CHAPTER 24

Mentally Ill or Insane Defendants

**SECTION 17‑24‑10.** Affirmative defense.

(A) It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.

(B) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.

(C) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the defense of insanity.

HISTORY: 1984 Act No. 396, Section 1; 1988 Act No. 323, Section 1; 1989 Act No. 93, Section 1.

Library References

Criminal Law 47, 331, 570.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 132 to 141, 952, 1512 to 1513.

RESEARCH REFERENCES

ALR Library

72 ALR 5th 109 , Adequacy of Defense Counsel’s Representation of Criminal Client‑Pretrial Conduct or Conduct at Unspecified Time Regarding Issues of Insanity.

Encyclopedias

S.C. Jur. Adultery and Fornication Section 16, Absence of Intent.

S.C. Jur. Homicide Section 3, Excusable Homicides.

LAW REVIEW AND JOURNAL COMMENTARIES

Execution of the mentally retarded: a punishment without justification. 40 S.C. L. Rev. 419 (Winter 1989).

United States Supreme Court Annotations

Habeas corpus, counsel, effective assistance, see Wood v. Allen, 2010, 130 S.Ct. 841, 558 U.S. 290, 175 L.Ed.2d 738, rehearing denied 130 S.Ct. 1942, 559 U.S. 1032, 176 L.Ed.2d 405.

Habeas corpus, counsel, effective assistance, advice to withdraw insanity defense, see Knowles v. Mirzayance, 2009, 129 S.Ct. 1411, 556 U.S. 111, 173 L.Ed.2d 251, rehearing denied 129 S.Ct. 2422, 556 U.S. 1234, 173 L.Ed.2d 1327.

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1. In general

Insanity is an affirmative defense to prosecution for crime. State v. Lewis (S.C. 1997) 328 S.C. 273, 494 S.E.2d 115. Criminal Law 48

Key to insanity is the power of defendant to distinguish right from wrong in the act itself—to recognize the act complained of is either morally or legally wrong. State v. Lewis (S.C. 1997) 328 S.C. 273, 494 S.E.2d 115. Criminal Law 48

Defendant may rely on lay testimony to establish insanity. State v. Lewis (S.C. 1997) 328 S.C. 273, 494 S.E.2d 115. Criminal Law 570(1)

Jury may disregard expert testimony on issue of defendant’s sanity. State v. Lewis (S.C. 1997) 328 S.C. 273, 494 S.E.2d 115. Criminal Law 494

It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong, or to recognize his act as being wrong. State v. Poindexter (S.C. 1993) 314 S.C. 490, 431 S.E.2d 254, rehearing denied. Criminal Law 48

A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong as defined in Section 17‑24‑10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirement of the law. State v. Poindexter (S.C. 1993) 314 S.C. 490, 431 S.E.2d 254, rehearing denied. Criminal Law 48

A defendant convicted of murder was not entitled to a new trial based on the discovery that he had a brain tumor at the time of the offense where his expert testified only that the tumor “may have” had an effect on his commission of the crime, and thus he failed to prove that the tumor had rendered the defendant legally insane. State v. South (S.C. 1993) 310 S.C. 504, 427 S.E.2d 666. Criminal Law 945(2)

A defendant was entitled to present the defense of insanity or to attempt to obtain a verdict of guilty but mentally ill where he presented evidence that his use of drugs had caused permanent and irreversible brain damage which manifested itself in a mental illness. State v. Hartfield (S.C. 1990) 300 S.C. 469, 388 S.E.2d 802. Criminal Law 57; Criminal Law 286.10

As literal reading of Sections 17‑24‑10 and 17‑24‑20 requires person having legal capacity to distinguish right from wrong, but who because of mental disease or defect is unable to recognize act charged as being wrong, may not be found either insane or guilty but mentally ill, court will therefore read “and” in Section 17‑24‑10(A) to mean “or” so that statutory definition of insanity is equivalent to definition of insanity under case law. State v. Grimes (S.C. 1987) 292 S.C. 204, 355 S.E.2d 538.

