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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Grace Gilchrist Knie, Circuit Court Judge

Appellate Case No. 2024-001476

THE STATE,

Respondent,

v.

JASON SHANE BISHOP,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Appellant's Issue Statements

- I. Did the sentencing court mistakenly believe the court lacked discretion to award credit for time served on home detention with SCRAM monitoring pursuant to section 24-13-40 of the South Carolina Code?
- II. Did the sentencing court mistakenly believe the court's sentence could not include home incarceration because this offense involved a mandatory minimum sentence, when the offense Mr. Bishop was convicted of did not involve a mandatory minimum sentence?
- III. Did the sentencing court improperly consider the initial charge when deciding to deny credit for time served and deny home incarceration?

Respondent's Counterstatements

- I. Whether the sentencing court properly exercised its discretion in declining to award credit for time spent on SCRAM monitoring.
- II. Whether the sentencing court properly exercised its discretion in sentencing Appellant to a term of years within the statutory range instead of his requested sentence of home incarceration with credit for time spent on SCRAM monitoring.
- III. Whether the sentencing court properly exercised its discretion in sentencing Appellant to a sentence within the statutory range for reckless homicide, the crime for which Appellant pled guilty.

STATEMENT OF THE CASE

On March 26, 2018, a Spartanburg County magistrate issued an arrest warrant for Appellant. (Arrest Warrant). The arrest warrant described the offense as felony driving under the influence (DUI) where death results. (Arrest Warrant). Appellant surrendered at the Spartanburg County Detention Center two days later. (I Tr. 7).

On March 29, 2018, a Spartanburg County magistrate issued a bond order with bond set at \$5,000. (Magistrate's Bond Order 1-2). As part of his bond, Appellant was ordered to appear before the designated court at the appointed place and time and not depart the State of South Carolina without permission. (Magistrate's Bond Order 1). The magistrate further ordered that Appellant would be subject to SCRAM monitoring,¹ was not to consume alcohol, and would be randomly drug tested. (Magistrate's Bond Order 2).

Also on March 29, 2018, Appellant moved to amend his conditions of bond, citing medical needs following the car wreck in this case and his out-of-state residence. (1st Motion to Amend Conditions 1-2). The same day, the Honorable J. Derham Cole issued a consent order amending Appellant's bond to allow him to reside at his North Carolina residence. (Consent Order 1).

Subsequently, in June 2018, a Spartanburg County grand jury indicted Appellant for felony DUI resulting in death. (Indictment No. 2018-GS-42-2973). On September 11, 2023, Appellant proceeded to a plea hearing before the Honorable Grace Gilchrist Knie. (I Tr. 1). At the plea hearing, the State informed Judge Knie that Appellant would be pleading guilty to reckless homicide, for which he was waiving presentment to the grand jury, and that the State did not have a recommendation for sentencing or a negotiated sentence. (I Tr. 5, 7). Judge Knie noted that

¹ A SCRAM monitoring bracelet monitors alcohol consumption but does not record or transmit the location of the wearer. (II Tr. 6, 40). SCRAM stands for "Secure Continuous Remote Alcohol Monitoring." (Court's Ex. 1, Ex. C, pg. 1).

Appellant had one day of jail credit and had been on a SCRAM monitor for 1,993 days at the time of this hearing. (I Tr. 7).

Judge Knie asked Appellant if he understood that reckless homicide was a felony with a penalty of not more than ten years' imprisonment and/or a fine of \$1,000 to \$5,000. (I Tr. 8). Appellant indicated he understood both the offense and penalty for which he was entering his plea. (I Tr. 8).

The State described the incident as occurring on Interstate 26 in Spartanburg County near the Costco Wholesale shortly after 8 pm on January 15, 2018. (I Tr. 9). Appellant left his lane of travel, crossed the center median, and entered oncoming traffic. (I Tr. 10). Appellant struck three vehicles. (I Tr. 10). Law enforcement found Appellant unconscious and bleeding from his head. (I Tr. 10). One of the individuals in one of the cars Appellant struck, Victim, died during surgery after the accident. (I Tr. 10). Due to Appellant's medical condition following the crash, law enforcement was not able to communicate with him nor was law enforcement able to perform field sobriety tests. (I Tr. 10).

Two weeks after the crash, law enforcement made contact with Appellant, who told them that he did not remember how the crash occurred but that he remembered leaving a restaurant near Westgate Mall close to the interstate prior to the crash. (I Tr. 11). Law enforcement obtained a search warrant for Appellant's hospital records, which showed a blood alcohol concentration of 0.182. (I Tr. 11). At this point, law enforcement arrested Appellant for felony DUI. (I Tr. 11).

Appellant agreed that a substantial basis for a reckless homicide conviction existed. (I Tr. 12). Judge Knie deferred sentencing at the request of both parties and ruled that the conditions of Appellant's bond remained in full force pending his sentencing. (I Tr. 13).

