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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court Of General Sessions
The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2024-000525

THE STATE, Respondent,

v.

JUSTIN RAY MEDFORD, Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

A. Whether Appellant's challenge to the statute is properly preserved for appellate review.

B. Whether the sentencing court correctly denied Appellant's request to receive credit for time served.

STATEMENT OF THE CASE

Justin Medford (Appellant) was indicted by a York County Grand Jury in July of 2023 for failure to stop for a blue light. The court set a surety bond on May 24, 2023, and Appellant posted that bond on August 30, 2023. Subsequently, Appellant was indicted in October of 2023, for trafficking fentanyl and possession with the intent to distribute fentanyl within proximity of a park or school. Appellant was represented by Melissa Rogers, Esquire and Assistant Solicitor William Anderson represented the State. On March 22, 2024, Appellant pled guilty to trafficking fentanyl 4 to 14 grams first offense, resisting arrest (b), failure to stop for a blue light, and possession with the intent to distribute fentanyl within proximity of a park or school.
The Court accepted his plea and sentenced him to ten years' imprisonment. Appellant filed a timely notice of appeal. This appeal follows.

STATEMENT OF FACTS

On May 24, 2023, the Fort Mill Police Department attempted to pull Appellant over for driving with a defective headlight. (Tr. p. 8). Appellant drove for over a mile before ultimately pulling over. (Tr. p. 8). When officers arrived at the vehicle, they noticed a small bag of marijuana. (Tr. p. 8). Appellant told officers he had marijuana and a needle inside. (Tr. p. 8). Subsequently, officers found fentanyl fragments in the vehicle. (Tr. p. 8). One officer became ill as a result of the exposure and was transported to the hospital. (Tr. p. 9). Appellant was also charged with obstruction of justice under the theory that the fentanyl was crushed prior to the stop. (Tr. p. 9).

While out on bond, in September, officers found Appellant unresponsive on a hotel patio. (Tr. p. 9). They observed him under the influence of drugs and in the possession of a syringe. (Tr. p. 9). Officers attempted to arrest Appellant, and he began to fight officers in an attempt to flee. (Tr. p. 9). After a struggle, officers were able to arrest Appellant. (Tr. p. 9). Subsequent to the arrest, officers found methamphetamine, cocaine, and fentanyl. (Tr. p. 9-10). After searching his phone, officers found "abundant" evidence of drug sales. (Tr. p. 10). Appellant confirmed the facts recited by the State were correct. (Tr. p. 11).

Appellant pled guilty to trafficking fentanyl 4 to 14 grams first offense, resisting arrest (b), failure to stop for a blue light, and possession with the intent to distribute fentanyl within proximity of a park or school. (Tr. p. 11). The State argued Appellant was not entitled to time served under § 24-13-40. The State claimed that the legislative intent clearly established time served credit should not be awarded when a defendant commits another crime while out on bond. (Tr. p. 12). Appellant argued he was currently incarcerated due to his failure to appear, never had his bond revoked, and that he had not "picked up subsequent problems[.]" (Tr. p. 13). The court accepted the plea and did not award credit for time served. (Tr. p. 14-15).

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

A. Appellant's challenge to the statute is not properly preserved for appellate review.

Appellant's argument is not properly preserved for review because during sentencing Appellant requested the court award credit for time served on the basis of discretion rather than raise a particular allegation of error.

In our state, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Significantly, the application of issue preservation requirements ensures the trial court has an opportunity "to rule properly after it considered all relevant facts, law, and *arguments*." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (emphasis added); cf. Unemployment Compensation Comm'n of Alaska v. Aragan, 329 U.S. 143, 155 (1946) ("A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and *deprives the Commission of an opportunity* to consider the matter, make its ruling, and state the reasons for its action." (emphasis added)).

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). If an issue is not presented to and ruled upon by the circuit court judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005).

Critically, on appeal, an appellant is limited solely to the grounds raised at trial. State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997); see State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").

Here, Appellant's argument at the trial court did not raise a particular allegation of error. Rather, Appellant asked the court to "consider giving him" credit for time served. (Tr. p. 13). Importantly, the court examined the statute and informed Appellant that the statute "appears to be nondiscretionary." (Tr. p. 14). The court then asked Appellant if he would "want argument on that[.]" As a response, Appellant's counsel stated "[n]o, your honor. I just ask that you go with the negotiation." (Tr. p. 14). Appellant's request for the court to make a discretionary ruling is not synonymous with an assertion of error. As a result, Appellant did not challenge the validity of the statute or specifically raise an error of law. Cf. State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) ("No objection to sentencing was raised at trial and this issue is not properly before the court."). Accordingly, Appellant's issue is not preserved for appellate review and cannot be appropriately raised for the first time on appeal. This Court should affirm.

B. The sentencing court properly denied Appellant's request to receive credit for time served.

Even if Appellant's argument is preserved for review, the applicable statute at the time was unambiguous and provided the court with no discretion. The court properly applied the statute by not awarding Appellant with credit for time served.

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). Yet, entitlement to credit for "time served" toward a criminal sentence is restricted by statute. S.C. Code Ann. § 24-13-40.

The entirety of S.C. Code Ann. § 24-13-40 reads as follows:

> The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (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. Provided, however, that **credit for time served prior to trial and sentencing shall not be given**: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense; (3) **when the prisoner commits a subsequent crime while out on bond**; or (4) has bond revoked on any charge prior to trial or plea.

S.C. Code Ann. § 24-13-40 (emphasis added).

Pursuant to this statute, prisoners are not entitled to credit for time served when a subsequent crime is committed while out on bond. Id.

The provision of S.C. Code Ann. § 24-13-40 which requires no credit for time served when a crime is committed while out on bond became effective on June 20, 2023. 2023 S.C. Acts 454 (H.3532; eff. June 20, 2023). Since Appellant's subsequent crimes were committed after the provision became effective, the court properly applied it to the present case.

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 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).

Appellant is not challenging the legality of the statute on appeal, and instead, has simply relied upon an earlier version of it as opposed to the version in effect at the time Appellant pled guilty.

Simply, the sentencing judge properly found he had no discretion in not awarding Appellant credit for his requested six months served. (Tr. p. 13-14). Appellant pled guilty to failure to stop stemming from his May arrest and other crimes associated with his September arrest. The statute unambiguously states that credit for time served prior to trial should not be given when a prisoner commits a subsequent crime while out on bond. Here, Appellant pled guilty to crimes committed while he was out on bond and awaiting trial. The court properly denied Appellant credit for time served.

Accordingly, 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.

Respectfully submitted,

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