2. Effective assistance of counsel

State postconviction court did not unreasonably apply Strickland, so as to warrant federal habeas relief, in concluding that trial counsel did not violate petitioner’s right to effective assistance at capital murder trial by failing to present an insanity defense, as psychiatrist’s unexplained and conclusory assertion that petitioner was insane was insufficient in light of the overwhelming evidence that petitioner was criminally responsible, psychiatrist did not review petitioner’s statements to his attorneys indicating premeditation and feelings of guilt, and insanity defense would have hindered assertion of potential mitigating circumstances. McWee v. Weldon (C.A.4 (S.C.) 2002) 283 F.3d 179, certiorari denied 123 S.Ct. 162, 537 U.S. 893, 154 L.Ed.2d 158. Habeas Corpus 486(2)

A defendant’s counsel was ineffective in advising the defendant to plead “guilty but mentally ill” to murder where counsel was fully aware that the State’s own psychiatrist had diagnosed the defendant as legally insane at the time of the crime, and failed to adequately apprise the defendant of the M’Naghten defense which, if established, would have relieved her of criminal responsibility. Davenport v. State (S.C. 1990) 301 S.C. 39, 389 S.E.2d 649. Criminal Law 1912

3. Presumptions and burden of proof

In every criminal case, it is presumed defendant is sane. State v. Lewis (S.C. 1997) 328 S.C. 273, 494 S.E.2d 115. Criminal Law 311

The defendant failed to meet his burden of proof to show that he was incompetent at the time of his guilty plea, even though medical records dated after the crime included statements that he had some problems with his mentation and was a little slow answering questions, where (1) such records were contradictory and were not the result of any psychological evaluation, (2) his attorney, who had known him for several years, testified that he did not “notice anything abnormal to make me think [the defendant] was mentally deficient,” and (3) his pastor testified that the defendant was coherent at his plea hearing, and that he understood what was being said to him. Jeter v. State (S.C. 1992) 308 S.C. 230, 417 S.E.2d 594.

Although a criminal defendant is presumed to be sane, when a defendant offers evidence of insanity, the State no longer enjoys the presumption but must present evidence to the jury from which the jury could find the defendant sane. If the contention of insanity is suggested, the State may present evidence of sanity in its case‑in‑chief rather than waiting to do so during its case in reply. Even though a defendant presents expert testimony, the State is not required to also produce expert testimony; lay testimony may be sufficient. State v. Smith (S.C. 1989) 298 S.C. 205, 379 S.E.2d 287. Criminal Law 331; Criminal Law 493

4. Questions for jury

The State presented adequate evidence of defendant’s sanity to present a question for the jury, during prosecution for assault and battery with intent to kill (ABWIK) and criminal domestic violence of a high and aggravated nature in which the defendant’s estranged wife was the victim; the victim’s neighbor testified that defendant went to her home the morning of the shooting to look for victim and that he was calm, in the months leading up to the shooting defendant endorsed all property settlement checks from the victim with the statement “Will be paid regardless or any medical, arrest or other event,” and defendant removed the victim from public view after she collapsed in the front yard following the shooting. State v. Senter (S.C.App. 2011) 396 S.C. 547, 722 S.E.2d 233, rehearing denied. Criminal Law 740

5. Instructions

Murder defendant was not entitled to charge on insanity, even though defendant suffered from severe depression at time of shooting; defendant chased his former wife out of her home after shooting victim and then ran back inside when he saw police officers, defendant allowed emergency crew into home to remove victim, and defendant remained in his former wife’s residence for hours and threatened to shoot himself but did not do so until police entered, all of which suggested that defendant recognized gravity of situation and that his conduct was wrong; overruling State v. Campen, 321 S.C. 505, 469 S.E.2d 619. State v. Lewis (S.C. 1997) 328 S.C. 273, 494 S.E.2d 115. Homicide 1502

Requested charge on insanity is properly refused where there is no evidence tending to show defendant was insane at time of crime charged. State v. Lewis (S.C. 1997) 328 S.C. 273, 494 S.E.2d 115. Criminal Law 814(10)

**SECTION 17‑24‑20.** Guilty but mentally ill; general requirements for verdict.

(A) A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17‑24‑10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

(B) To return a verdict of “guilty but mentally ill” the burden of proof is upon the State to prove beyond a reasonable doubt to the trier of fact that the defendant committed the crime, and the burden of proof is upon the defendant to prove by a preponderance of evidence that when he committed the crime he was mentally ill as defined in subsection (A).

