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**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

RYAN ONEAL GIST,

APPELLANT

APPELLATE CASE NO. 2024-001157

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ANDERS BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the circuit court judge fail to exercise his discretion when he sentenced Appellant to fifteen years active incarceration within the South Carolina Department of Corrections where he believed he was constrained by the order of another circuit court judge?

## STATEMENT OF THE CASE

On August 5, 2015, Appellant pled guilty before the Honorable L. Casey Manning to nine counts of armed robbery, two counts of common law robbery, and nine counts of possession of a weapon during the commission of a violent crime. R. 13, ll. 15-18; R. 26-27. Appellant was sentenced concurrent terms of incarceration of twenty years on each armed robbery, five years on each weapons charge, twenty years on one common law robbery, and fifteen years on the other common law robbery. R. 26-27. Appellant's plea counsel, James Cheek, filed a timely motion for sentence reconsideration on August 6, 2015. R. 25.

On December 15, 2022, the motion for reconsideration was heard before Judge Manning. Judge Manning reduced the armed robbery sentences to ten years each. On the common law robberies, Judge Manning sentenced Appellant to fifteen years suspended to five years imprisonment, to be run consecutively. The five-year sentences were to be served on home detention. Judge Manning ordered "if the Defendant violates Home Detention, he shall be sentenced to fifteen years." R. 26-27.

On May 15, 2024, counsel for Appellant, Daniel J. McDonald, IV, filed a motion to reinstate Appellant's bond and home detention. R. 1. On May 30, 2024, the State moved the court for an order converting Appellant's home detention sentence to an active sentence within the South Carolina Department of Corrections. R. 3-9. On June 28, 2024, the parties appeared before the Honorable R. Keith Kelly for a hearing. Appellant was represented by Counsel McDonald. The State was represented by Solicitor Barry Barnette. R. 10. At the end of the hearing Judge Kelly converted Appellant's home sentence to an active sentence within SCDC. R. 22, ll. 13-21; R. 34-52.

### **STANDARD OF REVIEW**

“In criminal cases, the appellate court sits to review errors of law only.” State v. Pogue, 430 S.C. 384, 386, 844 S.E.2d 397, 398 (Ct. App. 2020) citing 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.” Id. citing In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

## ARGUMENT

The circuit court judge failed to exercise his discretion when he sentenced Appellant to fifteen years active incarceration within the South Carolina Department of Corrections where he believed he was constrained by the order of another circuit court judge.

### **Relevant Facts**

At the hearing Officer Nancy Vinson reviewed Appellant's alleged violations while on the home detention program. Appellant was placed on home detention on September 29, 2023. On November 20, 2023, Appellant "had interaction with law enforcement" for a possible domestic disturbance where there were signs that one of the parties involved had been drinking. However, there was no proof that Appellant had been drinking and no charges were filed. R. 15, ll. 6-13. Counsel MacDonald objected to the State's presentation of numerous alleged violations where the basis for the violation and motion was Appellant's admission that he would test positive for marijuana. Counsel MacDonald argued that was the only conduct that the court should consider. Judge Kelly overruled Counsel MacDonald's objection stating he would "consider all of it" and allowed the State to place the following alleged violations on the record. R. 15, ll. 14-20.

On February 8th of 2024 he was called because he was not properly charging his bracelet. It was at 31 percent.

Then on February 9th he was called again. He was warned about constantly driving and turning around, told the officers that he admitted that he was looking for houses to move into.

On 2/23 of '24 he did fail a drug test for T.H.C., but we did send it to Spartanburg Regional where they came back negative with the result. So, he was placed back on home detention.

On March 18th of 2024 he had another interaction with law enforcement where they were called out for another domestic disturbance, but charges were not filed. On 3/26 of '24 he went to a Li'L Cricket multiple times -- three times -- in a

row within just a two-hour period. And he was called. He did not have a reason for this happening.

On 4/2 of 2024 there was a third domestic issue. He did call into the office. The reason he called in, as law enforcement wasn't called, but he'd left the house and was walking around in the Enoree area around the church and was giving the excuse for him not being at his home. On 4/18 of '24 he was called and told to charge his bracelet before he died. This was 4/18. He had not charged it since April the 15th. They're supposed to charge an hour every day. He had charged 13 minutes in three days.

