

RECEIVED

Jan 03 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO THE COURT OF APPEALS
The Honorable R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2022-001687

THE STATE,

Respondent,

v.

DERRICK JOSEPH MILES,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

300-B California Ave
Moncks Corner, SC 29461
(843) 719-4529

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

STANDARD OF REVIEW6

ARGUMENT7

 I. The Court of Appeals properly found that the issue of whether Petitioner
 received credit for house arrest was moot in this case.....7

CONCLUSION.....12

TABLE OF AUTHORITIES

Cases

Hayes v. State, 413, S.C. 553, 558, 777 S.E.2d 6 (Ct. App. 2015)..... 6

In re M.B.H., 387 S.C. 323, 692 S.E.2d 541 (2010)..... 5

Mathis v. South Carolina State Highway Dept., 260 S.C. 344, 195 S.E.2d 713 (1973)..... 6

State v. Halcomb, 382 S.C. 432, 676 S.E.2d 149 (Ct. App. 2009)..... 5

Statutes

S.C. Code Ann § 24-13-40 (Supp. 2021)..... 6

STATEMENT OF THE ISSUE

The Court of Appeals properly found that the issue of whether Petitioner received credit for house arrest was moot in this case

STATEMENT OF THE CASE

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

Petitioner did not appeal his conviction. However, Petitioner filed an application for post-conviction relief on December 23, 2013. Petitioner 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 Petitioner's PCR application via an order dated August 29, 2015. (R. 75-83). Petitioner appealed Judge Henderson's order on September 17, 2015.

The South Carolina Supreme Court granted Petitioner's petition for a writ of certiorari and remanded Petitioner's case to the Berkeley County Court of General Sessions to determine if Petitioner 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. Petitioner was represented by Wanda H. Carter, Esquire, and the State was represented Deputy Solicitor Bryan Alfaro of the Ninth Circuit Solicitor's Office. Judge Dennis declined to give Petitioner 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, Petitioner had been granted parole for his burglary sentence, but remained incarcerated in the South Carolina Department of Corrections for a conviction of trafficking for methamphetamine of greater than ten grams but less than twenty-eight grams. (R. 119). Petitioner timely filed a notice of appeal and an initial brief.

On August 10, 2022, the South Carolina Court of Appeals issued an opinion holding that the issue raised on appeal as moot. State v. Miles, Op. No. 2022-UP-338 (S.C. Ct. App. Filed August 10, 2022); (App. 1-3). A petition for rehearing was timely filed and denied on November 2, 2022. (App. 4-13). A timely Petition for Writ of Certiorari was filed on December 2, 2022. This return follows.

STATEMENT OF FACTS

On July 25, 2011, Petitioner 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). Petitioner and his co-defendants pawned several of the items at various pawn shops in the Charleston area. (R. 12). Petitioner's DNA was recovered from a pair of gloves used during the burglary (R. 12). Petitioner was indicted for burglary first degree but pled guilty to burglary second degree violent. Petitioner was sentenced to fifteen years' imprisonment and given credit for 365 days of time served. Petitioner was granted parole for his burglary sentence, but is still incarcerated in the South Carolina Department of Corrections for a conviction of trafficking of 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, 26, 692 S.E.2d 541, 542 (2010).

ARGUMENT

The Court of Appeals properly found that the issue of whether petitioner received credit for house arrest was moot in this case

Petitioner argued that the Court of Appeals erred in holding that the issue of whether petitioner received house arrest credit was moot. Specifically, Petitioner argued that the Court of Appeals erred in finding that the issue was moot because issues with sentencing credits fall in the category of being capable of repetition yet evading review. (App. 9). However, as the trial court observed, Petitioner's issue is moot as he is no longer in prison and has fully served his sentence. State v. Miles, Op. No. 2022-UP-338 (S.C. Ct. App. Filed August 10, 2022); App. 2. The Court further stated that "As such, any decision we could make as to the merits of his case would have no practical legal effect." Id.