(C) The verdict of guilty but mentally ill may be rendered only during the phase of a trial which determines guilt or innocence and is not a form of verdict which may be rendered in the penalty phase.

(D) A court may not accept a plea of guilty but mentally ill unless, after a hearing, the court makes a finding upon the record that the defendant proved by a preponderance of the evidence that when he committed the crime he was mentally ill as provided in Section 17‑24‑20(A).

HISTORY: 1984 Act No. 396, Section 2; 1988 Act No. 323, Section 2; 1989 Act No. 93, Section 2.

Library References

Criminal Law 48, 286.5, 331, 570, 870.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 132 to 141, 952, 1512 to 1513, 1891, 1893.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adultery and Fornication Section 16, Absence of Intent.

LAW REVIEW AND JOURNAL COMMENTARIES

Guilty but mentally ill: A poor prognosis. 49 S.C. L. Rev. 1095 (Summer 1998).

United States Supreme Court Annotations

Double jeopardy, death penalty, hearing to determine whether defendant’s mental capacity precludes execution, see Bobby v. Bies, 2009, 129 S.Ct. 2145, 556 U.S. 825, 173 L.Ed.2d 1173.

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1. In general

The guilty but mentally ill statute ensures the jury applies the legal definition of insanity properly by emphasizing that a person may be mentally ill, yet not legally insane; the guilty but mentally ill verdict clarifies the distinction between a defendant who is not guilty by reason of insanity and one who is mentally ill yet not criminally insane and, therefore, is criminally liable. State v. Curry (S.C.App. 2014) 410 S.C. 46, 762 S.E.2d 721, rehearing denied, certiorari denied. Criminal Law 48

Verdict of guilty but mentally ill (GBMI) does not absolve defendant of guilt, and defendant found GBMI must be sentenced as provided by law for defendant found guilty. State v. Hornsby (S.C. 1997) 326 S.C. 121, 484 S.E.2d 869. Sentencing And Punishment 103

A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong as defined in Section 17‑24‑10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirement of the law. State v. Poindexter (S.C. 1993) 314 S.C. 490, 431 S.E.2d 254, rehearing denied. Criminal Law 48

A defendant was entitled to present the defense of insanity or to attempt to obtain a verdict of guilty but mentally ill where he presented evidence that his use of drugs had caused permanent and irreversible brain damage which manifested itself in a mental illness. State v. Hartfield (S.C. 1990) 300 S.C. 469, 388 S.E.2d 802. Criminal Law 57; Criminal Law 286.10

Issue of defendant’s mental illness was disputed fact which was properly submitted to jury where defendant had introduced lay and expert evidence during his case that he was mentally ill at time crime was committed, and in reply state had presented expert testimony that defendant was not mentally ill at time crime was committed. State v. Bell (S.C. 1987) 293 S.C. 391, 360 S.E.2d 706, certiorari denied 108 S.Ct. 734, 484 U.S. 1020, 98 L.Ed.2d 682, denial of habeas corpus affirmed 72 F.3d 421, certiorari denied 116 S.Ct. 2533, 518 U.S. 1009, 135 L.Ed.2d 1056, rehearing denied 117 S.Ct. 24, 518 U.S. 1047, 135 L.Ed.2d 1118. Homicide 1351

As literal reading of Sections 17‑24‑10 and 17‑24‑20 requires person having legal capacity to distinguish right from wrong, but who because of mental disease or defect is unable to recognize act charged as being wrong, may not be found either insane or guilty but mentally ill, court will therefore read “and” in Section 17‑24‑10(A) to mean “or” so that statutory definition of insanity is equivalent to definition of insanity under case law. State v. Grimes (S.C. 1987) 292 S.C. 204, 355 S.E.2d 538.