On April 18, 2024, Appellant moved to amend the conditions of his bond. (2d Motion to Amend). Appellant alleged that he suffered a stroke on March 21, 2024, at which time, medical providers removed his SCRAM bracelet before performing an MRI. (2d Motion to Amend 1-2). Appellant stated that his recovery would require further rehabilitation and medical appointments. (2d Motion to Amend 2). He further stated that between his bond on March 29, 2018, and his hospitalization on March 21, 2024, he had not violated the conditions of his SCRAM monitoring. (2d Motion to Amend 2).

On June 25, 2024, Appellant proceeded to a sentencing hearing before Judge Knie. (II Tr. 1). At the hearing, law enforcement informed the court that Appellant had been in compliance with the SCRAM requirements between his bond and his hospitalization. (II Tr. 6). Law enforcement also confirmed that the SCRAM bracelet monitors alcohol consumption but does not record nor transmit the location of the wearer. (II Tr. 6). However, the bracelet does have to be in proximity to the base twice per day to download data for transmission. (II Tr. 7). Appellant stated that a note from a hospital nurse showed that his SCRAM bracelet was removed on March 22, 2024. (II Tr. 7).

The State indicated that Appellant did not have a prior record, except for a few old speeding tickets. (II Tr. 11). Appellant stated that he was on home detention with SCRAM monitoring but continued working outside of the home. (II Tr. 14-15). Appellant's mother stated that she understood Appellant to be on home detention but also knew that he went to doctor's appointments, to work, to the grocery store, and to the barber shop. (II Tr. 27).

Judge Knie requested that the parties present arguments on whether Appellant could be given credit for monitored house arrest given that the SCRAM bracelet only monitored alcohol levels and not physical location. (II Tr. 40). The State argued that under sections 24-13-1510 and

-1520 of the South Carolina Code, an approved electronic monitoring device meant a device approved by a law enforcement agency that was primarily intended to record and transmit information as to a defendant's presence or non-presence in their residence. (II Tr. 41). According to the State, when someone is placed on SCRAM, they are told they are on house arrest "akin to a judge issuing a bond order saying you are to be on house arrest, 6:00 p.m. to 6:00 a.m." (II Tr. 41). However, there is not an actual monitoring program. (II Tr. 41). A violation of the SCRAM requirements would result in a bond revocation hearing for a violation of home detention. (II Tr. 41). However, because SCRAM does not monitor the location of the wearer, the State asserted that SCRAM monitoring did not qualify under section 24-13-40 as credit for time served. (II Tr. 42).

Appellant argued that because he had to be present at his residence twice per day for data to be transmitted from his SCRAM bracelet to the docking station, SCRAM monitoring qualified under section 24-13-40, thereby making the time he spent on SCRAM monitoring eligible as monitored house arrest for home detention. (II Tr. 42).

Judge Knie mentioned that this Court previously chose not to decide whether to award credit for time served on home detention without GPS monitoring, instead ruling that a trial court could not give credit for time served on home detention where a mandatory minimum sentence was imposed. (II Tr. 43).

Judge Knie acknowledged that Appellant had been on SCRAM monitoring for a total of 2,186 days. (II Tr. 45). She imposed a sentence of seven years' incarceration, gave Appellant credit for the one day he spent in pretrial detention, and noted that she considered the 2,186 days of SCRAM monitoring with no violations when determining the appropriate sentence for Appellant. (II Tr. 46; Sentencing Sheet).

On June 27, 2024, Appellant filed a motion to reconsider his sentence. (Motion to Reconsider). He argued that Judge Knie mistakenly believed that she lacked discretion to award credit for time served on home detention with SCRAM monitoring. (Motion to Reconsider 1-3). According to Appellant, the plain language of sections 24-13-1520 and 24-13-40 provide a sentencing court with discretion to award credit for time served when a defendant has been on home detention with SCRAM monitoring. (Motion to Reconsider 3). Appellant further argued that Judge Knie mistakenly believed Appellant's sentence could not include home detention instead of prison incarceration because Judge Knie mistakenly believed reckless homicide involved a mandatory minimum sentence. (Motion to Reconsider 3-4).

Appellant stated that Judge Knie referenced *State v. Simpson*,² in which this Court determined that a defendant convicted of a crime with a mandatory minimum sentence—no part of which could be suspended per the relevant statute—was not eligible for home detention for the mandatory minimum portion of the sentence. (Motion to Reconsider 3-4). According to Appellant, Judge Knie's reference to *Simpson* could only have been in consideration of whether she could apply credit for time served on home detention with SCRAM monitoring toward a mandatory minimum sentence, which reckless homicide does not have. (Motion to Reconsider 4). Appellant concluded by asking Judge Knie to revise her sentence to give him credit for time spent on SCRAM monitoring and impose a sentence of home detention instead of prison incarceration. (Motion to Reconsider 4).

