

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Opinion No. 27684
Filed November 16, 2014

RECEIVED

DEC -1 2016

S.C. SUPREME COURT

EX PARTE:

South Carolina Department of Disabilities
And Special Needs, Appellant.

IN RE:

State of South Carolina, Respondent,

v.

Rocky A. Linkhorn, Respondent.

PETITION FOR REHEARING

Rocky Linkhorn, through his undersigned counsel, petitions for rehearing of this appeal pursuant to Rule 221, SCACR.

The Court's opinion interprets S.C. Code Ann. §44-20-450 narrowly, excluding respondent Linkhorn from involuntary commitment to DDSN because he does not have an "intellectual disability" or "related disability" as defined by S.C. Code Ann. §§44-20-30(12) and (15). It also holds that "if an individual cannot be involuntarily committed to DDSN following judicial admission proceedings, the individual *may* be confined in jail if there are criminal

charges pending against him,” citing S.C. Code Ann. §44-20-450(G). Slip op. at 6 (emphasis in original).

Mr. Linkhorn respectfully submits that the court overlooked the following points:

1. Mr. Linkhorn cannot be held in jail pursuant to S.C. Code Ann. § 44-20-450(G) because he does not have an intellectual disability or a related disability.
2. The Court’s opinion overlooks the constitutional and public policy implications of indefinitely confining Mr. Linkhorn and other similarly situated individuals.

ARGUMENT

I

MR. LINKHORN CANNOT BE HELD IN JAIL PURSUANT TO S.C. ANN. § 44-20-450(G) BECAUSE HE DOES NOT HAVE AN INTELLECTUAL DISABILITY OR A RELATED DISABILITY.

The Court held that involuntary commitment to DDSN under chapter 20 of Title 44 is limited to criminal defendants who have an “intellectual disability” or “related disability” as those terms are defined by S.C. Code Ann. §§ 44-20-30(12) and (15) (Supp. 2015). An “intellectual disability” must arise before age 18 and a “related disability” must arise before age 22. The Court found the involuntary commitment provisions of §44-20-450 clear, unambiguous, and applicable only to persons whose disabilities fall within the above definitions. Mr. Linkhorn does not meet the criteria for either condition, as his disability is the result of an anoxic brain injury he sustained when he was 23 years old.

The opinion specifically excludes defendants who are “persons with an intellectual disability” as defined in § 44-23-10(22)¹ from involuntary commitment. That definition is broader, as it does not contain an age of onset limitation. Because Chapter 20 is not included in

¹ Since oral argument, §44-23-10 was amended. The definition of “person with an intellectual disability” remains the same, but is now within subsection (22) rather than subsection (21).

the list of chapters in which the term “person with an intellectual disability” may be used, the Court declined to apply it to the involuntary commitment of an individual to DDSN under 44-20-450, even when the petitioning party is a circuit solicitor seeking to commit a criminal defendant found incompetent to stand trial by the circuit court.

Yet the opinion goes on to hold that continued incarceration of Mr. Linkhorn is permissible under S.C. Code Ann. §44-20-450(G) (Supp. 2015). Respondent Linkhorn believes the court overlooked the fact that this finding is inconsistent with the reasoning that excludes him from involuntary commitment under § 44-20-450(A)(8).

The opinion strictly construed Chapter 20 and limited its involuntary commitment provisions solely to defendants whose conditions fall within the definitions contained in Chapter 20. Section 44-20-450(G) likewise applies only to persons with an “intellectual disability” or “related disability.” Mr. Linkhorn does not have an “intellectual disability” or “related disability,” because his condition did not arise until the age of 23. He is a “person with an intellectual disability.” S.C. Code Ann. § 44-23-10(22) (Supp. 2015). It is illogical to exclude him from involuntary commitment under § 44-20-450(A)(8), yet include him as someone who can be incarcerated under a statute that applies only to those with “intellectual disabilities” and “related disabilities.” Stated differently, it is inconsistent for the Court to refuse to apply the definition of “person with an intellectual disability” to § 44-4-20-450(A)(8), yet extend it to apply to § 44-20-450(G).

