending a devastating outcome. Just to be clear, the above stated desire to go home was not any part of the record considered by Judge Kinlaw. Regardless, Mr. Carter, of course, has long wanted to go home – because that is what he is legally entitled to and any person in his position would express the same longing. The experts in this case have not been "duped" by a clandestine and unimaginable wish of Petitioner, secretly held, to go home. It is the most obvious desire one could imagine under the circumstances. Dr. Alleyne explicitly testified that Petitioner has not been deceptive or malingering. (R. p. 35, lines 10-23.)

II. Respondent's reliance on alleged deficiencies with the SCDMH's Discharge Plan and Recommendation does not save the circuit court's order.

Respondent also continues to argue that SCDMH's proposed Discharge Plan justifies the circuit court's order. The insistent repetition of this position creates a kind of intellectual vertigo. **Judge Kinlaw's Order was not based on any issue with the proposed Discharge Plan**.

As previously recited in the Petition for Writ, the entirety of the substantive portion of the circuit court's Order reads as follows:

> In making its determination, the Court has reviewed and considered the Briefs and Memoranda submitted by the parties, arguments made at the hearing, the Violence Risk Assessment and other supporting documentation submitted at both the August 30 2023 and the December 8, 2022 hearing, the Courts previous orders in this case, and the testimonies of Dr. Jennifer Alleyne and Dr. Richard Frierson.
>
> Based on this review, the Court finds by clear and convincing evidence that the Defendant is still in need of inpatient treatment pursuant to the standard of §44-17-580(A). The Court finds that the Defendant is mentally ill; needs involuntary treatment; and because of his condition lacks insight or capacity to make responsible decisions regarding treatment; and there is a likelihood of serious harm to himself or others. Therefore, the Court orders that Defendant continue with inpatient treatment and be committed to the appropriate facility of SCDMH for further treatment.

(R. pp. 1-2.) There is no mention of the discharge plan; its effectiveness; or its conformity with the prior Order of Judge Gravely. The circuit court made its ruling exclusively on a belief that Petitioner lacked the insight to make decisions regarding his treatment and that there is a likelihood of serious harm to himself or others – conclusions for which there was no evidence. *See id.* It is an insult times two. Respondent is baiting this Court to affirm the circuit court not only on a ground for which there was no evidence (continued need of hospitalization) but also a ground (discharge plan) never *mentioned*.

But, even had it, Petitioner would reemphasize that the Discharge Plan recommendation can have no bearing on the circuit court's first statutory inquiry and decision to release Petitioner

to outpatient supervision. There are obviously two distinct and chronological statutory questions before the circuit court: First, is Petitioner "in need of continued hospitalization"? *See* S.C. Code 17-24-40(C)(2)(c). Second, if he is not, on what conditions should he be released? *See* S.C. Code 17-24-40(C)(2)(c) & (D). Contrary to the Respondent's contention, therefore, it unequivocally is a bifurcated process; this very Court has said so: "After conducting the hearing, if the Judge determines that the Defendant **IS NOT** in need of continued hospitalization, he shall issue an Order releasing the Defendant to the custody of the SCDMH for care and treatment under such terms and conditions as shall be appropriate." (S.C. S. Ct. Administrative Order, dated April 24, 2014, at 3 (emphasis in original).)

In other words, the second inquiry does not inform the first – because it is not implicated until the first is resolved. Respondent would use, what only it has characterized, as deficiencies in the SCDMH's discharge plan as some pretextual shield to argue additional hospitalization is required. But, as has been discussed, the hospitalization inquiry is a two-pronged test unrelated to conditions of release:

> Does the patient
>
> (1) have insight or capacity to make responsible decisions with respect to his treatment; and
>
> (2) is there a likelihood of serious harm to himself or others,

S.C. Code § 44-17-580. Once clear and convincing evidence, as was presented here, establishes that the patient has sufficient insight and is not a likely harm to himself or others – the Court is free to fashion whatever conditions of release it prefers. Respondent, paradoxically, argues that deficiencies in the recommendation of SCDMH somehow bind the court's hands to do differently than recommended with respect to discharge. In the one instance Respondent says that it is the circuit court's province to simply disregard the undisputed testimony of two experts on the

hospitalization inquiry, but, in the other, that it cannot also reject those same expert's recommendation as to conditions of discharge and fashion its own. It could have.

