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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 STATEAPPELLANT,

v.

CASEY DOUGLASRESPONDENT.

FINAL REPLY BRIEF OF APPELLANT

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REPLY ARGUMENT

Respondent asserts several procedural defenses that he maintains prevent the Court from reaching the two issues presented. Appellant, the State, submits that Respondent's arguments challenging appealability and preservation are misplaced and inapplicable here. Further, Respondent's merits argument cobbled together from different statutory sections is essentially a concession of the point raised by the State – the circuit court exceeded its authority under S.C. Code Ann. § 44-23-460. This reply briefly addresses Respondent's errors in presenting his arguments.

I. The order is appealable pursuant to S.C. Code Ann. § 14-3-330(2)(a) and the general requirement of sentencing first does not apply to a State's appeal.

Respondent argues the order is not appealable as it is akin to bond and pre-trial release. (BOR at 8). Further, he argues that the ruling may be revisited by the terms of S.C. Code Ann. § 44-23-450. (BOR at 10). Thus, he reasons, the State may not rely on S.C. Code Ann. § 14-3-330(2)(a) for an argument that the “order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action [.]” (BOR at 10, citing § 14-3-330(2)(a)).

Here, the provisions in (a) are applicable. Judge Hayes' order demonstrates an error of law that undermines the possibility of trial in this criminal matter. *Id.* In sum, the order departs from the statutory structure for restoring fitness for trial. A substantial right, truly, the duty to prosecute, and the related right to rely on secure inpatient treatment of those defendants charged with violent crimes who are not yet fit for trial, is detrimentally affected; thus, the matter is appealable. *Compare State v. Hill*, 314 S.C. 330, 331, 444 S.E.2d 255, 256 (1994) (“orders admitting respondents to bail” not appealable under § 14-3-330 because they “do not involve the merits, nor do the orders affect a substantial right which determines or discontinues the action”) *with Reed v.*

Becka, 333 S.C. 676, 681, 511 S.E.2d 396, 399 (Ct. App. 1999) (“[b]ecause it so significantly impairs the prosecution of a criminal case, an order which prohibits the State from withdrawing a plea offer is directly appealable by the State under§ 14-3-330(2)(a)”). Considering *Hill* and *Reed* together brings clarity to the appealability issue here.

In *Hill*, the matter to be considered was the grant of bond to capital defendants; not the merits, and not a ruling affecting the ability to go to trial. *Hill*, 314 S.C. at 331, 444 S.E.2d at 256. Further, bond was not prohibited by law and could be proper if considered under the standards set out in that case. *Id.*, at 332-333, 44 S.E.2d at 256-257. However, in *Reed*, the circuit court prohibited the State from withdrawing a plea offer which hamstrung the State in its ability to exercise its prosecutorial duty; if a plea based on the retracted offer was accepted, jeopardy would attach, and the State could not appeal. *Reed*, 333 S.C. at 681, 511 S.E.2d at 399. This case presents more as *Reed* than *Hill*.

First, and clearest, is that the State cannot go to trial until the defendant is returned to competency. Anything that lessens or detracts from the ordered restorative treatment in the manner prescribed by the statute is not just a clear error of law, but also, critically, does not merely impact but denies the State's ability to go to trial and obtain a judgment. Like the situation in *Reed*, the ability for the State to exercise its prosecutorial duty has been infringed.

Second, and relatedly, the order offends the right of the State to bring charges (here, two murder charges and a weapon charge) and be assured that the significant restriction on liberty as dictated by the statute is followed when a trial cannot be held in the usual course. The statute speaks in terms of hospitalization for a reason: restricted independence and inpatient treatment is contemplated, freedom and outpatient treatment is not. The statute does not authorize the relief granted. Whether some relief under the proper statutory direction could be granted aside, what is

clear is that the lower court failed to follow the path the Legislature designated in balancing the right to prosecution, and medical confinement for an incompetent defendant. Because the State raises a matter of law that both affects its prosecutorial duty and lessens the appropriate restrictions on liberty as a result of serious charges, this militates in favor of appealability. This appeal is premised on the allegation of error regarding a clearly defined, substantial right that has been infringed.

Third, the only relief available would be, by definition, pre-trial as the matter is based on management and treatment of a defendant. For restorative treatment, the statute speaks only to hospitalization. If incompetence continues, under S.C. Code Ann. § 44-23-460, because there is no possibility of dismissal of murder charges under the statute, there is only hospitalization or county detention under the indictments. Nothing in S.C. Code Ann. § 44-23-460 authorizes a circuit court to grant independence (and immunity) by transfer to an alternate facility. As with the first point, this also falls under the ability to exercise the State's prosecutorial duty consistent with the provisions set out in state statute.

Consequently, the State's challenge to the order falls cleanly within the allowable appeal provisions of § 14-3-330. Respondent's position that the instant appeal mirrors the appeal attempt in *State v. Dingle*, 279 S.C. 278, 306 S.E.2d 223 (1983) is incorrect. *Dingle* is wholly distinguishable.

