

**THE STATE OF SOUTH CAROLINA**

**IN THE COURT OF APPEALS**

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APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS  
THE HONORABLE D. CRAIG BROWN  
CIRCUIT COURT JUDGE

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APPELLATE CASE NO. 2016-001544  
CIVIL ACTION NO. 2016-CP-40-02459

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Sean Lyons,

**APPELLANT,**

versus

Palmetto Richland Springs,

**RESPONDENT.**

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**INITIAL BRIEF OF RESPONDENT**

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SC Court of Appeals

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
COUNTERSTATEMENT OF ISSUES ON APPEAL .....	1
COUNTERSTATEMENT OF THE CASE.....	1
COUNTERSTATEMENT OF FACTS .....	3
ARGUMENT.....	3
<b>I.    THE CIRCUIT COURT PROPERLY HELD THAT THE APPELLANT’S APPEAL FROM THE PROBATE COURT ORDER WAS UNTIMELY .....</b>	<b>4</b>
<b>II.   THE CIRCUIT COURT DID NOT ERR IN THE APPLICATION OF S.C. CODE ANN. § 44-17-620.....</b>	<b>8</b>
<b>III.  APPELLANT’S ARGUMENTS ARE NOT PRESERVED.....</b>	<b>9</b>
<b>IV.   EVIDENCE SUPPORTED THE PROBATE COURT FINDING.....</b>	<b>10</b>
CONCLUSION.....	11

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Argoe v. Three Rivers Behavioral Health, L.L.C.,</u> 392 S.C. 462, 710 S.E.2d 67 (2011).....	4,5
<u>Bounds v. Smith,</u> 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1978).....	6
<u>Dean v. Kilgore,</u> 313 S.C. 257, 437 S.E.2d 154 (Ct. App. 1993).....	10
<u>Elam v. S.C. Dep't of Transp.,</u> 361 S.C. 9, 602 S.E.2d 772 (2004).....	9
<u>Gaffney v. Peeler,</u> 21 S.C. 55 (1884).....	9
<u>Gold v. South Carolina Bd. of Chiropractic Exam'rs,</u> 271 S.C. 74, 245 S.E.2d 117 (1978).....	8
<u>Home Health Serv., Inc. v. South Carolina Tax Comm'n,</u> 312 S.C. 324, 440 S.E.2d 375 (1994).....	8
<u>In re Treatment &amp; Care of Luckabaugh,</u> 351 S.C. 122, 568 S.E.2d 338 (2002).....	8
<u>Joytime Distribs. and Amusement Co., Inc. v. State,</u> 338 S.C. 634, 528 S.E.2d 647 (1999).....	8
<u>Kollins v. S.C. Dep't of Mental Health,</u> No. CA 804-1599-CMC-BHH, 2007 WL 790010, at *2 (D.S.C. Mar. 14, 2007).....	5, 6
<u>Lewis v. Casey,</u> 518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996).....	6
<u>Long v. Dunlap,</u> 87 S.C. 8, 68 S.E. 801 (1910).....	9
<u>Matter of Howard,</u> 315 S.C. 356, 434 S.E.2d 254, (1993).....	9, 10
<u>Mims v. Alston,</u> 312 S.C. 311, 440 S.E.2d 357 (1994).....	4, 5

Wilder Corp. v. Wilke,  
330 S.C. 71, 497 S.E.2d 731 (1998).....9

**OTHER AUTHORITIES**

S.C. Code Ann. § 44-17-580.....3, 4  
S.C. Code Ann. § 44-17-620.....3, 4, 7, 8

### COUNTERSTATEMENT OF ISSUES ON APPEAL

- 1. THE CIRCUIT COURT PROPERLY HELD THAT THE APPELLANT'S APPEAL FROM THE PROBATE COURT ORDER WAS UNTIMELY**
- 2. THE CIRCUIT COURT DID NOT ERR IN THE APPLICATION OF S.C. CODE ANN. § 44-17-620**
- 3. APPELLANT'S ARGUMENTS ARE NOT PRESERVED**
- 4. EVIDENCE SUPPORTED THE PROBATE COURT FINDING**