On 4/18 again, second issue of the day, he was questioned [,] or they had a writeup from his officer of him leaving his work, going to an Exxon, then goes to a Sonic, then a Bojangles but only for minutes at a time. He then goes home to get his charger because he needed to charge his bracelet. Then he goes to a post office. Back to work. Leaves again for another Exxon from work. Then he goes to a residential area, stops at 307 Beauregard Street in Clinton at 4:14 p.m. Goes to Family Dollar in Clinton. Then goes back to the residential area but stops at 105 Beauregard Street in Clinton. Stays there from 4:57 to 4:05 [sic], and then he goes back home. He called in and stated that what had happened was that the gentleman that was driving the car stopped and saw his baby mama and was not wanting to leave the residence [,] so he took the gentleman's car. He does not have a driver's license in the State of South Carolina. Drove it home and stated that him and the gentleman got in a fistfight at his house based on that. Law enforcement was not called out for this incident.

On 4/23 he was questioned about stopping at Laurel Apartments. He stated he did not go inside the apartments. Officer said you definitely went inside, it shows on G.P.S. He then admitted that he went inside those apartments to check on his mom and did admit to going into the apartments.

4/2/24, he was hanging out up the street again by the mailboxes. This was actually [,] he called back and said that that was due to his dog.

The dog had issues again on May 6th going up the street. He was hanging out again for 10 to 12 minutes, said the dog is now secured. But then also on the -- it was the 2nd, 3rd and 6th of May he was hanging out in the road again from his house. So, we go back out again on May the 7th. He admitted to marijuana use. Alcohol was found in the house after being warned previously. And he had several movement curfew violations, what I stated before in the notes that I have read.

When we were putting him in the car he did stall with the officers. They did not charge him with resisting arrest, but he would not go ahead and get into the vehicle. Officers finally got him into the vehicle. After we got him in the vehicle and was driving down the road he began to bang his hair -- head on the partition in the patrol car causing it to split open and told the officer now you've

got to take me to get medical attention. We then had to divert from going to the jail, drive to Spartanburg Regional and have his head glued back shut where he had busted it open himself [sic].

R. 15, l. 25- R. 19, l. 2.

Counsel MacDonald requested that Judge Kelly hold Appellant in contempt in lieu of an active SCDC sentence and reinstate him on home detention. Appellant had been on home detention for eight months prior to the actual violation that brought him into court, was working two jobs, and took care of his family. R.19, l. 8-R. 20, l. 12. Counsel MacDonald argued in the alternative “if you find that because this is a violation that you shall and must convert his home detention sentence to an active sentence, we would ask that his active sentence be the five years that his home detention sentence was.” R. 20, ll. 13-17. He asserted that the amount of time that could be converted into an active sentence was the five years suspended to the home detention program and not the full fifteen-years. R. 20, ll. 18-24.

In ruling on the State’s motion Judge Kelly stated,

Mr. Gist, the problem that I have is the problem that you have, is the same problem I have, Mr. MacDonald Has. He did a great job for you, but *I am without authority to change another judge’s order. I’m also without authority to deviate from a state statute, and the statute says I shall convert. So, it’s converted.* The motion is granted. It’s converted, and it’s the 15-year that he agreed to.

R. 22, ll. 13-21 (emphasis added). Counsel MacDonald objected to the imposition of the fifteen-year sentence. R. 22, ll. 22-25. The order converting Appellant’s home detention sentence into an active SCDC sentence was filed on July 1, 2024. In the order Judge Kelly found Appellant had violated the terms of his home detention sentence and imposed the fifteen-year sentence ordered by Judge Manning. Appellant was given credit for fifty-two days served pre-violation hearing and 219 days served on home detention. R. 34-52.

## Discussion

“A failure to exercise discretion amounts to an abuse of that discretion.” State v. Hawes, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) citing Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997). “The decision of whether a defendant has violated a condition of his suspended sentence rests within the sound discretion of the trial court. State v. Perkins, 378 S.C. 57, 61, 661 S.E.2d 366, 368 (2008).

This case turns on the determination of whether Judge Kelly had the authority to deviate from the sentencing order issued by Judge Manning. It is true that in general one circuit judge may not reverse or modify the order of another circuit court judge. Binkley v. Burry, 352 S.C. 286, 295, 573 S.E.2d 838, 843 (Ct. App. 2000). However, there are exceptions to that rule. In State v. Smith, 276 S.C. 494, 280 S.E.2d 200, (1981), the defendant was tried in his absence and his sentence sealed. Upon having his sentence published, the defendant moved the court to modify or vacate his sentence. The sentencing court declined, believing he did not have jurisdiction to change the sentence. On appeal, our Supreme Court held that the authority to change a sentence rest solely and exclusively in the hands of the sentencing judge within the exercising of his discretion. Our Court reiterated that “a sealed sentence does not become the judgment of the court until it is opened and read to the defendant.” Id. citing Lytle v. Miller, 157 S.C. 332, 154 S.E. 225 (1930).

