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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE
Court Of General Sessions
The Honorable Alex Kinlaw Jr., Circuit Court Judge

Appellate Case No. 2023-001621

THE STATE,

Appellant,

v.

CHRISTOPHER STEPHEN QUICK,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court abused its discretion and committed a reversible error of law in its decision to award credit for time served when Respondent was not on monitored house arrest.

STATEMENT OF THE CASE

A Greenville County Grand Jury indicted Respondent Christopher Quick for Criminal Sexual Conduct with a minor in the second degree. On August 7, 2023 he pled guilty, before the Honorable Alex Kinlaw, Jr. Respondent was sentenced to a 20-year sentence suspended to 10 years in the Department of Corrections with 5 years of probation. Respondent was given credit for 992 days spent on GPS monitoring prior to his conviction.

STATEMENT OF FACTS

On November 30, 2019, Victim disclosed that her uncle (Respondent) sexually assaulted her the night before. (Plea Tr. p. 7). The incident occurred in Respondent's home. (Plea Tr. p. 7). Victim also disclosed that on the night of the incident she slept with Respondent in the master bedroom while the wife and children of Respondent slept in the other room. (Plea Tr. p. 7-8).

Victim was transported to the hospital, where a SANE examination was performed. (Plea Tr. p. 7). Victim disclosed in a forensic interview that she was assaulted each time she stayed at Respondent's home since she was between seven or eight years old. (Plea Tr. p. 7). Respondent's DNA was found in the form of sperm cells on Victim's vaginal swabs and on Victim's underwear cuttings. (Plea Tr. p. 8).

Respondent was arrested and as a condition of bail (12-19-19) was placed on "GPS monitoring." (Motion Tr. p. 10). The monitoring documented Respondent's location. (Motion Tr. p. 4). Respondent was not placed on GPS with "HIP", where he would only be permitted to leave for work, school, church, medical reasons, or to speak with an attorney. (Motion Tr. p. 4). Respondent was only given "exclusionary zones" around the Victim's residence and instructed to have no contact with her. (Motion Tr. p. 4). Thus, Respondent was placed on GPS monitoring to make sure he did not go near the victim. But was not ordered to remain on house arrest during the time he was released on bond.

Respondent plead guilty as charged on August 7, 2023. (Plea Tr. p. 21). Respondent was given credit for the 992 days served on GPS monitoring. (Plea Tr. p. 20). On September 1, 2023, a motion to reconsider was heard. (Motion Tr. p. 14). The State argued that §24-13-40 was unambiguous in that it stated credit may only be given for time spent "under monitored house arrest." Respondent argued that the statute does not refer to HIP, and that it simply says

monitored house arrest. (Motion Tr. p. 4). Respondent pointed to the contract where it states that, other than for work and counseling, Respondent could only leave with GCDC approval. (Motion Tr. p. 8). The State responded by claiming this was a standard contract and that since there was no HIP Respondent was free to leave his house. (Plea Tr. p. 10). The Court denied the State's motion to reconsider. (Plea Tr. p. 12-13).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016). When reviewing a sentencing issue on appeal, an appellate court will only interfere with a circuit court judge's sentencing decision in rare and unusual circumstances in light of the broad discretion afforded to the circuit court judge on such matters. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952).

ARGUMENT

The trial court abused its discretion and committed a reversible error of law in its decision to award credit for time served when Respondent was not on monitored house arrest.

In South Carolina, sentencing judges are vested with broad discretion to impose a sentence falling within the statutory limits upon an offender convicted of a crime. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974). Entitlement to credit for “time served” toward a criminal sentence is restricted by statute.¹ S.C. Code Ann. § 24-13-40. Pursuant to the statute, prisoners are only entitled to credit for time served pre-trial in limited circumstances. Id. Typically, prisoners must be given credit for time served for incarceration prior to trial and may be given credit for time spent “under monitored house arrest.” Id. Sentencing judges in our state are vested with complete discretion as to whether to award credit toward a sentence to an individual awaiting trial while on monitored *house arrest*. S.C. Code Ann. § 24-13-40; State v. Franklin, 267 S.C. 240, 245, 226 S.E.2d 896, 897 (1976) (explaining circuit court judges in South Carolina ordinarily have wide sentencing discretion).

Where the terms of a statute are clear, the court must apply the statute according to its literal meaning. Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995). The statute must be given its ordinary meaning without resorting to subtle or forced construction to limit or expand its scope. Durham v. United Companies Financial Corp., 331 S.C. 600, 503 S.E.2d 465 (1998). The sentence should not be overturned absent an abuse of discretion; an

¹ § 24-13-40- (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. 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.

abuse of discretion occurs when the court's sentence is based on an error of law. State v. Pogue, 430 S.C. 384, 386, 844 S.E.2d 397, 398 (Ct. App. 2020); State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 868 (Ct. App. 2005).

In State v. Field, our Supreme Court noted it was inclined to determine the trial court erred in awarding credit for time served, even though the Court ultimately determined the issue was not preserved for review. State v. Field, 429 S.C. 578, 840 S.E.2d 548 (2020). In Field, the Respondent plead guilty and was awarded credit for sixteen months' time served. Id. 429 S.C. 580 840 S.E.2d 549. The State presented a "strong argument" on the merits that Respondent was not eligible for time served because the court took him off house arrest; meaning Respondent was only on electronic monitoring. Id. Nonetheless, the issue was not preserved for review. Id. The issue was not preserved for review because at the motion to reconsider, the State only raised the issue of whether the sentence was consistent with the court's intent. Id. 429 S.C. 581 840 S.E.2d 550.

First, unlike the issue in Field, the issue is reserved for review. At the motion for reconsideration, the State argued that the argued §24-13-40 did not permit Respondent to receive credit for the time he spent on GPS monitoring. The State noted Respondent was not placed on GPS with "HIP", where he would only be permitted to leave for work, school, church, medical reasons, or to speak with an attorney. (Motion Tr. p. 4). Since the State raised this issue at the motion to reconsider, the issue is preserved for review.

Next, the Court committed an error of law when awarding credit for time Appellant spent on monitored release with no order of house arrest since no provision of South Carolina law allows for such credit to be awarded. Cf. State v. Taub, 336 S.C. 310, 318, 519 S.E.2d 797, 802 (Ct. App. 1999) (reversing Taub's sentence and remanding for resentencing because his sentence

fell below the mandatory minimum sentencing limits established for his offense). Respondent was free to go and come as he pleased, so long as he did not approach the “exclusionary zones” around the Victim’s residence. (Motion Tr. p. 4). Correspondingly, the bail form spells out that Respondent “must be placed on GPS monitor with exclusionary zone around victim’s residence”; not that Respondent was to be placed on house arrest.

At the motion for reconsideration, Respondent pointed to the contract where it states that, other than for work and counseling, Respondent could only leave with GCDC approval. (Motion Tr. p. 8). However, the contract also states that Respondent is on “GPS ONLY Monitoring.” (Electronic Monitoring Information p. 1). The language in the contract is designed to be a standard contract that is suitable to encompass all users. Respondent was not placed on monitored house arrest as evidenced by the bail forms and the “GPS ONLY” language on the client orientation form. The court committed an error of law and abused its discretion when awarding Respondent credit for time served because he was not on monitored house arrest. Accordingly, this Court should reverse.

CONCLUSION

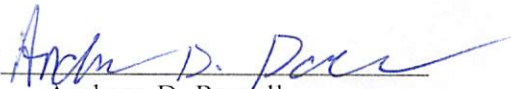
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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