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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVE W. JONES,

APPELLANT

APPELLATE CASE NO. 2024-000451

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion by finding no portion of Appellant's sentence for felony driving under the influence, death results, could be suspended and probation granted where the court misunderstood the plain language of S.C. Code Ann. § 56-5-2945, which allows probation to be granted once the mandatory minimum one year sentence has been served?

STATEMENT OF THE CASE

A Berkeley County grand jury indicted Appellant on May 12, 2021, for felony driving under the influence, death results. R. * (Indictment). On March 7, 2024, Appellant pled guilty as indicted before the Honorable Deadra Jefferson. Tr. 1. Assistant Solicitor Wilton McNeely represented the state. Calvin Andrew Carroll and Susan Williams represented Appellant. Tr. 1. Judge Jefferson sentenced Appellant to ten years imprisonment.

On March 15, 2024, Appellant timely filed a notice of appeal. Accompanying Appellant's notice of appeal was an explanation pursuant to Rule 203(d)(1)(B)(iv), SCACR, identifying the issue raised in this brief.

This appeal follows.

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) (quoting State v. Williams, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010)). "A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law." Id. (quoting In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 541 (2010)).

ARGUMENT

The trial court abused its discretion by finding no portion of Appellant's sentence for driving under the influence, death results, could be suspended and probation granted where the court misunderstood the plain language of S.C. Code Ann. § 56-5-2945, which allows probation to be granted once the mandatory minimum one year sentence has been served.

Relevant Facts

The assistant solicitor recommended a "cap of ten years" imprisonment in exchange for Appellant's guilty plea to felony driving under the influence when death results, which carries a mandatory minimum of one year imprisonment and up to twenty-five years. See S.C. Code Ann. § 56-5-2945(A)(2). During the sentencing proceeding, Appellant presented extensive evidence in mitigation. Defense counsel requested the trial court sentence Appellant to the one year mandatory minimum. If the court was not inclined to sentence Appellant to one year imprisonment, counsel requested in the alternative that the court sentence Appellant to "an additional period of time" suspended to the one year mandatory minimum and five years of probation with "alcohol monitoring." Defense counsel emphasized that he knew the mandatory minimum one year sentence could not be suspended pursuant to the statute. Tr. 42, ll. 4-23.

The trial court asked defense counsel to repeat his sentencing request. Counsel again asked the court to sentence Appellant to five years, suspended upon the service of one year imprisonment and five years' probation with alcohol monitoring. The court asserted, "But the statute says that no portion of his sentence can be suspended." In response, defense counsel maintained that his "understanding is the statutory minimum is non-suspendable, but anything beyond that could be structured that way, and I've seen it done." After reading the language of the statute, the court concluded that the "the legislature's intent was for the imposition of an

active sentence of at least the mandatory portion [and] that probation cannot be given for any portion" of the sentence imposed. The court "imagined" that the rationale behind why probation must not be granted, according to the court's interruption of the statute, was because the legislature intended the person to "come out on community supervision" after serving his active sentence. Tr. 43, l. 4 – 44, l. 15.

The court ultimately sentenced Appellant to ten years imprisonment. Tr. 47, ll. 6-12.

Discussion

The trial court abused its discretion by finding no portion of Appellant's sentence for felony driving under the influence, death results, could be suspended and probation granted where the court misunderstood the plain language of S.C. Code Ann. § 56-5-2945, which allows probation to be granted once the mandatory minimum one year sentence has been served.

"The general power to suspend sentences derives from S.C. Code Ann. § 24-21-410." State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). This statute states in relevant part: "After conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of a court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation." The "general power" derived from § 24-21-410 "does not extend to offenses where the legislature has specifically mandated that no part of a sentence may be suspended." Thomas, 372 S.C. at 468, 642 S.E.2d at 725 (citing State v. Johnson, 343 S.C. 693, 541 S.E.2d 855 (Ct. App. 2001); State v. Taub, 336 S.C. 310, 519 S.E.2d 797 (Ct. App. 1999); and State v. Tisdale, 321 S.C. 153, 467 S.E.2d 270 (Ct. App. 1996)).

Appellant was convicted of felony driving under the influence when death results. Pursuant to S.C. Code Ann. § 56-5-2945(A)(2), a person convicted of this offense "must be punished . . . by . . . mandatory imprisonment for not less than one year nor more than twenty-five years." The statute further states, "A part of the mandatory sentences required to be imposed by this section must not be suspended, and probation must not be granted for any portion." Based on the plain language of this statute, the trial court abused its discretion by finding no portion of Appellant's sentence could be suspended and probation granted. The statute plainly states that "probation must not be granted for any portion" of the "mandatory sentences required to be imposed by this section."

Because Appellant was convicted of felony driving under the influence when death results, he "must be punished" by "mandatory imprisonment for not less than one year." See S.C. Code Ann. § 56-5-2945(A)(2). While this mandatory one year sentence must not be suspended and probation granted, any additional sentence beyond the one year mandatory minimum may be suspended in the court's discretion based on the plain meaning of the statute.

"The cardinal rule of statutory construction is to ascertain and effectuate legislative intent." State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) (quoting Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "As such, a court must abide by the plain meaning of the words of a statute." Id. (citing Hodges, 341 S.C. at 85, 533 S.E.2d at 581). "When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation." Id. (citing Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 569, 703 S.E.2d 197, 200 (2010)). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Id. (quoting

Hodges, 341 S.C. at 85, 533 S.E.2d at 581). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Id. at 587, 713 S.E.2d at 622-23 (quoting Hodges, 341 S.C. at 85, 533 S.E.2d at 581). "Penal statutes are to be construed strictly against the State and in favor of the defendant." Thomas, 372 S.C. at 468-69, 642 S.E.2d at 725.

The plain language of the statute is unambiguous. Again, the sentence in dispute states, "A part of the mandatory sentences required to be imposed by this section must not be suspended, and probation must not be granted for any portion." The second clause of the sentence "probation must not be granted for any portion" refers back to the first clause, "of the mandatory sentences required to be imposed by this section." Consequently, the trial court abused its discretion by finding no portion of Appellant's sentence could be suspended and probation granted after he served the one year mandatory minimum.

If this Court determines there is ambiguity in language of the statute, the statute must be strictly construed against the state and in favor of Appellant. When doing so, the statute plainly allows probation to be granted after service of the mandatory one year minimum.

Respectfully, this Court should reverse Appellant's sentence and remand for a new sentencing hearing.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his sentence and remand for a new sentencing hearing.

Respectfully submitted,

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Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of October, 2024.