

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Lexington County
The Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-002208

RECEIVED
JUL 30 2015
SC Court of Appeals

EX PARTE:

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

IN RE:

State of South Carolina,Respondent,
v.
Rocky A. Linkhorn,..... Respondent.

MOTION FOR CERTIFICATION

The State of South Carolina respectfully requests that the Supreme Court certify this case for review pursuant to Rule 204(b), SCACR. This case involves an issue of significant public interest and a legal principle of major importance regarding the confinement of persons charged with crimes who are determined to be not competent to stand trial. The Record and Briefs have been filed in the Court of Appeals, but as of the date of the filing of this Motion, the Court of Appeals has not yet scheduled oral argument.

BACKGROUND

Set forth as follows are excerpts from the Brief of the State of South Carolina in this

case:

Rocky Linkhorn was arrested on July 14, 2010, and charged with Criminal Sexual Conduct with a Minor in the First Degree, Lewd Act on a Minor, and Disseminating Obscene Materials to a Minor. At the time of the hearing that gave rise to the Order appealed from in this matter, Linkhorn had been continuously incarcerated. (R. p. 97, l. 20 – p. 98, l. 6). These charges arise from the allegations that Linkhorn committed a sexual battery on a four-year-old female victim. (R. p. 98, ll. 17-18).

Prior to the alleged sexual battery and while incarcerated on another matter, Linkhorn attempted suicide at age 23 on March 13, 1998. The attempted suicide caused Linkhorn to suffer an anoxic brain injury. (Diagnostic Report signed August 2, 2012 (the “Diagnostic Report”)) (R. pp. 79-81). As a result of the brain injury, Linkhorn was diagnosed with a “dementia caused by an anoxic brain injury.” (R. p. 141, ll. 20-22). Linkhorn was evaluated for his fitness to stand trial and ultimately determined incompetent to stand trial and unlikely to obtain competency to stand trial in the foreseeable future for the reasons set forth in S.C. Code Ann. § 44-23-410. (Order of William P. Keesley Finding Lack of Competence to Stand Trial for the Foreseeable Future and Ordering Probated Commitment Proceedings dated November 2, 2011 (“First Judge Keesley Order”)) (R. pp. 35-36).

As a result of his finding of lack of competence, Judge Keesley ordered the Solicitor responsible for the prosecution of Linkhorn to initiate judicial [commitment] proceedings [due to mental illness] pursuant to S.C. Code Ann. §§ 44-17-510 through 44-17-610. (R. p. 36). On December 12, 2011, the Probate Court dismissed the proceedings because the designated examiners found that Linkhorn was not mentally ill. However, there were indications that Linkhorn suffered from a mental disability. (Amended Order of Judge Keesley filed February 28, 2012 (“Amended Order”)). (R. pp. 37-38). In the Amended Order, Judge Keesley ordered the solicitor to initiate judicial admission proceedings pursuant to §§ 44-17-510 through 44-17-610 and/or S.C. Code Ann. § 44-20-450 [Proceedings for the involuntary admission of a person with intellectual disability or a related disability to the services of the [D]epartment [of Disabilities and Special Needs.]

Assistant Solicitor Rhonda Patterson initiated judicial commitment proceedings in the Probate Court of Lexington County,

South Carolina. (Petition for Judicial Admission dated January 5, 2012 (the "Solicitor's Petition for Admission")). (R. pp. 45-46). Appellant South Carolina Department of Disabilities and Special Needs ("DDSN") issued the Diagnostic Report which evaluated Linkhorn pursuant to S.C. Code Ann. § 44-20-390 (Supp. 2011) wherein its examiners found:

Mr. Linkhorn clearly presents with significant cognitive impairment. A diagnosis of intellectual disability requires significant and concurrent deficits in intellectual and adaptive functioning prior to the age of 18. There is no available data to establish onset of Mr. Linkhorn's cognitive difficulties prior to the age of 18. Records seem to clearly correlate the onset of difficulties with an incident in 1998, when at the age of 23 Linkhorn attempted to hang himself and was subsequently given a diagnosis of encephalopathy secondary to anoxic brain injury. His current diagnosis of dementia includes the criterion of a significant decline from previous level of functioning. The DDSN Eligibility Determination Letter dated 7/30/2012 indicates that Mr. Linkhorn does not meet the criteria for a diagnosis of intellectual disability and he is therefore not eligible for DDSN services under that category. . . .