In *Dingle*, the defendant was ordered to be evaluated for competency and sanity. The defendant attempted to appeal that order. The prosecution "withdrew its request for the examination thereby making that appeal moot." 279 S.C. at 281, 306 S.E.2d at 225. On appeal after his conviction, the defendant challenged the jurisdiction of the circuit court to continue with the trial proceedings as he attempted an appeal of the evaluation order. Our Supreme Court found

the order committing the defendant for evaluation was not immediately appealable, and there was no impact on jurisdiction. *Id.*, at 282, 306 S.E.2d at 225. Clearly, there is no challenge to authority to evaluation under § 44-23-410 – the attempted issue in *Dingle*. Here, the State is attempting to *enforce* the provisions of the Fitness to Stand Trial provisions, not frustrate them. *Dingle* lends no support to Respondent’s argument.

Further, Respondent notes the general rule that an appeal may only follow a conviction and sentence. (BOR at 9). That is correct for defendants. However, that cannot be applicable to the State since a conviction and sentence would trigger finality, mooted the appeal before it even began. *See generally State v. Quinn*, 430 S.C. 115, 124, 843 S.E.2d 355, 360 (2020) (explaining the State cannot appeal after conviction as it “is not an ‘aggrieved party’ permitted to appeal under Rule 201(b), SCACR” when it has “successfully secured a guilty verdict”).

Additionally, Respondent argues there is more that could be done below at some later time. (BOR at 9). However, he cannot argue that the stepped-down security and continued treatment which is not allowed by the statute would not begin. That is the harm, and that harm departs from the statutory structure and interferes with the State’s core function. Respondent’s corollary suggestion that the charges are not dismissed leaps from the fitness to stand trial to the trial. While that is where the State is trying to go when competency is deemed restored, at this point, that is frustrated by failure to abide by the statutory provisions. In essence, Respondent is proving the necessity of appeal.

Finally, Respondent appears to argue that additional proceedings, if any, may render the ruling interlocutory and/or moot. (BOR at 9-10). As explained, the harm is complete in failing to follow the statute which interferes with ordinary criminal law procedures. If Respondent is suggesting it is, or will be, moot, then this precisely fits the pattern of “capable of repetition, yet

evading review,” an established exception to mootness. *State v. Grissett*, 442 S.C. 183, 188, 898 S.E.2d 139, 142 (2024) (applying exception where “the issue is one capable of repetition yet evading review”). Again, Respondent fails to show procedural infirmity in either allowing the appeal to continue or to have the merits addressed.

II. The issue concerning the circuit court’s authority under S.C. Code Ann. § 44-23-460 and specifically whether the circuit court could release Douglas to an outpatient facility was the only issue below, thus, preservation of the issue is clearly shown.

Respondent suggests that whether § 44-23-460 was misapplied (Appellant’s Issue 1), was not properly raised below and is procedurally unavailable for review. The State argued repeatedly that the trial court could not release unless competent, and if competent, he must be tried. This is more than clear in the motion to reconsider where that is cleanly and expressly laid out. (R.p. 294-295). The State was advocating for continued inpatient care if not deemed competent to stand trial. (See R. p. 183-184, Dr. Maddox testifying that “there’s more the hospital can do for him[.]”). Identification of the statutory provisions at issue were not in question; only the application. Thus, the argument was fairly presented below. See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“[A]n objection must be sufficiently specific to inform the trial court of the point being urged by the objector.”). Respondent’s argument in support of a procedural bar lacks merit.¹

III. As to the merits, Respondent’s attempt to pull portions from various sections other than the one ruled on by the circuit court implicitly concedes the circuit court failed to follow S.C. Code Ann. § 44-23-460.

The order cannot be squared with the statute. The judge’s order exceeds what he is authorized to grant and must be set aside. Respondent essentially argues that looking elsewhere in the statutes may provide support, (*see* BOR at 3-16), but that is contrary to the very basis for

¹ Respondent apparently raises no procedural bar to Issue II. That would, at any rate, similarly be without merit and for the same reasons given the nature of the question and arguments before the circuit court.

the order as expressed by the trial judge and offends established rules of statutory construction. The judge's order was clearly based only § 44-23-460 as was the Department's motion. (R. p. 282-283 and n. 1). Thus, § 44-23-460's plain terms must be applied given that "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)). Of note, the Department observed in a November 18, 2022, assessment that Respondent Douglas had been approved for out-patient placement "but [that] requires his charges to be resolved first." (R. 499). The Department was correct before it abandoned its position and advocated for placement outside what is allowed under the statute.

§ 44-23-460 is plainly written so that, when the court finds a 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. (R. p. 223-224). The problem is that release is required to be accompanied by two different options; discharge if custody exceeded the maximum he could have been sentenced to serve (which is not applicable here), or resumption of proceedings against him if found fit.² It is the middle ground that the circuit court took – ordering continued treatment but not inpatient treatment – that has no support in the statute. The only path open to the court, upon finding Respondent incompetent, was to require him to be released back to the Spartanburg County Detention Center. There is no provision under S.C. Code § 44-23-460, to order continued treatment

² Respondent adds an observation in footnote 11 of his brief which appears to suggest the State wishes to have a specific ruling on dismissal. (BOR at 14 n. 11). As explained in the State's brief, the murder charges make dismissal inapplicable. (BOA at 20-22). Respectfully, Respondent's suggestion evidences a continued misunderstanding of the concrete provisions; thus, his suggestion fails to undermine the statutory argument on appeal.

and/or care in an unsecure facility. Thus, the circuit court had no authority under the statute to allow a step-down transfer to a non-secure facility.

CONCLUSION

Based on the arguments in Appellant's brief, along with the reply arguments presented here, Appellant again submits the lower court's order must be vacated and this matter remanded for proceedings consistent with the statute.

Respectfully submitted,

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