On August 8, 2024, Judge Knie held a hearing on Appellant's motion to reconsider. (III Tr. 1). Appellant's arguments followed the arguments he presented in his written motion. (III Tr. 6-11). The State argued that under section 24-13-1520, monitored home detention can qualify as

² 429 S.C. 83, 837 S.E.2d 669 (Ct. App. 2020).

credit for time served if the electronic device used to monitor the defendant was primarily intended to record and transmit information as to the defendant's presence or non-presence in the home. (III Tr. 12). While Appellant's SCRAM monitor had to be present at his residence twice per day to upload data to the base, the data the SCRAM bracelet collected concerned only alcohol consumption and not physical location. (III Tr. 12). Therefore, the State asserted SCRAM monitoring did not qualify as monitored home detention under section 24-13-40.

The State further argued that even if SCRAM monitoring could qualify under section 24-13-1520, a sentencing court has discretion in whether to award credit for time served for time spent under monitored home detention. (III Tr. 12-13). The State asserted that Judge Knie used her discretion in determining not to give Appellant credit for time served for the time he spent on SCRAM monitoring. (III Tr. 13).

Judge Knie, in an effort to provide a clear record for appellate review, made statements on the record. (III Tr. 16-17). She stated that Appellant was initially charged with felony DUI, which had a statutory sentencing range of one to twenty-five years, and the State reduced the charge to reckless homicide, which had a statutory sentencing range of zero to ten years. (III Tr. 16). Judge Knie stated she did give Appellant some credit, in her discretion, for having been on SCRAM monitoring for 2,186 days because she could have given Appellant ten years in prison but instead sentenced him to seven years in prison. (III Tr. 16; Sentencing Sheet 2). Judge Knie has "never given credit[,] day for day[,] for SCRAM since [she has] been on the bench"; rather, she only gives credit for home detention with GPS monitoring as provided for under the relevant statute. (III Tr. 16).

On August 30, 2024, Judge Knie issued an order denying Appellant's motion to reconsider. (Order on Reconsideration 1-2). Judge Knie stated that on the sentencing sheet, she noted "[i]n

issuing this sentence[,] the Court has taken into consideration that [Appellant] has spent 2,186 days on SCRAM monitoring with no violations monitored through the Spartanburg County Sheriff's Department." (Order on Reconsideration 1-2; Sentencing Sheet 2). Judge Knie determined that after hearing arguments and reviewing the filings of both parties, she was unable to discover any material fact or principle of law that was overlooked or disregarded. (Order on Reconsideration 2). Further, Judge Knie determined that no error of law existed and that all facts were appropriately considered. (Order on Reconsideration 2).

This appeal followed.

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. *Id.* 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). "A trial judge has broad discretion in sentencing within statutory limits." *Id.* "A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant." *Id.*

ARGUMENT

I. The sentencing court properly exercised its discretion in declining to award credit for time spent on SCRAM monitoring because the awarding of credit for applicable home detention is entirely within the discretion of the sentencing court.

Section 24-13-40 of the South Carolina Code provides that "[i]n 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).

At the sentencing hearing, Judge Knie requested both parties present arguments on whether SCRAM monitoring qualified as monitored house arrest for the purposes of section 24-13-40 given that SCRAM monitoring only monitored alcohol consumption and not physical location. (II Tr. 40). Judge Knie heard arguments from both parties. (II Tr. 40-42). In making her ruling, Judge Knie mentioned a case decided by this Court, *State v. Simpson*, in which this Court determined that a person convicted of a violent offense could not be considered a nonviolent offender for the purposes of substituting home detention for a mandatory minimum term of imprisonment. 429 S.C. 83, 91, 837 S.E.2d 669, 673 (Ct. App. 2020). Judge Knie correctly stated that this Court chose not to define GPS monitoring and also chose not to decide whether to award credit for home detention without qualified GPS monitoring. (II Tr. 43).

When Judge Knie sentenced Appellant to seven years' imprisonment, she specifically noted that she considered the 2,186 days that Appellant spent on SCRAM monitoring. (II Tr. 46; Sentencing Sheet 2). Further, during the reconsideration hearing, Judge Knie stated that she did give Appellant some credit for his time spent on SCRAM monitoring because she could have given Appellant up to ten years in prison but instead sentenced him to seven. (III Tr. 16). Judge Knie's consideration of Appellant's time spent on SCRAM monitoring when determining the appropriate sentence was an appropriate exercise of her discretion.

