STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

APPELLANT,

V.

CHRISTOPHER S. QUICK,

RESPONDENT

APPELLATE CASE NO. 2023-001621

FINAL BRIEF OF RESPONDENT

KATHRINE H. HUDGINS
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ATTORNEY FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE OF APPEAL

Did the sentencing judge act within his broad discretion by giving Respondent credit for the time he served on GPS monitoring because the monitoring imposed was the equivalent of monitored house arrest?

PETITIONER'S STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion and commit a reversible error of law in it decision to award credit for time served when Respondent was not on monitored house arrest?

STATEMENT OF THE CASE

In July of 2023, over three years after arrest in December of 2019, the Greenville County Grand Jury indicted Respondent, Christopher Stephen Quick, for criminal sexual conduct with a minor second degree, indictment #2020-GS-23-004140. (R. p. 43-44). On August 7, 2023, Appellant appeared before the Honorable Alex Kinlaw, Jr. and pled guilty as charged in the indictment. The plea was entered without negotiations or recommendation. (R. p. 45-46; R. p. 15, lines 10-11). Rachel Kepley represented Respondent at the plea. Anthony McCollum prosecuted the case. Judge Kinlaw sentenced Respondent to twenty (20) years provided that upon the service of ten (10) the balance was suspended with five (5) years of probation. The judge required Respondent to register as a sex offender and ordered sex offender counseling while on probation. The judge additionally gave Respondent credit for 992 days of time served. (R. p. 45-46; R. p. 27, lines 1-12).

On August 17, 2023, the State filed a motion to reconsider sentence. (R. p. 4). On September 1, 2023, a hearing was held before Judge Kinlaw on the motion to reconsider sentence. Rachel Kepley again represented Respondent and Anthony McCollum represented the State. Judge Kinlaw denied the motion to reconsider sentence in a written order signed October 2, 2023. (R. p. 3). The State filed a notice of intent to appeal on October 16, 2023. The initial brief of Appellant was filed on March 8, 2024. This initial brief of Respondent follows.

STANDARD OF REVIEW

A trial judge has broad discretion in sentencing within statutory limits. Brooks v. State, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997). " 'In criminal cases, the appellate court sits to review errors of law only.' State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). A sentence will not be overturned absent an abuse of discretion; an abuse of discretion occurs '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, 326, 692 S.E.2d 541, 542 (2010)." State v. Pogue, 430 S.C. 384, 386, 844 S.E.2d 397, 398 (Ct. App. 2020).

ARGUMENT

The plea judge acted within his broad discretion by giving Respondent credit for the time he served on GPS monitoring because the monitoring imposed was the equivalent of monitored house arrest.

During the plea the prosecutor told the judge, "Mr. Quick does have credit for one day in jail and, I believe, 991 days on GPS monitoring." (R, p. 14, lines 1-2). The plea was entered without negotiations or recommendation. (R. p. 45-46; R. p. 15, lines 10-11). During the plea colloquy the judge advised Respondent, "And you understand that in this particular offense, I can give you anywhere from 0 to 20 years in prison; do you understand that?" (R. p. 11, lines 17-19). Respondent answered, "Yes, sir." (R. p. 11, line 20). The judge sentenced Respondent to twenty (20) years provided that upon the service of ten (10) years the balance was suspended with five (5) years of probation. (R. p. 45-46; R. p. 27, lines 1-6). The judge also gave Respondent credit for one day served in jail and 991 days served on GPS monitoring and referenced by the prosecution earlier in the plea. (R. p. 45-46; R. p. 27, lines 11-12).

Ten days after the plea the State filed a motion to reconsider sentence arguing that Respondent was not entitled to credit for the time served on GPS monitoring. (R. p. 4). During the hearing on the motion to reconsider the State noted that the bail proceeding form ordered that Respondent was to be placed on GPS monitoring with an exclusionary zone around the victim's residence and included a no contact provision. (R. p. 2; R. p. 32, lines 21-25). The State argued that Respondent was not entitled to credit for the 992 days served on GPS monitoring because the GPS requirement of bond was not monitored house arrest as provided in S.C. Code §24-13-40(c). (R. pp. 32-34). The State additionally relied on documents from Sentinel, the electronic monitoring company, to argue that Respondent was on GPS monitoring only. (R. p. 32, lines 2-

20). The comments portion of the client orientation form provides that "Client is on GPS ONLY Monitoring." (R. p. 47).

Counsel for Respondent relied on a six-page contract between Respondent and the electronic monitoring company in support of the fact that Respondent was under house arrest and the judge acted within his discretion by giving credit for the 992 days served. (R. pp. 34-37). The first page of the participant contract provides that, "While on the Electronic Monitoring Program you may be scheduled to be out of your home for work, counseling, drug and alcohol treatment, and additional activities ***only*** with prior GCDC approval. Schedule changes must be communicated to your Case Manager 24 hours in advance." (R. p. 50). Respondent initialed this and other paragraphs included in the contract. Page two of the contract provides program requirements. The paragraph numbered one states that the case manager will establish the initial curfew schedule. (R. p. 51). The paragraph numbered two states that, "You will remain within the walls of your residence while under curfew." (R. p. 51). Respondent initialed both of these paragraphs. Respondent signed the contract on page six. (R. p. 55).