2. Constitutional issues

Guilty but mentally ill (GBMI) statute did not violate due process, as it was rationally designed to accomplish its purposes of reducing number of defendants being completely relieved of criminal responsibility and insuring that mentally ill inmates receive treatment for their benefit as well as society’s benefit while incarcerated. State v. Hornsby (S.C. 1997) 326 S.C. 121, 484 S.E.2d 869. Constitutional Law 4338; Constitutional Law 4514; Mental Health 433(1)

Since defendant had been found guilty of burglary and murder beyond reasonable doubt in judicial proceeding, his liberty interest had been curtailed, and no fundamental right was involved in his due process challenge to guilty but mentally ill (GBMI) statute. State v. Hornsby (S.C. 1997) 326 S.C. 121, 484 S.E.2d 869. Constitutional Law 4514; Mental Health 433(1)

Guilty but mentally ill (GBMI) prisoners benefit from GBMI statute, for purposes of due process analysis, in that they are automatically sent to special centers for evaluation and treatment while guilty inmates in need of mental health care are directly integrated into prison system. State v. Hornsby (S.C. 1997) 326 S.C. 121, 484 S.E.2d 869. Constitutional Law 4338; Mental Health 433(1)

Defendant’s argument that guilty but mentally ill (GBMI) verdict attaches stigma to GBMI inmates because their actual time served may be longer would not support due process challenge, as it was speculative. State v. Hornsby (S.C. 1997) 326 S.C. 121, 484 S.E.2d 869. Constitutional Law 4338; Mental Health 433(1)

3. Guilty pleas

Plea colloquy that resulted in trial court’s acceptance of plea of guilty but mentally ill was not ineffective on grounds that it was unclear, at time of plea, whether death sentence was available for someone who was guilty but mentally ill when both defendant and his counsel were well aware of possibility that defendant could be sentenced to death if his plea was accepted. Wilson v. Ozmint (C.A.4 (S.C.) 2003) 352 F.3d 847, opinion amended on denial of rehearing 357 F.3d 461, certiorari denied 124 S.Ct. 2879, 542 U.S. 923, 159 L.Ed.2d 783. Criminal Law 273.1(4)

Trial court satisfied its obligations to determine defendant’s competence to enter plea of guilty but mentally ill, regardless of any private misgivings harbored by defense counsel, when court took special care to ascertain that defendant was competent, even though both prosecution and defense were willing to stipulate to competence, and court’s inquiry into defendant’s competence produced no evidence that he was mentally unfit to stand trial. Wilson v. Ozmint (C.A.4 (S.C.) 2003) 352 F.3d 847, opinion amended on denial of rehearing 357 F.3d 461, certiorari denied 124 S.Ct. 2879, 542 U.S. 923, 159 L.Ed.2d 783. Criminal Law 273(2)

Plea of guilty but mentally ill to offenses of murder, assault and battery with intent to kill, and illegal carrying of firearm was entered with understanding by capital defendant and his counsel of full consequences that defendant was facing at time plea was entered, and thus was knowing, voluntary, and intelligent, when trial court repeatedly informed defendant of both procedural and substantive consequences of plea, court informed defendant that death penalty was possibility at least five times and defendant answered each time that he understood, and the record disclosed that defendant was aware that trial court, rather than jury, would make decision as to whether he would be sentenced to death and that such decision would be made by weighing aggravating and mitigating evidence presented during case. Wilson v. Ozmint (C.A.4 (S.C.) 2003) 352 F.3d 847, opinion amended on denial of rehearing 357 F.3d 461, certiorari denied 124 S.Ct. 2879, 542 U.S. 923, 159 L.Ed.2d 783. Criminal Law 273.1(1); Criminal Law 273.1(4)

A defendant who pled guilty but mentally ill pursuant to Section 17‑24‑20 to 2 counts of murder, 9 counts of assault and battery with intent to kill, and one count of illegally carrying a firearm, could be sentenced to death since, although the legislature did not give special guidance or a specific procedure to be used in cases involving the death sentence, Section 17‑24‑70 states that a defendant found guilty but mentally ill “must be sentenced . . . as provided by law for a defendant found guilty,” and the penalty for one found guilty of murder may include the death penalty. State v. Wilson (S.C. 1992) 306 S.C. 498, 413 S.E.2d 19, certiorari denied 113 S.Ct. 137, 506 U.S. 846, 121 L.Ed.2d 90.

