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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MALIK DEON WHITE,

APPELLANT

APPELLATE CASE NO. 2023-000164

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF ISSUE ON APPEAL

The sentencing reconsideration judge erred in failing to add time served credit to appellant's sentence for his house arrest confinement (and electronic monitoring) in the case.

STATEMENT OF THE CASE

Appellant Malik Dean White pled guilty to attempted armed robbery during the September 2022 term of the Beaufort County General Sessions Court before Judge Brian M. Gibbons. Appellant was sentenced by Judge Brooks Goldsmith to imprisonment for a period of fifteen years during the December 2022 term of the Beaufort County General Sessions Court. A sentencing reconsideration hearing was held before Judge Gibbons during the January 2023 term of the Beaufort County General Sessions Court. Judge Gibbons denied appellant's motion to be resentenced and his request for time served credit in the case.

Appellant appealed his conviction and sentence. This brief follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Vick, 384 S.C.189, 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 (2004). 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, 770 S.E.2d 436, 438 (Ct. App. 2015). 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., 387 S.C. 323, 692 S.E.2d 541 (2010).

ARGUMENT

The sentencing reconsideration judge erred in failing to add time served credit to appellant's sentence for his house arrest confinement (and electronic monitoring) in the case.

During appellant's plea proceeding, the solicitor summarized the facts of the case. On November 16, 2020, appellant, Devante White, Sarah Barr, and Jamal Coakley drove to Timothy Milliken's home in Bluffton, SC in order to effect a "lick."[1] During the robbery, Coakley held a gun, which Davante White grabbed and used to shoot Milliken, who died thereafter. R. 8, l.12-p.9, l.20. At the sentencing hearing, the judge gave appellant 600 days credit for time served while previously jailed in another jurisdiction, but did not give appellant credit for time served while under **house arrest** and electronic monitoring. The colloquy regarding this follows:

> Defense Counsel: It was electronic monitoring, and he was also in the YOA supervision at the same time too. So, the – without the house arrest, he would be at 600 days. With the house arrest – the electronic monitoring, I[t] would be at 759. So 159 days electronic monitoring.
>
> The Court: And the state, anything in response?
>
> Solicitor: Not necessarily in response, Your Honor, just that the YOA that they referenced was in reference to a burglary and that is what caused him to receive that in 2019. Thank you, Your Honor.
>
> The Court: Well, I cannot do what your attorney is asking the court to do, but I am not going to do exactly what the solicitor is asking me to do either. I sentence you to the Department of Corrections for a period of 15 years, with credit for time served of 600 days. R. 41, l.7-p.42, l.2.

The colloquy at the sentencing reconsideration hearing regarding this matter follows:

> Defense Counsel: Your Honor, I just wanted to clarify on little thing too, Your Honor...[i]n the original sentencing the court did not give Malik White credit for his electronic monitor.

[1] A lick is defined as a robbery. R. 12, lines 21- p. 13, l.22.

Solicitor: I think that the sentencing sheet, if I reviewed it correctly has some six-hundred-and-some days –

The Court: It is six hundred.

Solicitor: --which I believe does include that period of time, it could be more though.

The Court: The sentence sheet does not indicate that he was given credit for electronic monitoring.

Defense Counsel: No, Your Honor. The six hundred days was for the time he spent in Georgia to the day of sentencing, not including the electronic monitor. If the Court does include electronic monitoring, it would have been seven hundred fifty-nine days,

The Court: Well, you are going to have to refresh my memory on the facts that would justify the court giving him that credit.

Defense Counsel: Yes, Your Honor. The entire time that he was out, he was on an electronic monitor and he had been working doing Door Dash and supporting his family, Your Honor, because that is the job he was able to do. He does have three minor children and one on the way, and that is the reason that I was requesting the time of the electronic monitor. He did not pick un any new charges from the date that this – date of this case, all the way through time of sentencing, he did not pick up any new charges, Your Honor.

The Court: Well, then let me ask the solicitor how the State feels. In the true sense, it was not one hundred percent house arrest. Apparently, he could go to work and other places.

Solicitor: That is correct, Your Honor.

The Court: There was not a locked down house arrest?

Solicitor: No, there was not. And I am showing the number was something like 759.

Defense Counsel: That is what I have from the time he was in Georgia in the detention center up until the day of sentencing, it was two years and twenty-nine days.

Solicitor: And again, a very minimal period of time he actually was incarcerated. R. 62, l.4-p. 64, l.6.

The sentencing reconsideration judge denied the request for time served house arrest credit and ruled as follows:

> The Court: All right, Mr. White. The court has considered all of the matters that have been presented by your attorney. As to the evidence that you may have given to law enforcement concerning another crime, in the court's opinion, is not sufficient for the court to change the ruling of the court. The discrepancies or differences between your sentence and the other sentences imposed by the court, the court does consider your prior criminal record, and for those reasons, the motion to reconsider is denied. R. 65, l.22-p. 66, l.8.

S.C. Code Ann § 24-13-40 reads as follows:

> In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing. *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 no receive credit for time served prior to trial in reduction of his sentence for the second offense.

In State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (Ct. App. 2004), the Court held that time served credit under § 24-13-40 could only be given to inmates serving time in a penal institution and not on home detention. However, on June 7, 2013, S.C. Code Ann. § 24-13-40, was amended to read as follows:

> The computation of the time served...must be calculated from the date of the imposition of the sentence.....[and] 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.

Consequently, S.C. Code Ann. § 24-13-40 as amended meant that Higgins was no longer controlling on the issue of whether to bestow time served credit while on home detention. Therefore, the sentencing reconsideration judge erred in failing to grant appellant's request for time

served credit while he was on electronic monitoring while under house arrest, which would have shaved an additional 159 days off his sentence in the case. The distinction that appellant was not on lock down and had been allowed to work while on house arrest, which triggered the electronic monitoring, did not justify the denial of appellant's request for house arrest time served credit. The sentencing reconsideration judge erred in failing to give appellant time served credit for his house arrest confinement (and electric monitoring) in the case.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request that appellant's sentence be vacated and the case remanded for a new sentencing hearing.

Wanda H. Carter
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ATTORNEY FOR APPELLANT

This 27th day of November, 2023.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 27, 2023.

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