Counsel for Respondent noted S.C. Code §24-13-1510 for the definition of home detention. (R. p. 35, line 16 – p. 36, lines 1-3). S.C. Code §24-13-1520 provides, "'Home detention' means the confinement of a person convicted or charged with a crime to his place of residence under the terms and conditions established by the department." Counsel for Respondent argued:

> But when we talk about GPS monitoring, I think the common definition we would think of is that you have an ankle monitor and you're allowed to go wherever you please. But that's not the contract Mr. Quick signed. Those are not the regulations he was under.
>
> He was under terms that required him to be in his residence, terms that required a curfew, terms that did not allow him to leave his home without permission. And

> when Sentinel put those regulations on him, they transformed what would normally be GPS into a home detention program.
>
> I think he is absolutely entitled to that credit under the statute. And I think the Court absolutely had discretion to give it to him. And I think that was the proper thing to do considering he was on that program with no violations for a number of years, Your Honor.

(R. p. 37, lines 8-23).

In response to the specific language of the contract establishing curfews during which Respondent was required to remain in his residence and requiring prior approval to be outside the home, the State argued, "It's the State's contention that this is a standard contract that does not delineate between electronic monitoring and GPS monitoring." (R. p. 39, lines 1-3). Although the State asserted that Respondent was free to leave the residence without approval, (R. p. 32, lines 12-13), the State failed to present evidence from the electronic monitoring company to support the assertion in contradiction to the language of the contract.

On October 2, 2023, Judge Kinlaw denied the State's motion to reconsider sentence in a written order. (R. p. 3). Judge Kinlaw acted within his broad discretion by giving Respondent credit for the 992 days he served on GPS monitoring when the monitoring imposed was the equivalent of monitored house arrest. S.C. Code §24-13-40 provides in pertinent part, "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.**" (emphasis added). The requirements of the contract between Respondent and the monitoring company establishing curfews during which Respondent was required to remain in his residence and requiring prior approval to be outside the home meet the definition of house arrest, defined as home detention pursuant to S.C. Code §24-13-1520. The State failed to prove that the requirements of the contract did not apply to Respondent. While

the conditions of bail required GPS monitoring rather than house arrest or home detention, the contract with Sentinel, the electronic monitoring required the equivalent of house arrest.

In State v. Field, 429 S.C. 578, 581, 840 S.E.2d 548, 550 (2020), the State appealed an order giving fifteen months of credit for time served on house arrest when the defendant only served five months on house arrest before his attorney moved and the judge granted a motion to remove the house arrest requirement. Fields remained on bond with electronic monitoring for an additional ten months before entering a plea. The South Carolina Supreme Court wrote, "We are inclined to agree that the sentencing court did not have the authority to give Field credit for the entire fifteen months." Field, 429 S.C. at 581, 840 S.E.2d at 550. The Court, however, found the issue was not preserved for appellate review. In contrast, Respondent remained under the requirements of the contract with the monitoring company, requirements that exceeded electronic monitoring, for the entire 992 days. The house arrest requirements set forth in the contract between Respondent and the electronic monitoring company were not removed as the house arrest was removed by the judge in Field. The plea judge had the authority to give Respondent credit for the entire 992 days.

The notation on the client orientation form, "Client is on GPS ONLY Monitoring" (R. p. 47), does not override the requirements provided in the contract that were the equivalent to house arrest. While the bail proceeding form did not require house arrest, the electronic monitoring company apparently did require the equivalent of house arrest. The sentencing judge did not abuse his discretion in giving Respondent credit for the time served on the equivalent of house arrest.

In State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981), the South Carolina Supreme Court wrote, "We hold the authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion." It was well within the sentencing judge's broad discretion to deny the State's motion to reconsider sentence. It was well within the sentencing judge's broad discretion to give Respondent credit for the time he served on the equivalent of house arrest. The plea was entered without negotiations or recommendation. (R. p. 45-46; R. p. 15, lines 10-11). The judge could have imposed a sentence of between zero and twenty years. (R. p. 11, lines 17-19). The judge could have fashioned a sentence that was equal to the sentence imposed without giving credit for the time served on the equivalent of house arrest. The judge, however, acted within his discretion and gave Respondent credit for the time he served on the equivalent of house arrest. The sentencing judge's decision to give Respondent credit for 992 days served should be affirmed.

CONCLUSION

Based on the above arguments this Court should affirm the sentence giving credit for the time served on the equivalent of house arrest.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR RESPONDENT

This 25th day of July, 2024.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability 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."

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This 25th day of July, 2024.

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APPELLATE CASE NO. 2023-001621

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Final Brief of Respondent in the above-referenced case have been served upon Andrew D Powell, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 25th day of July, 2024.

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From: Stock, Chris
To: Andrew Powell; Grace Sommer
Cc: Hudgins, Kathrine
Subject: Quick, Christopher - Final Brief of Respondent - 2023-001621
Date: Thursday, July 25, 2024 12:48:00 PM
Attachments: Quick, Christopher - Final Brief of Respondent - 2023-001621 - AG Cover Letter.pdf
Quick, Christopher - Final Brief of Respondent - 2023-001621.pdf

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Mr. Powell,

Please find attached for service the Final Brief of Respondent for Christopher Quick's appeal which will be filed today with the Court of Appeals.

Thank you.
Chris

Chris Stock
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