### COUNTERSTATEMENT OF THE CASE

On February 16, 2016, police responded to a report that the Appellant was behaving strangely. The responding officers concluded that the Appellant may have some mental health concerns. As a result, he was taken to Palmetto Health Baptist emergency department. After two days at Palmetto Health Baptist, the Appellant was transferred to Palmetto Health Richland Springs on February 18, 2016 for a mental health evaluation and treatment. On February 19, 2016, an Application for Involuntary Emergency Hospitalization for Mental Illness was completed. The Probate Court also filed a Notice of Hearing, Appointment of Counsel, Appointment of GAL, Appointment of Designated Examiners, dated February 24, 2016. The Appellant stayed at Palmetto Health Richland Springs until March 8, 2016. (Application for Involuntary Emergency Hospitalization for Mental Illness; Notification of Emergency Admission dated February 17, 2016, Appointment of Designated Examiner dated February 19, 2016; Notice of Hearing, Appointment of Counsel, Appointment of GAL, Appointment of Designated Examiners, dated February 24, 2016; July 6, 2016 Order, p. 1; March 8, 2016, Order Regarding Writ of Habeas Corpus)

On February 22, 2016, Dr. McGough completed a Report of Designated Examiner for Mental Illness, which read as follows:

Patient remains guarded, evasive, & delusional. He refused to provide history information. He has been agitated and sexually inappropriate. He exhibits illogical thought process. The Patient has written a writ of habeas[sic] corpus and insists I am imprisoning him unlawfully. He demonstrates impaired insight/judgment. Given impairment in thought process & content, he remains a danger to himself/others, in need of mandatory treatment.

(McGough Report, p. 1) Dr. McGough's report was filed with the Probate Court on February 25, 2016, and then subsequently became part of the Circuit Court record. Id.

Also filed on February 25, 2016 and also appearing in the Circuit Court record was a February 23, 2016 Report of Designated Examiner for Mental Illness completed by Andrea Gantt, LMSW. Ms. Gantt stated as follows:

Patient admitted d/t aggression and bizarre behavior displayed in ED after being brought to the ED by EMS and law enforcement. Pt. has been very grandiose and guarded [with] his responses. He complains of being held against his will and is demanding immediate release and/or hearing.

(Gantt Report, p. 1)

On February 24, 2016, the Probate Court received a Petition for Habeas Corpus of the Petitioner Sean Lyons dated February 22, 2016. (Petition for Habeas Corpus; March 8, 2016 Order) On March 3, 2016, the Probate Court issued an Order committing the Appellant to Palmetto Richland Springs for inpatient care and treatment. (March 3, 2016 Order; July 6, 2016 Order, p. 1-2) On March 8, 2016, the Probate Court issued an Order addressing the Appellant's Petition for Habeas Corpus wherein the Court found Habeas Corpus relief was not applicable to his commitment and ordered he shall remain committed for further inpatient treatment. (March 8, 2016 Order Regarding Writ of Habeas Corpus). Also on March 8, 2016, the Appellant was transferred to the South

Carolina Department of Mental Health Bryan Psychiatric Hospital. (July 6, 2016 Order, p. 1-2) The Appellant's brief states that he was released from inpatient care on March 31, 2016. (IBOA, p. 2)

On April 15, 2016, the Appellant appealed the March 3, 2016, Probate Court Order. (Notice of Appeal and Intention to Appeal filed April 15, 2015) On June 10, 2016, the Appellant and Respondent appeared before the Circuit Court on this appeal. (June 10, 2016 hearing transcript) At the hearing, the Respondent submitted a memorandum of law dated June 10, 2016. (Respondent's Memorandum of Law in Opposition) Following the hearing, the Appellant submitted a memorandum of law dated June 13, 2016. (Appellant's Response to Respondent's Memorandum of Law in Opposition) By order dated July 6, 2016, the Circuit Court dismissed his appeal as untimely, holding that the Appellant failed to appeal within the prescribed fifteen-day time limit set forth in S.C. Code Ann. § 44-17-620. The Circuit Court further found that the Probate Court order should not be disturbed where a review of the record revealed sufficient evidentiary support for the order. (July 6, 2016 Order, p. 1-2)

### **COUNTERSTATEMENT OF FACTS**

On February 18, 2016 through March 8, 2016, the Appellant was treated at Palmetto Health Richland/Richland Springs. The examiners' reports state he acted agitated, sexually inappropriate, aggressive and bizarre. The reports indicate he was illogical, delusional, and a danger to himself and others. (McGough report, Gantt report)