4. Effective assistance of counsel

A defendant’s counsel was ineffective in advising the defendant to plead “guilty but mentally ill” to murder where counsel was fully aware that the State’s own psychiatrist had diagnosed the defendant as legally insane at the time of the crime, and failed to adequately apprise the defendant of the M’Naghten defense which, if established, would have relieved her of criminal responsibility. Davenport v. State (S.C. 1990) 301 S.C. 39, 389 S.E.2d 649. Criminal Law 1912

5. Instructions

Failure to give an instruction on guilty but mentally ill that was supported by the evidence was reversible error in prosecution for throwing bodily fluids on a correctional officer, even though defendant’s sentence would have been the same regardless of whether he was merely guilty or guilty but mentally ill, as he would have been entitled to immediate treatment and evaluation if found guilty but mentally ill. State v. Curry (S.C.App. 2014) 410 S.C. 46, 762 S.E.2d 721, rehearing denied, certiorari denied. Criminal Law 1173.2(3)

Evidence supported jury instruction regarding guilty but mentally ill on charge of throwing bodily fluids on a correctional officer; one expert’s opinion that defendant suffered from mania at time of charged incident, combined with other lay and expert testimony on defendant’s on defendant antisocial conduct, odd mannerisms, and isolationist behavior, indicated his mental illness may have prevented him from being able to conform his conduct to the law at time of incident, and his affirmative actions of stockpiling his feces under his sink and placing feces on his face and clothing at time of incident created a jury question as to whether he truly appreciated the nature of his actions. State v. Curry (S.C.App. 2014) 410 S.C. 46, 762 S.E.2d 721, rehearing denied, certiorari denied. Criminal Law 773(1)

Jurors were not misled to believe that guilty but mentally ill (GBMI) was lesser verdict than guilty, in burglary and murder trial, where trial judge instructed jury on necessary mens rea for murder, specifically told jury that under insanity, defendant does not have criminal intent and should be acquitted, and explained that person who is guilty but mentally ill has capacity to distinguish between right and wrong or to recognize act is wrong but lacks capacity to conform his conduct. State v. Hornsby (S.C. 1997) 326 S.C. 121, 484 S.E.2d 869. Criminal Law 773(2)

6. Review

Defendant who did not request jury instruction stating that sentencing consequences for guilty or guilty but mentally ill (GBMI) verdicts were the same could not complain, on appeal, that jury was misled because it thought GBMI was lesser verdict than guilty. State v. Hornsby (S.C. 1997) 326 S.C. 121, 484 S.E.2d 869. Criminal Law 1038.3

**SECTION 17‑24‑30.** Form of verdict.

In a prosecution for a crime when the affirmative defense of insanity is raised sufficiently by the defendant, or when sufficient evidence of a mental disease or defect of the defendant is admitted into evidence, the trier of fact shall find under the applicable law, and the verdict must so state, whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity; or

(4) guilty but mentally ill.

HISTORY: 1984 Act No. 396, Section 3; 1988 Act No. 323, Section 3; 1989 Act No. 93, Section 3.

Library References

Criminal Law 875.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 1891 to 1892.

C.J.S. Robbery Section 124.

NOTES OF DECISIONS

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1. In general

The M’Naughten test is the correct standard for determining whether a defendant’s mental condition at the time of the offense rendered him criminally responsible. State v. Pittman (S.C. 2007) 373 S.C. 527, 647 S.E.2d 144, rehearing denied, certiorari denied, certiorari denied 128 S.Ct. 1872, 552 U.S. 1314, 170 L.Ed.2d 751. Criminal Law 48

The trial court erred in failing to include guilty but mentally ill in its charge to the jury where the defendant had raised the issue of sanity; once a defendant has raised the issue of sanity, Section 17‑24‑30 requires the submission of all four verdict forms (guilty, not guilty, not guilty by reason of insanity, and guilty but mentally ill), and a defendant may not waive a guilty but mentally ill verdict form. State v. Campen (S.C.App. 1996) 321 S.C. 505, 469 S.E.2d 619.

