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**Aug 08 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of General Sessions

The Honorable Brooks P. Goldsmith

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Warrant No. 2017A4010202032

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Solomon Yemame, Appellant,

vs.

The State of South Carolina, Respondent.

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**APPELLANT'S INITIAL BRIEF**

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s/S. Jahue Moore

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August 8, 2022

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**STATEMENT OF ISSUES ON APPEAL**

- 1. THE APPELLANT WAS NOT AWARDED CREDIT FOR HIS TIME SERVED WHILE ON HOUSE ARREST**
  
- 2. THE APPELLANTS TIME SERVED ON HOUSE ARREST INCLUDING AN ELECTRONIC MONITORING DEVICE SHOULD BE CREDITED TOWARDS HIS TIME SERVED**
  
- 3. THE COURT WAS GROSSLY DISPROPORTIONATE IN THE APPELLANT'S SENTENCE**

## STATEMENT OF THE CASE

The Defendant has no prior criminal history prior to any of these charges. The Defendant pled guilty pursuant to a plea agreement of assault and battery in the first degree, a non-violent felony charge. A charge that permits a sentence of zero to ten years. The Defendant pled guilty of all counts on April 7, 2022. After considering the facts and arguments made on behalf of the Defendant, this Honorable Court imposed a sentence of eight years (8) years.

On April 18, 2022, Appellant filed a Motion to Reconsider based on the length of the sentence and the mitigating facts presented by the Defendant, the Appellant respectfully requested this Court consider a lesser sentence. (Motion to Reconsider 4-18-22; R \_\_\_\_). Additionally, the Appellant hereby respectfully requested Court credit the time Appellant served on house arrest in his time served. This motion was based upon the statutory and decisional law of the State of South Carolina. On April 27, 2022, the Appellant's Motion to Reconsider was denied and a final judgment entered by way of Written Order on April 27, 2022. (Final Judgment 4-27-22; R \_\_\_\_).

On May 6, 2022, Appellant served his notice of appeal. (Notice of Appeal 5-6-22; R \_\_\_\_). Pursuant to Rule 203(d)(B)(iv), Appellant explained the basis of his appeal was his objection that the Court did not award Appellant credit for time served while on house arrest and house arrest on an electronic GPS monitoring device pursuant to S.C. Code 24-13-40. Additionally Appellant explained the basis of his appeal was his objection that the Court was disproportionate in the Appellant's sentence and therefore Appellant's sentence should be considered in proportion to the other criminals within the same jurisdiction and upon those committing the same crime in other jurisdictions. *See State v. Brannon, 341 S.C. 271, 533 S.E.2d 345 (Ct. App. 2000).*

## STANDARD OF REVIEW

A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support. *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). In criminal cases, the appellate court sits to review errors of law only. *State v. Vick*, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009) (quoting *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is “bound by the trial court's factual findings unless they are clearly erroneous.” *Id.* (quoting *Wilson*, 345 S.C. at 5-6, 545 S.E.2d at 829). The reviewing court “does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence.” *State v. Slocumb*, 412 S.C. 88, 91, 770 S.E.2d 436, 438 (Ct. App. 2015).

The role of appellate courts in reviewing sentences is to determine: (1) whether the exercise of discretion by the sentencing court was based upon findings of fact grounded in competent, reasonably credible evidence; (2) whether the sentencing court applied the correct legal principles in exercising its discretion; and (3) whether the application of the facts to the law was such a clear error of judgment that it shocks the conscience. *State v. Brouwer*, 346 S.C. 375, 395, 550 S.E.2d 915 (Ct. App. 2001) (citing *State v. Megargel*, 143 N.J. 484, 673 A.2d 259 (1996)). There is a strong public policy against interference with a trial court's sentencing discretion. *Id.*, See *State v. Echols*, 175 Wis.2d 653, 499 N.W.2d 631 (1993). The trial court has broad discretionary powers in imposing a sentence because it is generally in a better position than the reviewing court to determine the appropriate sentence by weighing such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Id.* (citing *People v. Hernandez*, 319 Ill. App. 3d 520, 253 Ill. Dec. 550, 745 N.E.2d 673 (2001)).

Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *Id.* (citing *People v. Stacey*, 193 Ill.2d 203, 250 Ill. Dec. 4, 737 N.E.2d 626 (2000)).