Thereafter, on January 2, 2013, Assistant Solicitor Rhonda Patterson filed a Motion for a Rule to Show Cause (the "Motion for Rule") in the Court of General Sessions of Lexington County, South Carolina. (R. pp. 47-48). The Probate Court dismissed the pending action and transferred the matter to the Circuit Court. . . .

On March 12, 2013, The Honorable Jean Hoefler Toal, Chief Justice of the Supreme Court of South Carolina, issued an Order vesting the Honorable J. Michael Baxley with exclusive jurisdiction to hear and dispose of all matters pertaining to the *State v. Rocky Linkhorn* case (the "Chief Justice's Order"). [footnote omitted] (R. p. 42). . . .

As a result of the Rule to Show Cause Hearing, Judge Baxley issued his Order Granting Solicitor's Rule to Show Cause; Requiring DDSN to Accept Involuntary Commitment; and Prohibiting Future Refusal by DDSN in Similar Cases (the "Order Granting Solicitor's Rule to Show Cause") (R. pp. 1-18). Judge Baxley found, based on

the evidence and testimony, that DDSN "currently denies involuntary commitment, care and treatment to those defendants whose cognitive impairments begin after the age of twenty-two, regardless of their treatment needs." (Order Granting Solicitor's Rule to Show Cause) (R. p. 8). He found that the "end result of this practice is that head, spinal cord, and/or brain-injured individuals [like Linkhorn] find themselves without care and treatment through involuntary commitment, potentially dangerous individuals are released to the general public, and potentially vulnerable individuals in need of care are warehoused in county jails in direct violation of § 44-23-220." (Order Granting Solicitor's Rule to Show Cause) (R. pp. 8-9).

Judge Baxley granted the State's motion and ordered the Eleventh Circuit Solicitor's Office to re-initiate the judicial commitment proceedings against Linkhorn and ordered DDSN to take custody of Linkhorn and to secure him in an appropriate facility until the reinitiated judicial proceedings could be completed. (Order Granting Solicitor's Rule to Show Cause) (R. p. 17). Further, DDSN was enjoined and prohibited from raising a defense that Linkhorn cannot be denied treatment and services under § 44-23-430 through an involuntary commitment because he has a head, brain, and/or spinal injury rather than an "intellectual disability" or a "related disability" as defined by S.C. Code Ann. §§ 44-20-30(12) and (15). (R. p. 17).

In addition, Judge Baxley found that DDSN had "engaged in a pervasive pattern and practice of denying involuntary services to otherwise eligible criminal defendants found incompetent to stand trial by a circuit court of competent jurisdiction" and that this practice "violates state law and infringes on the power of circuit courts." (R. p. 17). Therefore, Judge Baxley enjoined and prohibited DDSN from: . . . opposing petitions for involuntary commitment on the basis that a defendant is eligible for voluntary services in its head and spinal cord injury division. It is also enjoined from opposing petitions for involuntary commitment on the basis that a defendant does not have an 'intellectual disability' or 'related disability' as defined in S.C. Code Ann. § 44-30-30(12) and (15). The applicable threshold for involuntary commitment to DDSN services for criminal defendants who are unfit to stand trial is whether that defendant suffers from an 'intellectual disability' as defined in S.C. Code Ann. § 44-23-10(21). Order Granting Solicitor's Rule to Show Cause, (R. p. 18).

Finally, Judge Baxley ordered the development of "admission and intake procedures consistent with this Order for all criminal

defendants found to be suffering from an 'intellectual disability' as defined in S.C. Code Ann. § 44-23-10(21), and further shall provide for the development of secure facilities necessary thereto; or in the alternative, shall provide funds and necessary contractual arrangements to henceforth house such defendants in secure facilities operated by other entities." (Order Granting Solicitor's Rule to Show Cause) (R. p. 18).

DDSN has appealed the Order Granting the Solicitor's Rule to Show Cause.

Among other issues, DDSN's brief challenges the jurisdiction of Circuit Court Judge Baxley and the 2013 Order of the Chief Justice vesting jurisdiction in him. As set forth in that brief at page 9:

Consequently, even assuming that the Chief Justice's Order [of March 12, 2013] intended to vest exclusive jurisdiction over the pending Probate Court matter in the Circuit Court and to Judge Baxley, which the Order does not expressly do, then that Order would be in contravention of S.C. Code Ann. § 44-20-450. In sum, Judge Baxley's assumption of jurisdiction over the Petition for Judicial Admission filed in Probate Court was an abuse of authority and his Order should be ruled null and void *ab initio*.