The defendant’ own testimony and the testimony of the defendant’s psychiatrist raised the issue of the defendant’s sanity so as to oblige the trial court to submit a verdict form for guilty but mentally ill even though the psychiatrist testified that the defendant had the capacity and ability to differentiate right from wrong at the time of the incident and had the capacity to conform his conduct accordingly, where the psychiatrist as well as the defendant testified as to the defendant’s long history of mental illness and his treatment thereof. State v. Campen (S.C.App. 1996) 321 S.C. 505, 469 S.E.2d 619. Criminal Law 773(1); Criminal Law 1173.2(3)

Section 17‑24‑30 requires the submission of four different verdict forms: guilty, not guilty, not guilty by reason of insanity, and guilty but mentally ill where, in a prosecution for a crime, the defendant raises the affirmative defense of insanity. State v. Rimert (S.C. 1994) 315 S.C. 527, 446 S.E.2d 400, rehearing denied, certiorari denied 115 S.Ct. 730, 513 U.S. 1080, 130 L.Ed.2d 634. Criminal Law 798.5

In a criminal action where the defendant raises the affirmative defense of insanity, the defendant cannot waive a guilty but mentally ill verdict form since Section 17‑24‑30 mandates such a submission. State v. Rimert (S.C. 1994) 315 S.C. 527, 446 S.E.2d 400, rehearing denied, certiorari denied 115 S.Ct. 730, 513 U.S. 1080, 130 L.Ed.2d 634.

**SECTION 17‑24‑40.** Commitment of person found not guilty by reason of insanity.

(A) In the event a verdict of “not guilty by reason of insanity” is returned, the trial judge must order the person who was the defendant committed to the South Carolina State Hospital for a period not to exceed one hundred twenty days. During that time, an examination must be made of the person to determine the need for hospitalization of the person pursuant to the standards set forth in Section 44‑17‑580.

(B) A report of the findings must be made to the chief administrative judge of the circuit in which the trial was held, the solicitor, the person, and the person’s attorney.

(C)(1) Within fifteen days after receipt of this report by the court, the chief administrative judge of the circuit in which the trial was held must hold a hearing to decide whether the person should be hospitalized pursuant to the standard of Section 44‑17‑580.

(2)(a) If the chief administrative judge finds the person not to be in need of hospitalization, the judge may order the person released upon such terms or conditions, if any, as the judge considers appropriate for the safety of the community and the well‑being of the person.

(b) In the event the chief administrative judge finds the person to be in need of hospitalization, the judge must order the person committed to the South Carolina State Hospital.

(c) If at a later date it is determined by officials of the State Hospital that the person is no longer in need of hospitalization, the officials must notify the chief administrative judge, the solicitor, the person, and the person’s attorney. Within twenty‑one days after the receipt of this notice, the chief administrative judge, upon notice to all parties, must hold a hearing to determine whether the person is in need of continued hospitalization pursuant to the standard of Section 44‑17‑580. If the finding of the court is that the person is in need of continued hospitalization, the court must order his continued confinement. If the court’s finding is that the person is not in need of continued hospitalization, it may order the person released upon such terms and conditions, if any, as the chief administrative judge considers appropriate for the safety of the community and the well‑being of the person.

(D) Any terms and conditions imposed by the chief administrative judge must be therapeutic in nature, not punitive. Therapeutic terms must include, but not be limited to, requirements that the person:

(1) continue taking medication for an indefinite time and verify in writing the use of medication;

(2) receive periodic examinations and reviews by psychiatric personnel; and

(3) report periodically to the probation office for an evaluation of his reaction to his environment and his general welfare.

(E) The chief administrative judge of the circuit in which the trial was held at all times has jurisdiction over the person for the purposes of this chapter.

(F) If a person is committed to the supervision of the Department of Mental Health pursuant to this section after having been found not guilty by reason of insanity of a violent crime, the person may not leave the facility or grounds to which he is committed at any time unless accompanied by an employee of the department who must be responsible for and in the physical presence of the person at all times. For purposes of this section, a violent crime includes those offenses described in Section 16‑1‑60 and the common law offense of assault and battery of a high and aggravated nature.

