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Apr 15 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Supreme Court

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

Appellate Case No. 2024-000422

THE STATE,

Respondent,

v.

ANDRES FERNANDO POSSO,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

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 Petitioner 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, IV, 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. Posso appealed, and the court of appeals affirmed in an unpublished opinion without oral argument. State v. Posso, Opinion No. 2024-UP-060 (S.C. Ct. App. Filed Feb. 21, 2024). Posso filed a petition for writ of certiorari with this Court on March 15, 2024. This return 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. 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. (Tr.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"). Certiorari should be denied.

CONCLUSION


For all the foregoing reasons, it is respectfully submitted that certiorari should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within return to petition for writ of certiorari on Wanda Carter, Esquire, counsel of record for the Petitioner, 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 15th day of April, 2024.


Anne A. Mueller
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