To say it differently, the circuit court, by statute, was free to order whatever conditions of release it preferred if it disagreed with SCDMH or ask them for new ones. Of course, here the circuit court never reached the issue at all.

III. The expert testimony that Petitioner is no longer in need of hospitalization was unequivocal.

Respondent tries to suggest to this Court that the expert testimony in this case was somehow materially qualified in its recommendation – in other words, not as adamant and plain as it actually was. Within the bounds of medical expertise, one could not imagine a more lopsided and full-throated opinion by Drs. Alleyne and Frierson that Petitioner has medically and legally relevant insight into his condition and that he no longer poses a substantial risk to himself or others. The *entirety* of the sworn testimony at the hearing insisted – (1) that Petitioner had unprecedented insight into his illness sufficient to make responsible treatment decisions (R. p. 26, line 7–p.27, line 8; p. 33, lines 2-5; p. 87, lines 6-17; p. 89, lines 3-22; p. 91, lines 7-8); (2) was not a substantial risk of harm to himself or others, (R. p. 27, line 10–p.28, line 1; p. 33, lines 6-10; p. 35, lines 6-9; p. 92, line 17-p.93, line 5); and (3) was no longer in need of hospitalization, (R. p. 65, lines 5-7; p. 99, lines 13-17; p. 369).)

And, Petitioner's discharge to outpatient supervision was never premised on a guarantee of no future violence. And, mercifully, the legal inquiry does not turn on the exercise of the Attorney General's Office's "common sense." (Return to Writ at 20.) Contrary to Respondent's argument, that is simply not the law. Respondent states, "as a matter of common sense and as shown by the evidence, it was reasonable for the circuit court to conclude Carter continued to pose a likely risk of serious harm to himself or others." *Id*. Given the unanimity and insistence of the

actual testimony endlessly recited by the Petitioner, if there is less "reasonable" basis for an Order under the law it cannot be imagined. Of course, in response to that directed question, the experts could not guarantee perfectly his future conduct. The standard is "substantial likelihood" of harm to himself or others. The expert witnesses effortlessly and adamantly testified in the negative to that inquiry – that Petitioner was not. (See R. p. 27, line 10–p.28, line 1; p. 33, lines 6-10; p. 35, lines 6-9; p. 92, line 17-p.93, line 5.)

IV. It is unconstitutional for circuit courts to rely on the severity of the underlying crime.

As exhaustively argued in the Petition, it is illegal for the circuit court or Respondent to continue to emphasize the underlying crime as some basis to decline his transition to outpatient supervision. *See Jones v. United State*, 463 U.S. 354, 369 (1983). The United States Supreme Court decision, in *Jones*, as discussed in the initial Petition, could not be any more direct: "There simply is no necessary correlation between severity of the offense and length of time necessary for recovery." *Id*. Persistent arguments in this regard make a mockery of the NGRI statute and process, which this Court has so exhaustingly explained in its Administrative Order.

The circuit court is not a parole board. It is not constitutionally or statutorily tasked with a wholistic evaluation of the behavior of the Petitioner over his life. As Petitioner SCDMH argues in its reply, the Petitioner is not accountable for the crime. He has been exonerated. The circuit court's evaluation is a therapeutic moment, not a punitive one. Section 17-24-40(D) states that "[a]ny terms and conditions imposed by the chief administrative judge must be therapeutic in nature, not punitive." S.C. Code 17-24-40(D) (emphasis added). The circuit court was required to evaluate, in light of the unanimous expert medical testimony, the *present* state of a "patient" not a prisoner.

Jevon Carter is only the most decent person for whom everyone who has ever actually met and spoken with him, in this process, vouches for unequivocally. His medications work. They have for a long time. He administers them. He is compliant, polite, and never a disciplinary issue. He has proper insight into both his condition and treatment. He is not a substantial risk to himself or others. The evidence is preposterously to only one conclusion. For ease of reference and citation:

1. **Petitioner has sufficient insight and capacity to make responsible decisions with respect to his treatment going forward.** (R. p. 26, line 7-p. 27, line 8; p. 33, lines 2-5; p. 87, lines 6-17; p. 89, lines 3-22; p. 91, lines 7-8; pp. 368-69.)

2. **Petitioner is not a serious harm to himself or others when properly treated.** (R. p. 27, line 10-p. 28, line 1; p. 33, lines 6-10; p. 92, line 17-p. 93, line 5; pp. 368-69.)