HISTORY: 1984 Act No. 396, Section 4; 2002 Act No. 348, Section 1, eff July 20, 2002.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

CROSS REFERENCES

Reconfinement of patient committed to facility pursuant to this Chapter after being continuously absent from jurisdiction of department for at least a year, see Section 44‑17‑870.

Library References

Mental Health 439.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 278 to 287.

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1. In general

The Circuit Court Chief Administrative Judge cannot authorize a not guilty by reason of insanity (NGRI) defendant’s unsupervised release from the state hospital if the Judge concludes that the defendant is in need of “continued” hospitalization. State v. Hudson (S.C.App. 1999) 336 S.C. 237, 519 S.E.2d 577, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 346 S.C. 139, 551 S.E.2d 253. Mental Health 439.1

2. Constitutional issues

The retroactive application of Section 17‑24‑40, which establishes the procedure for commitment of a defendant found not guilty by reason of insanity, did not constitute a violation of the constitutional prohibition against ex post facto laws, in spite of the defendant’s assertion that he was disadvantaged by the retroactive application of the statute because certain procedural alternatives were available to him under the law in effect at the time of his offense, which were not available to him under Section 17‑24‑40, which gave jurisdiction of judicial commitment proceedings to the trial judge and chief administrative judge rather than the probate court, since Section 17‑24‑40 did not: (1) make criminal a previously innocent act; (2) aggravate a crime previously committed; (3) provide greater punishment; or (4) change the proof necessary to convict. Additionally, the statute is neither penal in purpose nor nature as it is not designed as a punishment or punishment enhancer, and it merely changed the mode of procedure for commitment proceedings and did not affect any substantial right of the defendant. State v. Huiett (S.C. 1990) 302 S.C. 169, 394 S.E.2d 486.

3. Justiciability

State’s consent order with Department of Mental Health in State ex rel. Condon v. South Carolina Department of Mental Health, which mandated that Department receive prior court approval before releasing not guilty by reason of insanity (NGRI) defendants on unsupervised leave, did not render moot the state’s appeal from order in instant case, which found defendant in need of “continued” hospitalization, but authorized her unsupervised leave from hospital; consent order did not determine whether court can actually approve such leave, and even with approval of judge, parties could not determine extent of judicial power under statute. State v. Hudson (S.C.App. 1999) 336 S.C. 237, 519 S.E.2d 577, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 346 S.C. 139, 551 S.E.2d 253. Mental Health 439.1

**SECTION 17‑24‑50.** Length of confinement or supervision of defendant found not guilty by reason of insanity.

In no case shall a defendant found not guilty by reason of insanity be confined or be under supervision longer than the maximum sentence for the crime with which he was charged without full civil commitment proceedings being held.

HISTORY: 1984 Act No. 396, Section 5.

Library References

Mental Health 439.1.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 278 to 283.

**SECTION 17‑24‑60.** Petition by attorney of defendant found not guilty by reason of insanity.

Two years from the date of commitment the defendant’s attorney may petition the chief administrative judge to be relieved as counsel.

HISTORY: 1984 Act No. 396, Section 6.

Library References

Criminal Law 1762.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 366, 371 to 375.

**SECTION 17‑24‑70.** Sentencing of defendant found guilty but mentally ill.

If a verdict is returned of “guilty but mentally ill” the defendant must be sentenced by the trial judge as provided by law for a defendant found guilty, however:

(A) If the sentence imposed upon the defendant includes the incarceration of the defendant, the defendant must first be taken to a facility designated by the Department of Corrections for treatment and retained there until in the opinion of the staff at that facility the defendant may safely be moved to the general population of the Department of Corrections to serve the remainder of his sentence.

(B) If the sentence includes a probationary sentence, the judge may impose those conditions and restrictions on the release of the defendant as the judge considers necessary for the safety of the defendant and of the community.

HISTORY: 1984 Act No. 396, Section 7; 1988 Act No. 323, Section 4.

Library References

Mental Health 436.

Sentencing and Punishment 103, 1960.

Westlaw Topic Nos. 257A, 350H.

C.J.S. Criminal Law Section 2151.