## ARGUMENT

### **I. THE CIRCUIT COURT PROPERLY HELD THAT THE APPELLANT'S APPEAL FROM THE PROBATE COURT ORDER WAS UNTIMELY**

Respondent submits that the Circuit Court properly held that the Appellant's appeal from the Probate Court order was untimely where it exceeded the statutorily prescribed time for appeals set forth in S.C. Code Ann. § 44-17-620. (July 6, 2016 Order, p. 2) The statute reads as follows:

The petitioner or the person shall have the right to appeal from any order of the probate court issued pursuant to Section 44-17-580 to the court of common pleas of the county where the probate court is situated. The notice of intention to appeal together with the grounds for the appeal shall be filed in the probate court and the court of common pleas within fifteen days of the date of the order issued pursuant to Section 44-17-580....

S.C. Code Ann. § 44-17-620

As argued by the Respondent before the Circuit Court, under South Carolina law, a party must file both a notice of intention to appeal and their grounds for appeal within the fifteen-day deadline. South Carolina case law supports the dismissal of an appeal for falling outside of this statutorily prescribed timeline.

In Mims v. Alston, the South Carolina Supreme Court upheld the fifteen-day appellate window from a probate court order. Mims was committed via order dated April 23, 1991. She was subsequently transferred to a psychiatric hospital where she remained until June 27, 1991. Mims v. Alston, 312 S.C. 311, 312-13, 440 S.E.2d 357, 358 (1994) In Mims, there were two probate court orders. After the April 23, 2016 order, the Appellant filed a "Memorandum Of Law In Support Of Her Argument That She Be Released" on May 16, 1991. After a second probate court order issued on May 23, 1991,

the Appellant filed a notice of appeal the next day, on May 24, 1991, but did not file the grounds for her appeal. Id. 312, 358.

The Supreme Court upheld the circuit court ruling that found the “appellant had not perfected her appeal of either order because she had not filed grounds for appeal within the fifteen-day limit provided under S.C. Code § 44-17-620 (1985).” Id. at 313, 358. In Mims, the Appellant remained committed throughout the fifteen-day appellate period. Despite her status in the mental hospital, the Supreme Court found the fifteen-day statute of limitations was applicable. Likewise, this Court should uphold the lower court’s application of the fifteen-day statute of limitations in the case at hand. See also Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 471, 710 S.E.2d 67, 72 (2011)(Court held the Appellant could not collaterally challenge the commitment orders where the fifteen-day time period for an appeal had lapsed).

As argued before the lower court, the Probate Court in this case issued an Order of Detention on March 3, 2016, making March 18, 2016 Lyons’ statutorily mandated appeal deadline. The statute does not provide for any excuses permitting late filing, including detention as asserted by Appellant Lyons. As Appellant failed to appeal in a timely manner, this Court should affirm the Circuit Court’s dismissal of his appeal as untimely.

The Appellant seems to argue that his status as a confined mental health patient justifies his delay in filing an appeal. However, the statute is specifically tailored to appeals from mental health confinement orders and, thus, such confinement was considered when establishing a fifteen-day window. Additionally, Mims addressed a

similar instance of an Appellant being confined in a mental health institution during the fifteen-day appellate time period and the court found the statute of limitations applicable.

The Appellant contends that Respondent was required to give him access to a law library and law materials and Respondent's alleged failure to do so resulted in his denial of a right to appeal. In Kollins v. S.C. Dep't of Mental Health, the South Carolina District Court examined a claim from a Plaintiff confined in the South Carolina Department of Mental Health alleging that he had a constitutional right to a law library. The South Carolina District Court found that while prisoners and mental health detainees are entitled to "meaningful access" to the courts, this does not require "access to a law library or legal assistance in filing lawsuits." Kollins sets this notion forth in the following excerpt:

In *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1978), the Supreme Court defined access to the courts for prisoners as "meaningful access." *Bounds*, 430 U.S. at 830.

