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SC Court of Appeals

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL CIRCUIT

THE STATE)

CASE NO: 2020-GS-32-01240

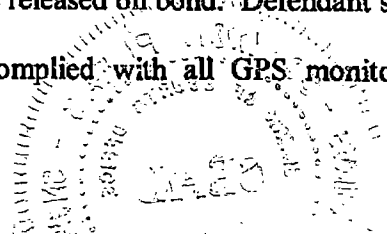
vs.)

ANDRES FERNANDO POSSO)
Defendant.)

ORDER DENYING DEFENDANT'S
MOTION TO REOPEN SENTENCE

This matter comes before the Court upon the Defendant's Motion to Reopen Sentence ("the Motion") for Defendant Andres Fernando Posso ("Defendant") on Case No. 2020-GS-32-01240. Defendant plead pursuant to *Alford* before this Court on May 12, 2022 to two (2) counts of Criminal Sexual Conduct with a Minor, 3rd Degree and was sentenced to an eight (8) year active sentence, as per the recommendation of Assistant Solicitor LeAnna McMenamin with the Eleventh Circuit Solicitor's Office. On May 13, 2022, Defendant's counsel, Jason Chehoski with the Eleventh Circuit Public Defender's Office, filed the Motion pursuant to S.C. Code, § 24-13-40. After receiving written submissions from the parties addressing their respective arguments, the matter was taken under advisement by the Court.

As a brief factual background, when informed of the allegations underlying this conviction, Defendant fled the country. Upon return, Defendant was arrested and spent roughly eight (8) months in jail without bond. On May 19, 2020, Judge Addy issued an Order Setting Bond for Defendant, placing him on GPS monitored house arrest while released on bond. Defendant spent six-hundred seventeen (617) days on house arrest and complied with all GPS monitoring conditions during that time.



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[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

Pursuant to the Motion, Defendant asks this Court to give him time served credit for the six-hundred seventeen (617) days he spent on house arrest. Defendant argues that, due to the COVID-19 pandemic, he was placed on house arrest rather than remaining in custody during the pendency of his criminal charges, and therefore, he should be given credit for that time. The State, on the other hand, maintains that Defendant should not be given credit for his time on house arrest, contending Defendant already received the benefit of having seven (7) counts of Criminal Sexual Conduct with a Minor and one (1) count of Criminal Solicitation of a Minor dismissed, as well as a recommendation of a cap of eight (8) years in exchange for his plea.

In *State v. Higgins*, the South Carolina Court of Appeals held that the South Carolina “legislature only intended to allow credit for time served in a penal institution” and affirmed a trial court’s refusal to afford credit to the defendant for “the time served on house arrest while he was released on bond.” 357 S.C. 382, 386, 593 S.E.2d 180, 182 (Ct. App. 2004).

After considering the arguments of counsel and the applicable statutes and case law, the Court holds that Defendant is not entitled to time served credit for the six-hundred seventeen (617) days he spent on house arrest while released on bond. Pursuant to the discretion afforded by SCRCrimP, Rule 29, the Court rules on this Motion on the briefs submitted by the parties without oral argument. The Court, therefore, orders Defendant’s Motion is hereby DENIED.

IT IS SO ORDERED.



Walton J. McLeod, IV
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina
September 23, 2022

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