The brief of the State argues that this Order of Baxley is consistent with the 2003 Order of the Chief Justice:

The 2013 Chief Justice's Order is consistent with a longstanding Order of the Chief Justice dated August 14, 2003, vesting Judge Baxley with statewide jurisdiction over enforcement of all outstanding and future orders issued by Courts of General Sessions committing defendants to the Department of Mental Health pursuant to §§ 44-23-430 or 17-24-40. (Supreme Court Order 2003-08-14-01 re: Hon. J. Michael Baxley vested with statewide jurisdiction over enforcement of all outstanding and future orders issued by the Courts of General Sessions committing defendants to the Department of Mental Health) (the "2003 Order") (R. p. 43).

The 2003 Order was in place at all times relevant to this matter as it was not superseded until May 7, 2014, when Chief Justice Toal vested the Honorable Frank R. Addy, Jr. statewide jurisdiction over enforcement of all outstanding

and future orders issued by the Courts of General Sessions committing defendants to the Department of Mental Health. (R. p. 44). The 2003 Order also provided that Judge Baxley “shall have jurisdiction to review and approve a statewide plan for the orderly and timely disposition of commitment orders and to monitor the status of all inmates currently in custody and awaiting admission pursuant to commitment orders.” (R. p. 43).

Brief of State at pages 9 and 10. The 2014 Order also gave Judge Addy “jurisdiction over enforcement of all outstanding and future orders issued by Courts of General Sessions committing defendants to [DDSN pursuant to . . . §44-2-450(8)].” R. p. 44

**THIS CASE PRESENTS ISSUES OF SIGNIFICANT PUBLIC INTEREST
AND A LEGAL PRINCIPLE OF MAJOR IMPORTANCE**

This issue of the confinement of persons charged with crimes who are determined to be not competent to stand trial needs to be resolved quickly as to the instant matter and because other similar issues have arisen elsewhere and are likely to recur. Attached is an Order in *State of South Carolina v. Ira Dewitt Hayes*, 2014-GS-46-02758, 03054, the Honorable Lee S. Alford, December 18, 2014 finding the Defendant incompetent to stand trial (report omitted) and a March 2, 2015 Order of the Probate Court, finding Mr. Hayes not mentally ill. *Ex Parte: Megan Fuller, Assistant Solicitor, In the Matter of Ira Dewitt Hayes*. DDSN has moved to dismiss a Petition for Judicial Admission for Mr. Hayes scheduled to be heard before the Probate Court on August 14, 2015. *Megan Fuller, Asst. Solicitor, Petitioner, In the Matter of Ira Dewitt Hayes, etc.* 2014MH46000336. (Notice of Hearing and Motion attached).

Guidance is critical for the instant case and similar cases because defendants charged

with crimes, particularly serious crimes¹, who are judged not competent to stand trial need to be in a place appropriate for the safety of the public and consistent with their disabilities and medical and mental health. The statutes and case law applicable to such individuals were not intended to let them “fall through the cracks” and be put on the streets placing the public and themselves at risk.² Issues related to these situations need to be resolved quickly, and the Supreme Court’s certifying this case and scheduling argument soon, would serve a significant public interest by expediting the appellate process for these issues of major importance.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar. No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

T. PARKIN HUNTER
Assistant Attorney General
S.C. Bar No. 2827
[Signature block continues next
page]

¹ As noted above, Mr. Linkhorn is charged with Criminal Sexual Conduct with a Minor in the First Degree, Lewd Act on a Minor, and Disseminating Obscene Materials to a Minor. Mr. Hayes is charged with charged with Assault & Battery, Second Degree, and Threatening the Life, Person, or Family of Public Official, Teacher, or Principal. Order of December 18, 2014.

² The State of South Carolina does not waive any claims or defenses in either the instant appeal or in the proceedings re the Defendant Ira Hayes regarding the custody, commitment or other status of Mr. Linkhorn and Mr. Hayes or any other inmate.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3680

By: 

July 30, 2015

ATTORNEYS FOR THE STATE

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

INDICTMENT NUMBERS:
2014-GS-46-03054
2014-GS-46-02758

VS.)

FINDING LACK OF COMPETENCE TO
STAND TRIAL

IRA DEWITT HAYES,)

DEFENDANT.)

AND ORDERING
PROBATE COMMITMENT PROCEEDINGS

This matter is before me pursuant to S.C. Code Ann. Section 44-23-430 (1976, as amended) regarding the issue of the Defendant's competence to stand trial.

