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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2019-000958

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SC Court of Appeals

THE STATE,

Respondent,

v.

DERRICK JOSEPH MILES,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Whether the trial judge abused his broad sentencing discretion by declining to grant Appellant additional credit for time served while on house arrest?

STATEMENT OF THE CASE

In February 2012, the Berkeley County Grand Jury indicted Appellant for one count of burglary first degree (2012-GS-08-0255). Appellant plead guilty to burglary second degree violent before the Honorable Stephanie McDonald on July 25, 2013. Appellant was represented by William Runyon, Esq. The State was represented by Assistant Solicitor Colleen Dixon of the Ninth Circuit Solicitor's Office. Appellant was sentenced to fifteen years' imprisonment pursuant to a negotiated plea with credit given for 365 days of time served. (R. 13-16).

Appellant's plea counsel requested that Appellant receive credit for 365 days for the time he served in the Berkeley County jail, but did not request additional credit for time served on house arrest. (R. 8).

Appellant did not appeal his conviction. However, Appellant filed an application for post-conviction relief on December 23, 2013. Appellant subsequently filed an amended application on June 19, 2015. A post-conviction relief hearing was held on July 22, 2015 before the Honorable Roger E. Henderson. Judge Henderson dismissed Appellant's PCR application via an order dated August 29, 2015. (R. 75-83). Appellant appealed Judge Henderson's order on September 17, 2015.

The South Carolina Supreme Court granted Appellant's petition for a writ of certiorari and remanded Appellant's case to the Berkeley County Court of General Sessions to determine if Appellant should be given credit for time served while on house arrest. Miles v. State, Op. No. 2017-MO-012 (filed June 21, 2017). A sentencing hearing was held on remand before the Honorable R. Markley Dennis on May 28, 2019. Appellant was represented by Wanda H. Carter, Esq. and the State was represented Deputy Solicitor Bryan Alfaro of the Ninth Circuit Solicitor's Office. Judge Dennis declined to give Appellant credit for any additional time served while on

house arrest. (R. 117-18). Judge Dennis signed an order reflecting his decision on May 29, 2019. (R. 123). As of the date of the remand sentencing hearing, Appellant had been granted parole for his burglary sentence, but was incarcerated in the South Carolina Department of Corrections for trafficking in methamphetamine of greater than ten grams but less than twenty-eight grams. (R. 119). Appellant timely filed a notice of appeal and an initial brief.

STATEMENT OF FACTS

On July 25, 2011, Appellant and two co-defendants broke into a home in the Goose Creek area of Berkeley County. (R. 12). The owners of the home, George and Robin McDonald, reported a large amount of jewelry and several firearms as being stolen. (R. 11-12). Appellant and his co-defendants pawned several of the items at various pawn shops in the Charleston area. (R. 12). Appellant's DNA was recovered from a pair of gloves that were used during the burglary (R. 12). Appellant was indicted for burglary first degree but pled guilty to burglary second degree violent. Appellant was sentenced to fifteen years' imprisonment and given credit for 365 days of time served. Appellant was granted parole for his burglary sentence, but is still incarcerated in the South Carolina Department of Corrections for trafficking in methamphetamine of greater than ten grams but less than twenty-eight grams. (R. 119).

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Halcomb, 382 S.C. 432, 438, 676 S.E.2d 149, 152 (Ct. App. 2009). “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, 692 S.E.2d 541 (2010).

ARGUMENT

The trial judge did not abuse his broad sentencing discretion by declining to grant Appellant additional credit for time served while on house arrest.

Appellant argues Judge Dennis erred in denying Appellant's request to receive credit for time served while on house arrest at the remand sentencing hearing because Judge Dennis assumed that the original sentencing judge, Judge McDonald, had already taken any time served credit into account when accepting Appellant's negotiated plea. Appellant contends Judge Dennis abused his discretion by not considering whether Appellant should be granted credit for time served while on house arrest. On the contrary, Judge Dennis considered Appellant's arguments and, in his discretion, declined to give Appellant any additional credit. Appellant conflates the negative outcome of his motion to receive additional credit for time served on house arrest with an abuse of discretion on Judge Dennis' part. Just because Appellant did not achieve his desired outcome does not mean that Judge Dennis did not consider his request on remand and use his discretion in denying Appellant's request.

S.C. Code § 24-13-40 provides in relevant part:

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. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

S.C. Code § 24-13-40.

The aforementioned statute contains both mandatory and discretionary provisions for trial judges to consider when determining the amount of time served a defendant should be given credit for. Per § 24-13-40, a trial judge "must" give a defendant credit for time served prior to

trial and sentencing unless one of the two enumerated exceptions apply. However, a trial judge is not required to give a defendant credit for time served while on house arrest. The plain language of the statute dictates that credit “may be given” for time spent on house arrest, but a trial judge is not required to do so.

Here, the trial judge heard arguments from Appellant and his appellate counsel and declined to give Appellant additional credit for time served on house arrest. In making his decision, Judge Dennis gave deference to the sentence imposed by Judge McDonald. However, the fact that Judge Dennis gave deference to Judge McDonald’s sentence does not mean that Judge Dennis failed to consider Appellant’s request or that he abused his discretion in denying Appellant’s request. In fact, Judge Dennis articulated his ruling in a written order which reads: “After hearing from both parties, the Court, in its discretion, declined to grant any additional time served credit beyond the original 365 days credit which was negotiated between the parties at the entry of the initial negotiated guilty plea and sentencing before Judge McDonald on July 25, 2013.” (R. 123). Thus, while Judge Dennis gave Judge McDonald’s sentence deference, he nonetheless heard arguments from each party and ultimately declined to give Appellant additional credit. Appellant confuses the negative outcome of his motion with an abuse of discretion.

This Court should affirm the ruling of Judge Dennis. However, even if this Court remands Appellant’s case back to the circuit court for an additional sentencing hearing or grants Appellant credit for the time he served on house arrest, Appellant’s current incarceration status in the South Carolina Department of Corrections will not be affected. Appellant acknowledged this fact during the remand sentencing hearing when he declared “I’ve made parole on the sentence. I’m on a different sentence.” (R. 119, lines 14-15). Indeed, Appellant is currently

serving an active sentence on the completely unrelated offense of trafficking methamphetamine of greater than ten grams but less than twenty-eight grams. As the plain language of § 24-13-40 indicates, Appellant cannot receive credit for time served prior to trial on one offense while awaiting trial and sentencing for a second offense. In Appellant's case, he has already completed the active portion of his burglary second degree offense. Appellant cannot apply credit for time served on house arrest while awaiting trial for the burglary offense toward the trafficking sentence he is currently serving. The decision of Judge Dennis should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the lower court should be affirmed.

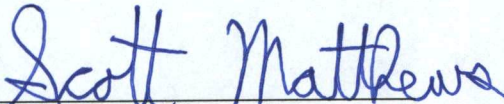
Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule
211(b), SCACR.

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