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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
The Honorable Walton J. McLeod, Circuit Court Judge

Appellate Case No. 2022-001396

THE STATE,

Respondent,

v.

ANDRES FERNANDO POSSO,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

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

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

205 East Main St.
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. S.C. Code §24-13-40 provides a trial court "must" give credit for time "served" prior to trial and sentencing and "may" give credit for time spent under pre-trial house arrest. The trial court gave Posso credit for time served while incarcerated at the detention center, but declined to give him credit for time spent under house arrest. Did the trial court abuse its discretion?

STATEMENT OF THE CASE

A Lexington County grand jury indicted Appellant Andres Posso for two counts of Criminal Sexual Conduct with a Minor in the 2nd degree and seven counts of Criminal Sexual Conduct with a Minor in the 3rd degree. He pled guilty pursuant to North Carolina v. Alford¹ to two counts of CSC with a Minor 3rd degree on May 12, 2022, before the Honorable Walton J. McLeod, Circuit Court Judge. The remaining charges were dismissed. The State recommended a cap of 8 years' incarceration. Judge McLeod sentenced Posso to concurrent 8-year sentences. Judge McLeod gave Posso credit for time served at the detention center prior to his plea, but did not give him credit for time spent on house arrest. This direct appeal follows.

¹ 400 U.S. 25 (1970) (recognizing validity of guilty plea entered without express admission of guilt).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011). A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law. Id.

ARGUMENT

The trial court acted within its discretion when it declined to give Posso credit for time spent on house arrest prior to his plea

The trial court acted within its discretion when it declined to give Posso credit for time spent on house arrest prior to his plea. This Court should affirm.

The South Carolina Code provides: "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." S.C. Code Ann. § 24-13-40 (emphasis added). The statute, by its terms, gives trial courts the discretion to give—or not to give— credit for time spent on monitored house arrest prior to trial. See State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006) (explaining statute providing court "may" revoke probation vested court with discretion). The trial court did not err.

Furthermore, Posso raised no objection to the sentence to the circuit court. Plea counsel agreed it was within the trial court's discretion whether to give credit for time spent on house arrest. (R.p.21). Accordingly, this claim is not preserved for review. State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) (explaining "a challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review"). This Court should affirm.

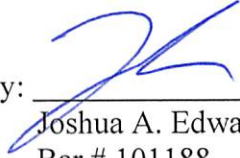
CONCLUSION

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

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

By: 

Joshua A. Edwards
Bar # 101188

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

S.R. HUBBARD, III
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