3. **Petitioner has exhibited *no violence or aggression* during his time at SCDMH, since August 16, 2022** (R. p. 35, lines 6-9; p. 92, lines 4-15; p. 93, lines 1-5; p. 368 ("Mr. Carter . . . has had no verbal or physical altercations on the unit.").

4. **Petitioner has had *no compliance or disciplinary issues* at the SCDMH**, (R. p. 92, lines 4-7; p. 368 ("Mr. Carter has consistently followed unit rules, interacts appropriately with staff and peers . . . .")).

5. **Petitioner has no "current symptoms of mental illness."** (R. p. 91, lines 9-10.)

6. **Petitioner has no** "**mood instability**." (R. p. 91, lines 10-11.)

7. **Petitioner has no "violent ideations**." (R. p. 91, lines 8-9.)

8. **Petitioner has been on the same medical regimen since, at least, the date of his NGRI evaluation on July 5, 2021, until now** (Compare R. p. 342 with p. 367); (R. p. 30, 87).

9. **Petitioner has been fully responsible and compliant with the self-administration of his medical regimen**. (R. p. 30, lines 7-23; p. 34, lines 4-5; p. 40, lines 1-2 (affirming Petitioner has never missed a dose); p. 87, lines 21-23; p. 92, lines 4-6; p. 369.)

10. **Petitioner cannot derive any additional benefit from further hospitalization**. (R. 32, line 18-p. 33, line 1; p. 99, lines 13-25.)

11. **Petitioner has good insight into his illness and the treatment regimen for that illness.** (R. p. 26, line 7–p.27, line 8; p. 33, lines 2-5; p. 87, lines 6-17; p. 89, lines 3-22; p. 91, lines 7-8; pp. 368-69.);

12. **His medical regimen effectively rehabilitates his diagnoses and mental illness and can be properly maintained on an outpatient basis.** (R. p. 58, lines 16-21; p. 64; p. 92, lines 4-15; p. 363.)

13. **Petitioner advanced through each level of the SCDMH without incident and without the need to repeat a stage.** (R. pp. 368-69; p. 35, lines 2-3.)

14. **Petitioner has had no disciplinary issues and has been active with his group and individual therapy**. (R. p. 369; p. 32, lines 22-25; p. 35, lines 1-9; p. 92, line 4-p. 93, line 5.)

15. **Petitioner is one of the most courteous, polite, highest functioning, and well-adjusted individuals Dr. Alleyne has ever treated at the Bryan Forensic Unit** (R. p. 34, lines 20-25; p. 35, line 4; p. 97, lines 16-22; pp. 351, 368-69.)

16. **Petitioner has expressed repeated remorse for his involvement with Ms. Mattison's death and lives with that sober reality every day.** (R. p. 46, lines 7-8; p. 88, lines 2-17; p. 89, lines 14-15.)

17. **He has not been deceptive or malingering.** (R. p. 35, lines 10-23.)

18. **"[T]o a reasonable degree of certainty . . . <u>Mr. Carter is no longer in need of hospitalization</u>**." (R. p. 65, lines 5-7; p. 99, lines 13-17; p. 369.)

Respectfully, "the State is no longer entitled to hold him on that basis." *Foucha*, 504 U.S. at 77 (emphasis added); s*ee also Olmstead v. L.C.*, 527 U.S. 581, 582 (1999) ("Unjustified placement or retention of persons in institutions severely limits their exposure to the outside community, and therefore constitutes a form of discrimination based on disability prohibited by Title II.").

CONCLUSION

It is of paramount importance, not only to Petitioner, but all future NGRI patients that this Court repair legal damage done to constitutional process below. If the Petitioner can be denied release to outpatient supervision based on the record in this case, *no one* could ever meet the statutory standard. The Petitioner respectfully renews his request that this Court grant *certiorari*, review this case, and reverse the decisions of the Court of Appeals and the circuit court, with directions to order Petitioner released upon appropriate conditions as provided by S.C. Code § 17-24-40(D) and this Court's April 24, 2014 Administrative Order.

Respectfully Submitted,

The Law Office of D. Josev Brewer, LLC

s/D. Josev Brewer
D. Josev Brewer
650 E. Washington St.
Greenville, SC 29601
864-383-5250
joe@joebrewerlaw.com
Attorney for the Petitioner Jevon Kenneth Carter

August 28, 2026