Mr. Linkhorn believes this oversight, alone, is sufficiently important to grant rehearing in this case. Moreover, as discussed below, application of § 44-20-450(G) to Mr. Linkhorn raises significant constitutional issues.

II

CONTINUED INCARCERATION OF MR. LINKHORN VIOLATES HIS RIGHT TO DUE PROCESS OF LAW

Mr. Linkhorn believes the opinion also overlooks the due process implications of holding that it is permissible to incarcerate him because he has pending criminal charges. His incarceration violates his right to due process guaranteed by the Fourteenth Amendment to the United States Constitution and by article I, §3 of the South Carolina Constitution. Specifically, his liberty interest is curtailed by a statute or procedure that allows his ongoing incarceration because he is charged, but not convicted, with a criminal offense.

The law is clear: The Fourteenth Amendment does not allow “indefinite commitment of a criminal defendant solely on account of his incompetency to stand trial. . . .” *Jackson v. Indiana*, 406 U.S. 715, 730 (1972). Even if Mr. Linkhorn cannot be held under § 44-20-450(G), he will remain incarcerated because he has pending charges and cannot make bail. In the usual case, a criminal defendant can exercise his Sixth Amendment right to a speedy trial to resolve his charges.² This remedy is not available to Mr. Linkhorn. He is incompetent to stand trial, and will most likely always be incompetent to stand trial. His freedom is curtailed solely by his disability rather than by a process in which he will have an opportunity to be heard. This does not comport with the United States or South Carolina Constitutions.

Section 44-23-410, *et seq.*, provides protections to criminal defendants who are incompetent to stand trial. They enjoy the rights and privileges of other involuntarily committed patients. S.C. Code Ann. § 44-23-430(3). If not committed after a full and fair hearing in the probate court, they must be released. *Id.* They can petition the court for a reexamination of

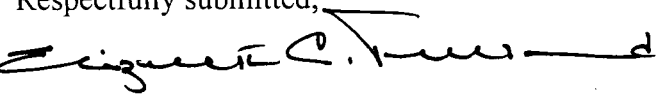
² Article I, §14 of the South Carolina Constitution guarantees the identical right.

competency to stand trial. S.C. Code Ann. § 44-23-440. When in-patient treatment is no longer necessary, they are entitled to a hearing before the circuit court. S.C. Code Ann. §44-23-450.

These protections are not available to Mr. Linkhorn. The effect of the opinion is to exempt an entire class of incompetent criminal defendants from the protections offered by Chapter 23 of Title 44 and to deny them federal and state constitutional rights. Mr. Linkhorn will never have a fair and full hearing in the probate court to determine his service needs because the opinion exempts him from that process. He can remain incarcerated, but can never be tried.³ This denial of *any* process violates his right to due process.⁴

CONCLUSION

Based on the foregoing, respondent Linkhorn respectfully requests that the Court grant the petition and affirm the ruling of the circuit court.

Respectfully submitted,

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ATTORNEY FOR ROCKY LINKHORN

December 1, 2016

³ While a state or federal court might issue a writ of *habeas corpus*, his release under these circumstances would also allow him to circumvent the public safety concerns addressed by article 23.

⁴ The appellant might argue that Mr. Linkhorn can receive its services on a voluntary basis and avoid confinement in this way. This argument overlooks the absurdity of requiring an incompetent person to make a rational decision. It also overlooks the fact that Mr. Linkhorn cannot compel DDSN to provide him services; that is within the sole discretion of the director of that agency. S.C. Code Ann. §44-20-430 (Supp. 2015).

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CERTIFICATE OF SERVICE

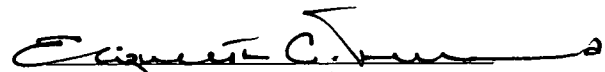
The undersigned, attorney for respondent Rocky A. Linkhorn, does hereby certify that service of the Petition for Rehearing of Respondent Rocky A. Linkhorn in the above-captioned matter was made upon counsel of records for all parties by placing copies in the United States Mail, first-class postage prepaid, at the below listed address clearly indicated on said envelopes on this 1st day of December, 2016:

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