The Court emphasized that, as long as the motion to alter, amend or modify a sentence was made during the term of court at which the sentence became the judgment of the court, the sentencing judge had jurisdiction to entertain the motion within his discretion. In remanding the matter back to the circuit court for resentencing, the Smith Court wrote

It is apparent here the sentencing judge did not exercise any discretion but based his ruling on an erroneous view of the law. It is an equal abuse of discretion

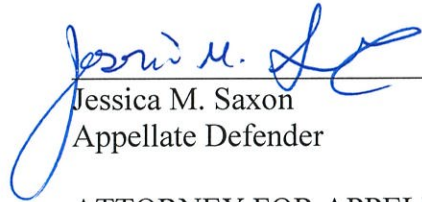
to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly. We call to the attention of the bench and bar that the mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised. It should be stated on what basis the discretion was exercised.

Id. at 497–98, 280 S.E.2d at 201–02.

When Appellant appeared before Judge Kelly it was on cross motions regarding his sentence – the State argued for conversion to an active SCDC sentence and Appellant argued for reinstatement in the home detention program. Judge Kelly was required to determine if Appellant had violated the terms of the home detention program. If he found violations had occurred, he was required by the plain language of the Home Detention Act to convert Appellant’s sentence into an active SCDC sentence. Judge Kelly was also required to consider Appellant’s motion for reinstatement and to consider the alternate sentencing options presented by Counsel MacDonald. However, he declined to consider any alternative sentencing option because he believed he was bound by the language of Judge Manning’s order. Because there was a motion to reinstate the sentence, made during the term of court at which Appellant’s sentence became the judgment of the court, the circuit court judge had jurisdiction to entertain the motion and consider whether to sentence Appellant to the full fifteen years of incarceration. The failure of the circuit court to consider alternative sentencing was a failure of the court to exercise discretion and thus error.

**CONCLUSION**

Based on the foregoing argument, Appellant respectfully request this Court reverse his active SCDC sentence and remand the matter back to the circuit court for a new sentencing hearing.

  
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Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 5th day of March, 2025.

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APPELLATE CASE NO. 2024-001157

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ryan Gist states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's hearing before Judge R. Keith Kelly, which was held on June 28, 2024, and, in her opinion, the appeal is without legal merit sufficient to warrant a new sentencing hearing.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the hearing.

Wherefore, she asks the Court to relieve her as counsel for Ryan Gist.

Respectfully Submitted,



Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of March, 2025.

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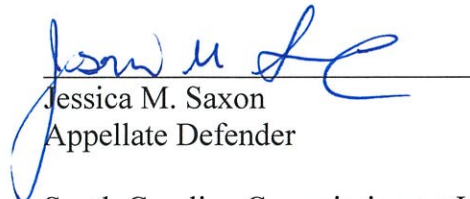
APPELLATE CASE NO. 2024-001157

**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):2015-GS-42-3653 & 2015-GS-42-3654 and sentencing sheets
- (2) Transcript dated June 28, 2024
- (3) Motion to Reinstate Home Detention filed May 15, 2024
- (4) Motion to Convert Home Detention to Active SCDC Sentence filed May 30, 2024
- (5) Motion to Reconsider filed Augst 6, 2015
- (6) Order Granting Reconsideration filed January 4, 2023
- (7) Order Converting Home Sentence to Active SCDC Sentence filed July 1, 2024

I certify that this designation contains no matter which is irrelevant to this appeal.

  
Jessica M. Saxon  
Appellate Defender

South Carolina Commission on Indigent Defense  
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(803) 734-1330

ATTORNEY FOR APPELLANT

This 5th day of March, 2025.

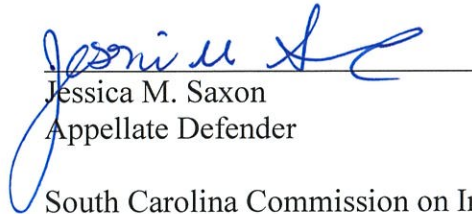
**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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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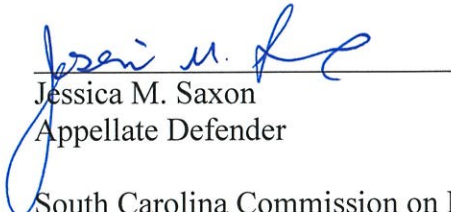
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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Ryan Gist, #327471, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 5th day of March, 2025.

  
\_\_\_\_\_  
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