## **ARGUMENTS**

### **I. THE APPELLANT WAS NOT AWARDED CREDIT FOR HIS TIME SERVED WHILE ON HOUSE ARREST**

The Appellant's time served on house arrest should be credited towards his time served on the Court sentence. Time spent under house arrest is used to compute time served by the prisoner. S.C. Code § 24-13-40. In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest. *Id.* It is not unusual for pretrial supervision to be considered in reducing a sentence. *Id.* The Appellant pled guilty pursuant to a plea agreement for assault and battery in the first degree, a non-violent felony charge. Before pleading to the charge or being sentenced on April 7, 2022, the Appellant was placed on house arrest for the charge. Therefore the Defendant's time spent under house arrest prior to the Court sentence should be computed into his sentence of the time served.

### **II. THE APPELLANTS TIME SERVED ON HOUSE ARREST INCLUDING AN ELECTRONIC MONITORING DEVICE SHOULD BE CREDITED TOWARDS HIS TIME SERVED**

The Appellant's time served on house arrest including a GPS monitoring device should be credited towards his time served on the Court sentence. It is not unusual for pretrial supervision to be considered in reducing a sentence. S.C. Code § 24-13-40. In every case in computing the time served by a prisoner, full credit against the sentence....may be given for any time spent under monitored house arrest. *Id.* The Appellant was charged with assault and battery in the first degree, a non-violent felony charge as a condition of bond. The Appellant was placed on house arrest for

the charge. After being placed on house arrest, the Appellant was also placed under monitored house arrest with an electronic device. After pleading guilty pursuant to the plea agreement, the Court then sentenced the Appellant to eight years based on Appellant's plea of the charge on assault and battery in the first degree, a non-violent felony charge. Therefore the Appellant's time spent under house arrest with an electronic monitoring device prior to the Court's sentence should be computed into his sentence of the time served.

### **III. THE COURT WAS GROSSLY DISPROPORTIONATE IN THE APPELLANT'S SENTENCE**

The Court was grossly disproportionate in the Appellant's sentence and therefore Appellant's sentence should be considered in proportion to the other criminals within the same jurisdiction and upon those committing the same crime in other jurisdictions. In *State v. Brannon*, the Court held that "only if the Court determines that the sentence is grossly disproportionate to the offense need it consider sentences imposed on other criminals within the same jurisdiction and upon those committing the same crime in other jurisdictions." *State v. Brannon*, 341 S.C. 271, 533 S.E.2d 345 (Ct. App. 2000). The Appellant has no other criminal charges. The Appellant was charged with assault and battery in the first degree, a non-violent felony charge, which is a crime carrying the sentence of zero to ten years. The Appellant received a sentence of eight years, despite Appellant not having a criminal background.

Additionally the Court was grossly disproportionate in the Appellant's sentence because the sentence was not in proportion to other criminals within the jurisdiction and before the Court on the same day, April 7, 2022. These three cases were *State v. Randolph*, *State v. Jones*, *State v. Wondell Williams*. In *State v. Randolph*, Randolph had no prior criminal history and was charged and pled guilty to assault and battery first degree for attempted murder for the shooting of a victim to the head and fleeing the scene. The Court sentenced that Defendant to probation. In *State v.*

Jones where Jones was charged with criminal sexual conduct but pled guilty to assault and battery second degree. Jones was accused of molesting an 11 year old child but only sentenced to probation and not required to be listed on the sex offender registry. In the third matter, State v. Wilson, the Defendant pled guilty to assault and battery first degree. The Court again sentenced Wilson to probation.

The Court's only comment upon sentencing was the opinion that locking the bedroom door was premeditation to commit assault. The Appellant disagrees. It is traditional and customary to lock a bedroom door during intimate activities. The Appellant did not jam or block the door to prevent entry. Appellant opened the door when it was knocked upon. Appellant does not believe locking of the door in this context justifies an eight year sentence especially in light of other sentences given by the Court.

Therefore, based on the disproportionality between the Appellant's sentence and the aforementioned cases, the Court should reconsider the Appellant's sentence as the Court was grossly disproportionate in the Appellant's sentencing and should consider Appellant's sentence in proportion to the other criminals within the jurisdiction.

### **CONCLUSION**

Based on the foregoing and all other information presented at Appellant's sentencing hearing, the Appellant respectfully requests that this Court reverse the Appellant's sentence and credit Appellant with the time served under house arrest in Appellant's time served.

*Signature on the following page*

Respectfully submitted,

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