As the court properly noted, the completion of an individual's sentence renders an appeal of that sentence moot. Hayes v. State, 413 S.C. 553, 558, 777 S.E.2d 6, 9 (Ct. App. 2015). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy." Mathis v. South Carolina State Highway Dept., 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). The Court of Appeals addressed Petitioner's assertion that this issue falls into an exception to the mootness doctrine and properly found that it does not.

S.C. Code Ann § 24-13-40 (Supp. 2021), amended a month before Petitioner's sentencing, to allow a sentencing court, in its discretion, to award a defendant credit for time served while under GPS monitored house arrest. At Petitioner's sentencing hearing, Petitioner's counsel, never requested credit for or mentioned the 387 days Petitioner spent under house arrest. (R. 5-17). "In determining whether a moot issue should be reviewed under the public importance exception, the issue must present a question of imperative and manifest urgency requiring the

establishment of a rule for future guidance in ‘matters of important public interest.’” Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 27, 630 S.E.2d 474 (2006). This evaluation must be made based on the facts of each individual situation. Id. Here, the Court of Appeals properly noted that the issue is not whether S.C. Code Ann § 24-13-40 grants discretion to the plea court to award credit for time served, but whether Petitioner’s counsel was ineffective in not asking for the credit on his behalf. (App. 3). Therefore, this issue is not capable of repeating and evading review because it is specifically associated with Petitioner. The fact that Petitioner’s counsel did not ask for credit on his behalf does not rise to a question of imperative and manifest urgency. Petitioner has fully served the sentence imposed and as the Court of Appeals found, “no ruling we could issue would have any practical effect on Miles . . . and pointed to no remaining collateral effect of the sentence he received that gives rise to a justiciable controversy.” Therefore, the Court of Appeals properly found that Petitioner’s claim is moot and Petitioner’s Petition for Writ of Certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

300-B California Ave
Moncks Corner, SC 29461
(843) 719- 4529

BY:



AMBREE M. MULLER
104213

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 3, 2023

RECEIVED

Jan 03 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO THE COURT OF APPEALS
The Honorable R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2022-001687

THE STATE,

Respondent,

v.


DERRICK JOSEPH MILES

Petitioner.

CERTIFICATE OF SERVICE

I, Anne Mueller, certify that I have served the Return to Petition for Writ of Certiorari on Wanda H. Carter, Esquire, counsel of record for Petitioner, by sending one copy by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 3rd day of January, 2023.



Anne A. Mueller
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

From: [Anne Mueller](#)
To: ["wcarter@sccid.sc.gov"](mailto:wcarter@sccid.sc.gov)
Cc: [Scott Leverett \(sleverett@sccid.sc.gov\)](#); [Ambree Muller](#); [Anne Mueller](#)
Bcc: [Victim Services](#)
Subject: State v. Derrick Joseph Miles, 2022-001687
Date: Tuesday, January 3, 2023 4:36:00 PM
Attachments: [image001.png](#)
[Miles Derrick - 2022-001687 - Return To Petition For Writ Of Certiorari \(03186387xD2C78\).PDF](#)

Good afternoon, Ms. Carter.

Attached to this email is the State's Return To Petition For Writ Of Certiorari in the above matter.

If you will, please confirm your receipt of our return by return email.

Sincerely,

Anne Mueller, Legal Assistant to Assistant Attorney General Ambree M. Muller

Anne A. Mueller, Legal Assistant
Office of the South Carolina Attorney General
Criminal Appeals Division • Office 803-734-3922 • scag.gov

emailsigseal



This email, which includes any attachments, is considered confidential and may be legally privileged. If you have received it in error, please notify the sender immediately by reply email and then delete this message from your system. Please do not copy it, use it for any purposes, or disclose its contents to any other person. This email is subject to FOIA requests. Thank you for your cooperation.