This was interpreted to require institutions to provide access to a law library or legal assistance in filing lawsuits. However, the *Casey* decision, issued in 1996, indicated that "*Bounds* established no such right.... The right that *Bounds* acknowledged was the (already well-established) right of *access to the courts*." *Lewis v. Casey*, 518 U.S. at 350. The *Casey* decision distanced itself from the more expansive *Bounds* decision, finding that *Bounds* "appear[s] to suggest that the State must enable the prisoner to *discover* grievances, and to *litigate effectively* once in court.... These elaborations upon the right of access to the courts have no antecedent in our pre-*Bounds* cases, and we now disclaim them." *Casey*, 518 U.S. at 343. The *Casey* court went on:

In other words, *Bounds* does not guarantee inmates the wherewithall to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply

one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.

*Id.* at 355. The “touchstone,” according to *Casey*, is that inmates be afforded “a reasonably adequate opportunity to file nonfrivolous legal claims challenging their convictions or conditions of confinement.” *Id.* at 356.

As a fundamental tenet associated with our basic concepts of ordered liberty, an individual whose liberty is constrained against his will, whether he be a mental patient, a criminally-convicted inmate, a pre-trial detainee, or an individual civilly committed through an SVP act, has a constitutional right of access to the courts to challenge the fact or conditions of his confinement....

Kollins v. S.C. Dep't of Mental Health, No. CA 804-1599-CMC-BHH, 2007 WL 790010, at \*2 (D.S.C. Mar. 14, 2007). The Court continued, stating that Casey found a legal library was only one method by which access to the courts may be accomplished and that it was not required as a matter of constitutional right. *Id.*

The Appellant makes generic assertions that the Respondent prevented the Appellant from appealing his commitment and failed to provide him with legal materials. The Appellant does not specifically outline in what way he was prevented from filing legal documents, what legal materials he needed, or how he was prevented from obtaining the same. The Appellant further alleges he was denied access to legal counsel. However, the Appellant submitted a petition for habeas corpus on February 24, 2016. This petition was examined by the Probate Court and addressed in the Probate Court's March 8, 2016 Order Regarding Writ of Habeas Corpus. The Appellant's ability to file this petition and receive a ruling on the same is evidence of the Appellant's access to the court following the March 3, 2016, Order of Detention. His argument that the Respondent directly denied him access to the courts, legal materials or an attorney fails where he demonstrated his ability to file matters before the court during his commitment

period. Where the Plaintiff has failed to demonstrate he was denied access to the courts and the record reveals evidence to the contrary, this Court should affirm the Circuit Court's dismissal of his appeal from the Probate Court order.

## II. THE CIRCUIT COURT DID NOT ERR IN THE APPLICATION OF S.C. CODE ANN. § 44-17-620

The Appellant argues that a fifteen-day appellate window is "so insufficient, under the circumstances, that it becomes a denial of justice." (IBOA, p. 4) S.C. Code Ann. § 44-17-620 clearly sets forth a fifteen-day statute of limitations, so the Appellant appears to be arguing the statute amounts to a denial of justice. The South Carolina Supreme Court has noted that the Court does not favor finding statutes unconstitutional.

This Court is reluctant to find a statute unconstitutional. Every presumption is made in favor of a statute's constitutionality. *Gold v. South Carolina Bd. of Chiropractic Exam'rs*, 271 S.C. 74, 245 S.E.2d 117 (1978). A "legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." *Joytime Distribs. and Amusement Co., Inc. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999). [The Appellant] bears the burden of proving the statute unconstitutional. *See Home Health Serv., Inc. v. South Carolina Tax Comm'n*, 312 S.C. 324, 440 S.E.2d 375 (1994).

In re Treatment & Care of Luckabaugh, 351 S.C. 122, 134–35, 568 S.E.2d 338, 344 (2002). As established in Luckabaugh, the Appellant has a burden to demonstrate that fifteen-days to appeal a Probate Court order amounted to a clear constitutional violation beyond any reasonable doubt. Where the Appellant has failed to demonstrate that the statute amounts to a constitutional violation, then the Appellant has not met his burden of proof regarding the same. As a result, the Circuit Court's application of S.C. Code Ann. § 44-17-620 and its time bar was appropriate and should be affirmed.

