

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JAN 13 2014  
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
J. Michael Baxley, Circuit Court Judge

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Indictment Nos. 2011-GS-32-0242  
2011-GS-32-0243  
2011-GS-32-0244

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EX PARTE:

South Carolina Department of Disabilities  
and Special Needs, ..... Appellant.

IN RE:

State of South Carolina, ..... Respondent,

v.

Rocky A. Linkhorn, ..... Respondent.

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**REPLY MEMORANDUM IN SUPPORT OF  
PETITION FOR WRIT OF SUPERSEDEAS  
OR STAY PENDING APPEAL**

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The Appellant South Carolina Department of Disabilities and Special Needs  
(DDSN) has petitioned this Court for a writ of supersedeas or alternatively a stay

pending appeal of the Order Granting Solicitor's Rule to Show Cause Requiring DDSN to Accept Involuntary Commitment and Prohibiting Future Refusal by DDSN in Similar Cases filed September 26, 2013 (hereinafter referred to as "Judge Baxley's Order"). The Respondents State of South Carolina and Rocky A. Linkhorn have now filed returns to that petition.

The State opposes the supersedeas or stay pending appeal primarily on the basis that the State does not deem the supersedeas or stay to be necessary. The State contends that Judge Baxley's Order is prospective only and does not impact current placements of DDSN clients who are judicial commitments that are unfit to stand trial. The State further argues that the Order "simply does not require the placement of Respondent Linkhorn or any other individual found incompetent to stand trial in the future to be housed in the most restrictive placement possible." The State concludes that the Order "does not mandate any specific restrictive placement." Finally, the State contends that Judge Baxley's directives contained in paragraph #4 of the Conclusions of his Order regarding the development of "admissions and intake procedures" and the "development of secure facilities" for all "criminal defendants" who satisfy his construction of "intellectually disabled" are currently stayed at this time under Rule 241, SCACR.

Similarly, the Respondent Linkhorn argues that DDSN has "misinterpreted" Judge Baxley's Order. Linkhorn argues that the Order "did not direct the appellant

to immediately house its existing clients in prison-like facilities. Nor did it conclude that all persons in the subset that includes Linkhorn must be treated in this setting." Linkhorn further argues that "[o]nly respondent Linkhorn is affected by the court's order at this time" and that the Order sending Linkhorn to a secured facility such as GeoCare did not make that placement permanent. Linkhorn concludes that a supersedeas or stay "is unnecessary because the appellant misconstrues the scope of the order. Only respondent Linkhorn is affected by its provisions."

In reply, DDSN submits that its reading of Judge Baxley's Order differs from that of the Respondents. However, DDSN agrees that, if this Court construes the scope of that Order as affecting only Linkhorn and his placement, then a supersedeas or stay pending appeal is likely unnecessary. If the Order affects no other current or future clients and does not mandate placements in "secured facilities" such as GeoCare, or alternatively if future application or enforcement of Judge Baxley's Order as to persons other than Linkhorn is already stayed by Rule 241 as the State contends, then a supersedeas is not needed.

Nonetheless, to avoid any further confusion or misunderstanding as to the scope and enforceability of the Order during the pendency of this appeal with respect to other DDSN clients and future cases, DDSN respectfully requests that this Court directly state in its ruling that the Order on appeal has no application to

current clients of DDSN or any future cases and applies strictly to the Respondent Linkhorn. That is the ultimate relief sought by DDSN in its petition. Whether this Court grants that relief by issuing a writ of supersedeas or by declaring that Judge Baxley's Order applies prospectively to Linkhorn alone, DDSN is satisfied with either approach.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

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Department of Disabilities and Special Needs*

Columbia, South Carolina

January 13, 2014

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**CERTIFICATE OF SERVICE**

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The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Appellant, South Carolina Department of Disabilities and Special Needs, does hereby certify that service of the **Reply Memorandum in Support of Petition for Writ of Supersedeas or Stay Pending Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this

the 13th day of January 2014:

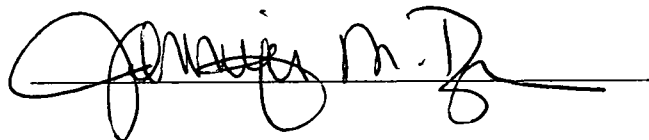
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A handwritten signature in black ink, appearing to read "Monique M. Lee", with a long horizontal line extending to the right.

DAVIDSON & LINDEMANN, P.A.

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January 13, 2014

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**Hand Delivered**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Edgar Brown Building  
1205 Pendleton Street  
Columbia, South Carolina 29201

RE: Ex Parte: South Department of Disabilities and Special Needs  
In Re: State of South Carolina v. Rocky A. Linkhorn  
Appellate Case Number: 2013-002208  
Indictment Numbers: 2011-GS-32-0242; 2011-GS-32-0243; 2011-GS-32-0244  
Our File Number: 79.9313

Dear Ms. Kitchings:

Please find enclosed for filing the originals and seven copies of the **Reply Memorandum in Support of Petition for Writ of Supersedeas or Stay Pending Appeal** with regard to the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb  
Enclosures

The Honorable Jenny Abbott Kitchings  
January 13, 2014  
Page Two

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cc: Tana Vanderbilt, Esquire (*w/ Enclosures*)  
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