Defendant is charged with Assault & Battery, Second Degree, and Threatening the Life, Person, or Family of Public Official, Teacher, or Principal. Pursuant to a previous Court Order, Ira Hayes was evaluated by both the Department of Disability and Special Needs and the Department of Mental Health on September 22, 2014 and December 2, 2014. In a report dated December 3, 2014, the examiner found that the Defendant is not currently competent to stand trial and is unlikely to become competent in the foreseeable future. The report was statutorily admitted into evidence pursuant to S.C. Code Ann. §44-23-420(C), and a copy of said report is attached hereto and incorporated herein by reference.

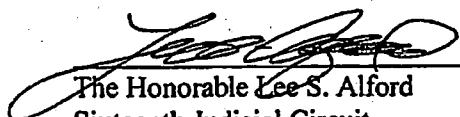
A copy of said report has been reviewed by the respective parties, Megan Fuller, Assistant Solicitor, and Mark McKinnon, counsel for the Defendant. Both parties concur in the conclusions drawn by the examiner in the aforementioned report, and neither party is contesting these conclusions. Therefore, neither party is seeking to offer the testimony of the examiner at a hearing on the issue of the Defendant's competence to stand trial.

Based on the examiner's report, I find that the Defendant is currently incompetent to stand trial for the reasons set forth in S.C. Code Ann. Section 44-23-410 (1976, as amended), and unlikely to become competent in the foreseeable future.

THEREFORE IT IS ORDERED, pursuant to S.C. Code Ann. Section 44-23-430(2), the Solicitor responsible for prosecution of the Defendant shall initiate judicial admission proceedings in


the County Probate Court pursuant to S.C. Code Ann. Section 44-17-510 through Section 44-17-610, within fourteen (14) business days from the date of this Order.

IT IS SO ORDERED.

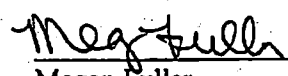

The Honorable Lee S. Alford
Sixteenth Judicial Circuit

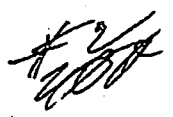
Dec 18, 2014
York, SC

I consent:


Mark McKinnon
Attorney for the Defendant
Public Defender's Office
Sixteenth Judicial Circuit

I consent:


Megan Fuller
Assistant Solicitor
Office of the 16th Circuit Solicitor



STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE PROBATE COURT

EX PARTE:

MEGAN FULLER, ASST. SOLICITOR
(Petitioner / Applicant)

ORDER OF DISMISSAL

IN THE MATTER OF:

IRA DEWITT HAYES
(A Person Alleged to be Mentally Ill)

(Strike a., b., or c., whichever two are incorrect)

a. Upon reading the Report of the Two Designated Examiners that the above-named person is not mentally ill,

ON ~~b. Upon reading the Report of Disagreement by the Two Designated Examiners,~~

c. After a full hearing on the issues involved herein and consideration of the testimony and record, and it appearing that there is not clear and convincing evidence that the above-named person is mentally ill,

IT IS ORDERED:

d. That the petition / application herein be dismissed.

(Strike out e., if inapplicable)

ON ~~e. That the person alleged to be mentally ill be released from the facility in which he/she is presently detained.~~

Dated this 2 day of

Carolyn W. Rogers (SEAL)
Judge of Probate Court

MARCH, 20 15.

MUST PRINT ON BLUE PAPER ONLY

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Megan Fuller, Asst. Solicitor,)
)
PETITIONER)
)
IN THE MATTER OF:)
)
Ira Dewitt Hayes,)
)
An alleged intellectually disabled person)
)
DOB: Redacted)

IN THE PROBATE COURT
CASE NO.: 2014MH4600336

NOTICE OF HEARING

TO: Tara Vanderbilt, Esq. - SCDDSN, P. O. Box 4706, Columbia, SC 29240
Megan Fuller, Esq., -1675-1C York Highway, York, SC 29745
Mark McKinnon, Esq. - P. O. Box 691, York, SC 29745
Thomas B. Roper, Esq. - 1721-14 Ebenezer Road, Rock Hill, SC 29732
Ira Dewitt Hayes - York County Detention Center, York, SC 29745

A hearing has been set in the above entitled action for the 14th day of August, 2015
at 11:00 a.m.. You are hereby notified to be present at the York County Probate
Court at the aforesaid time.