### III. APPELLANT'S ARGUMENTS ARE NOT PRESERVED

At the June 10, 2016, Circuit Court hearing stemming from Appellant's appeal from the Probate Court order, Respondent argued that the appeal was untimely. Appellant did not respond to the timeliness argument at the hearing, but did ask for additional time to submit a legal memorandum. In his legal memorandum dated June 13, 2016, the Appellant states he filed his appeal at the earliest possible date. He argues that the statutory language allows for an appeal outside the fifteen-day window. (Appellant's Response to Respondent's Memorandum of Law in Opposition, p. 1-2). He does not, however, argue that his untimeliness was the result of a lack of access to legal materials or an attorney. Nor does he argue that S.C. Code Ann. § 44-17-620 amounts to a denial of justice. Since the Appellant did not raise these arguments before the lower court, they are not properly preserved for review by this Court.

[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court. *E.g., Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Long v. Dunlap*, 87 S.C. 8, 68 S.E. 801 (1910) (Supreme Court will not consider any point which was not presented and considered below unless it involves jurisdiction of the court); *Gaffney v. Peeler*, 21 S.C. 55 (1884) (question of law which was not presented to or passed upon by the trial court cannot be raised on appeal); Rule 210(c), SCACR (record on appeal shall not include matter which was not presented to lower court).

Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-80 (2004)

Where the Appellant's issues on appeal were not raised and ruled upon by the Circuit Court, the Respondent respectfully requests this Court dismiss them for a lack of appellate preservation.

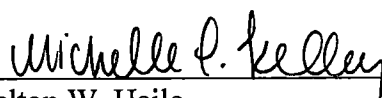
#### **IV. EVIDENCE SUPPORTED THE PROBATE COURT FINDING**

The Circuit Court's order notes that even if the appeal had been timely filed, evidence existed to support the Probate Court order confining the Appellant for mental health treatment. (July 6, 2016 Order, p. 2) Respondent urges this Court to affirm the lower court's decision that the appeal was untimely. However, in the alternative, Respondent respectfully requests this Court find that the Probate Court order should be affirmed where it was based on two examiner reports recommending the Appellant's commitment. "If the proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." Matter of Howard, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). See also Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (Ct. App. 1993). The Circuit Court found the Probate Court's March 3, 2016 Order had evidentiary supported and affirmed on that basis. As an alternative argument, we respectfully request this Court affirm the Circuit Court's finding that the Probate Court had sufficient evidence to support its ruling.

**CONCLUSION**

For the reasons set forth herein, the Respondent respectfully requests the Court affirm the Circuit Court's order granting dismissing the Appellant's Probate Court appeal where it was untimely filed and the Appellant's issues for appeal in opposition are not preserved.

Respectfully submitted,



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November 22, 2016.

**CERTIFICATE OF SERVICE**

I, the undersigned, attorney for Respondent, Palmetto Richland Springs, do hereby certify that I have this date served the foregoing Initial Respondent's Brief, dated November 22, 2016, by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to counsel of record as indicated below:

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Dated: November 22, 2016.

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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA**

**IN THE COURT OF APPEALS**

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CIVIL ACTION NO. 2016-CP-40-02459

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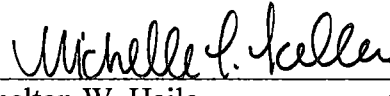
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**PROOF OF SERVICE**

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The undersigned hereby certifies that a copy of the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal have been served upon the following Pro se party of record this 22nd day of November, 2016, by mailing same postage prepaid to the following:

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November 22, 2016

The Honorable Jenny Abbott Kitchings  
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Re: *Sean Lyons v. Palmetto Richland Springs*  
Appellate Case No. 2016-001544  
Civil Action No. 2016-CP-40-02459  
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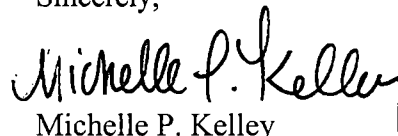
Dear Ms. Kitchings:

Enclosed for filing please find an original and one (1) copy of the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal. Also enclosed is Proof of Service of the Brief and Designation of Matter.

Please file the documents and return one file-stamped copy with our runner. By copy of this letter, I am this day serving Plaintiff/Appellant with the same.

If the Court requires anything further or you have any questions, please do not hesitate to contact me.

Sincerely,

  
Michelle P. Kelley  
SC Bar No. 75198

MPK:sjl

Enclosures

cc: Sean Lyons (Via U.S. Mail to InTown Suites, 8310 Two Notch Road, Room 208, Columbia, SC 29223) (with enclosures)