C.J.S. Mental Health Sections 272 to 277, 283.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adultery and Fornication Section 16, Absence of Intent.

LAW REVIEW AND JOURNAL COMMENTARIES

Fetzer, Execution of the mentally retarded: a punishment without justification. 40 S.C. L. Rev. 419 (Winter 1989).

United States Supreme Court Annotations

Double jeopardy, death penalty, hearing to determine whether defendant’s mental capacity precludes execution, see Bobby v. Bies, 2009, 129 S.Ct. 2145, 556 U.S. 825, 173 L.Ed.2d 1173.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Capital defendant’s plea of guilty to murder, kidnapping, and first‑degree criminal sexual conduct with a minor was unconditional, and thus valid, even though determination of whether defendant was guilty but mentally ill (GBMI) was deferred; defendant never attempted to reserve right to later deny his guilt, he reserved right only to present evidence that he committed crime while mentally ill, GBMI would still be considered guilty, and difference between guilty and GBMI pertained only to post‑sentencing medical treatment. State v. Downs (S.C. 2004) 361 S.C. 141, 604 S.E.2d 377, rehearing denied. Criminal Law 273(4.1)

A defendant convicted of murder and sentenced to death was not entitled to be resentenced based on the discovery that he had a brain tumor at the time of the offense where the trial judge found only that there was a “significant possibility” that the outcome of the sentencing “could have” been different; the proper standard was whether the newly discovered evidence probably would have changed the result. State v. South (S.C. 1993) 310 S.C. 504, 427 S.E.2d 666. Sentencing And Punishment 2265

A defendant who pled guilty but mentally ill pursuant to Section 17‑24‑20 to 2 counts of murder, 9 counts of assault and battery with intent to kill, and one count of illegally carrying a firearm, could be sentenced to death since, although the legislature did not give special guidance or a specific procedure to be used in cases involving the death sentence, Section 17‑24‑70 states that a defendant found guilty but mentally ill “must be sentenced . . . as provided by law for a defendant found guilty,” and the penalty for one found guilty of murder may include the death penalty. State v. Wilson (S.C. 1992) 306 S.C. 498, 413 S.E.2d 19, certiorari denied 113 S.Ct. 137, 506 U.S. 846, 121 L.Ed.2d 90.

2. Constitutional issues

The proscription against cruel and unusual punishment was not violated by sentencing to death a defendant who pled guilty but mentally ill to 2 counts of murder, 9 counts of assault and battery with intent to kill, and one count of illegally carrying a firearm where, even though the defendant was acting under an “irresistible influence,” under South Carolina law the defendant was completely culpable and responsible for his crimes and thus the penological goal of retribution was served by the sentence. State v. Wilson (S.C. 1992) 306 S.C. 498, 413 S.E.2d 19, certiorari denied 113 S.Ct. 137, 506 U.S. 846, 121 L.Ed.2d 90.

**SECTION 17‑24‑80.** Release of defendant.

(A) Should a defendant be released pursuant to Sections 17‑24‑40(C)(2)(a), 17‑24‑40(C)(2)(c), or 17‑24‑70(B) herein, the solicitor shall immediately notify the local probation office and it shall then be the responsibility of the probation office to monitor compliance by the defendant of the terms and conditions of his release.

(B) The probation office shall file reports quarterly or more often, if necessary, of the defendant’s compliance with the terms of his release with the circuit solicitor, the chief administrative judge of the circuit, the defendant’s attorney, and the defendant.

(C) In the event the defendant violates any of the terms of his release, notice of the violation shall be immediately given by the probation office to the chief administrative judge of the circuit, the circuit solicitor, the defendant’s attorney, and the defendant. Upon the receipt of the notice the chief administrative judge, upon notice to all parties, may order a hearing and order inpatient treatment if he finds the defendant in need of hospitalization pursuant to the standard of Section 44‑17‑580 of the 1976 Code, or order such other action as he may deem appropriate.

HISTORY: 1984 Act No. 396, Section 8.

Library References

Mental Health 436 to 440.

Sentencing and Punishment 1988.

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C.J.S. Criminal Law Section 2155.

C.J.S. Mental Health Sections 272 to 287.