Dated: July 28, 2015
York, South Carolina

Charolyn W Rogers
York County Probate Court Judge

Address of York County Probate Court:
1 East Liberty Street, York, SC 29745

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE PROBATE COURT
CASE NO.: 2014MH4600336

Megan Fuller,)
)
Petitioner))

NOTICE and MOTION TO
DISMISS

IN THE MATTER OF:)
)
)

Ira DeWitt Hayes)
(An alleged intellectually disabled individual))
DOB: Redacted)

TO: Megan Fuller, Esq., Attorney for Petitioner
Mark McKinnon, Esq., Attorney for Mr. Hayes
Thomas B. Roper, Esq., GAL for Mr. Hayes

Please take Notice, the South Carolina Department of Disabilities and Special Needs by and through its undersigned attorney, will move on August 14, 2015 at 11:00 a.m., for an Order pursuant to Rule 12 (b) of the South Carolina Rules of Civil Procedure to dismiss the Petition for Judicial Admission received by the South Carolina Department of Disabilities and Special Needs on March 24, 2015, by regular mail. The South Carolina Department of Disabilities and Special Needs requests that this court dismiss the Petition. The grounds for this Motion are as follows:

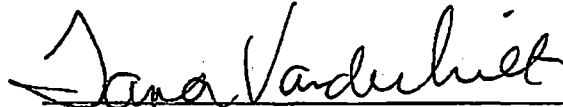
1. The diagnostic report determined that Mr. Sullivan does not have an intellectual disability or a related disability.
2. Pursuant to SC Code 44-20-450 (D) the petition shall be dismissed.

Based on the above, the Petition for Judicial Admission must be dismissed.

Respectfully submitted,

July 27, 2015

Columbia, South Carolina



Tana Vanderbilt, General Counsel

South Carolina Department of Disabilities
and Special Needs
P.O. Box 4706
Columbia, SC 29240
Phone: (803) 898-9683
Fax: (803) 898-9656

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
The Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-002208

RECEIVED

JUL 30 2015

SC Court of Appeals

EX PARTE:

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

IN RE:

State of South Carolina,Respondent,

v.

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

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2015, I served a copy of the Motion for Certification of the State upon the other parties by depositing copies of it in the U.S. Mail, postage prepaid, addressed as follows to their attorneys::

Andrew F. Lindemann, Esquire
William H. Davidson, Esquire
Davidson & Lindemann, P.A.
Post Office Box 8568
Columbia, South Carolina 29202-8568

CERTIFICATE OF SERVICE

Linkhorn v. State

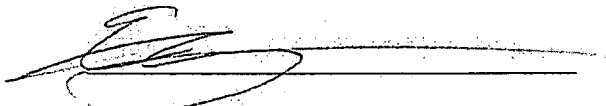
July 30, 2015

Page 2

Tana Vanderbilt, Esquire
General Counsel
South Carolina Department of
Disabilities and Special Needs
Post Office Box 4706
Columbia, South Carolina 29240

Rhonda W. Patterson, Esquire
Eleventh Circuit Solicitor's Office
205 East Main Street
Lexington, South Carolina 29072

Elizabeth C. Fullwood, Esquire
Office of the Public Defender, Eleventh Judicial circuit
407 ½ West Main Street
Lexington, South Carolina 29072



J. Emory Smith, Jr.
Deputy Solicitor General
S.C. Bar No. 5262



ALAN WILSON
ATTORNEY GENERAL

July 30, 2015

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
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JUL 30 2015
SC Court of Appeals

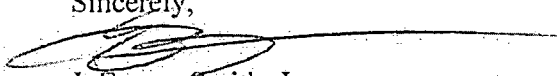
RE: Ex Parte: South Carolina Department of Disabilities and Special Needs
In Re: State of South Carolina v. Rocky A. Linkhorn
Appellate Case Number: 2013-002208

Dear Mr. Shearouse:

Please find enclosed for filing with your Office are the original and six copies of the Motion for Certification of Respondent State of South Carolina. By copy of this letter, I am serving copies on all counsel of record. I am also mailing copies to counsel involved in proceedings regarding Mr. Hayes whose proceedings are referenced in the Motion, and counsel for the Department of Mental Health for information and filing a copy at the Court of Appeals.

I would appreciate your stamping the enclosed copy of this letter and returning it via our courier. Thank you for your assistance in this matter.

Sincerely,


J. Emory Smith, Jr.
Deputy Solicitor General

cc: The Honorable Jenny Abbott Kitchings
Andrew F. Lindemann, Esquire
William H. Davidson, Esquire
Tana Vanderbilt, Esquire
Rhonda W. Patterson, Esquire
Elizabeth C. Fullwood, Esquire
Monique M. Lee, Esquire
Mark T. McKinnon, Esquire
Thomas B. Roper, Esquire
Megan Y. Fuller, Esquire



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SC Court of Appeals



The Honorable Jenny Abbott Kitchings
Clerk of Court
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