Despite Appellant's assertion to the contrary, Judge Knie's statement that she has "never given credit[,] day for day[,] for SCRAM since [she has] been on the bench" is also an expression of the exercise of her discretion. Section 24-13-40 explicitly grants a sentencing judge the discretion to award credit for time served under qualifying monitored house arrest.³ Judge Knie, acting within her discretion, declined to award credit for SCRAM monitoring. Because Appellant is not guaranteed or entitled to credit for time served under qualifying monitored house arrest, Judge Knie did not abuse her discretion in declining to award him credit for time spent on SCRAM monitoring.

II. The sentencing court properly exercised its discretion in sentencing Appellant to seven years' incarceration because such a sentence was within the statutory range, which the sentencing court recognized before sentencing Appellant.

Appellant contends that the only possible reason for Judge Knie to discuss *Simpson* was to determine whether she could apply credit for time spent on SCRAM monitoring toward a mandatory minimum sentence. (App. Br. 8). As mentioned above, Judge Knie mentioned *Simpson*, a case in which this Court determined that a person convicted of a violent offense could not be considered a nonviolent offender for the purposes of substituting home detention for a mandatory minimum term of imprisonment, before sentencing Appellant. (II Tr. 43).

However, Judge Knie's comments at the sentencing hearing differentiate *Simpson* from this case. She stated that this Court in *Simpson* chose not to define GPS monitoring; instead, this Court held that a sentencing court could not give credit for any non-prison time served for a mandatory

³ The State does not concede that SCRAM monitoring qualifies as monitored house arrest under section 24-13-40. Instead, the State asserts that this Court need not determine whether SCRAM monitoring qualifies under the statute because credit for qualifying monitored house arrest is within a sentencing court's discretion and Judge Knie properly exercised that discretion in denying Appellant any credit for time served for the time he spent on SCRAM monitoring. Therefore, a determination on whether SCRAM monitoring qualifies under section 24-13-40 would make no impact on the outcome of this case.

minimum sentence. (II Tr. 43). Judge Knie also noted that this Court chose not to decide whether credit for home detention without GPS monitoring qualified for monitored house arrest. (II Tr. 43). In discussing *Simpson*, Judge Knie expressed her concern that an appellate court had not determined whether home detention without GPS monitoring qualified as monitored house arrest. SCRAM monitoring could be considered home detention without GPS monitoring because it does not record or transmit the location of the wearer; it merely tracks alcohol consumption. (II Tr. 6, 40). Therefore, Judge Knie was discussing *Simpson* while in the process of determining whether SCRAM monitoring qualified for monitored house arrest for the purposes of section 24-13-40, which was something Judge Knie ultimately did not rule upon.

Moreover, the record shows that Judge Knie was well aware of the sentencing range for reckless homicide, which does not have a mandatory minimum sentence. Before accepting Appellant's guilty plea, Judge Knie discussed the penalty for reckless homicide with Appellant, stating, "Reckless homicide is a felony. And the penalty for this offense is not more than ten years and/or a fine of \$1,000 to \$5,000." (I Tr. 8). At the sentencing hearing, Judge Knie provided a brief historical context of this case and stated, "[Appellant pled] to Reckless Homicide, zero to ten. It is a felony, non-violent." (II Tr. 4). At the reconsideration hearing, Judge Knie acknowledged that the State initially charged Appellant with felony DUI, which carried a sentencing range of one to twenty-five years, but that the State chose to reduce the charge to reckless homicide, which had a sentencing range of zero to ten years. (III Tr. 16).

Nothing in this record indicates that Judge Knie was operating under an erroneous belief that reckless homicide carried a mandatory minimum sentence or that home incarceration was not an option for Judge Knie to choose. While South Carolina law requires a court to exercise discretion when a court is granted such authority, there is no requirement that a court exercise its

discretion in a particular fashion or provide reasons why its discretion was exercised in a particular way. *See State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) ("A failure to exercise discretion amounts to an abuse of that discretion." (quoting *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997))); *State v. Hill*, 266 S.C. 49, 51, 221 S.E.2d 398, 399 (1976) ("The exercise of discretion implies conscientious judgment, not arbitrary action, and takes account of the law and particular circumstances of the case, being directed by the reason and conscience of the judge to a just result.").

Here, because Judge Knie sentenced Appellant within the statutory range for reckless homicide and acted within her statutory discretion in determining whether to award credit for time Appellant spent on SCRAM monitoring, Judge Knie properly exercised her discretion in sentencing Appellant to seven years' incarceration. *See In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) ("A trial judge has broad discretion in sentencing within statutory limits.").

III. The sentencing court properly exercised its discretion in sentencing Appellant within the statutory range for reckless homicide, the crime for which Appellant pled guilty, because nothing in the record indicates the sentencing court was influenced by improper consideration of Appellant's initial charge.

Nothing in the record suggests that Judge Knie was influenced by any improper consideration in the imposition of Appellant's sentence. Moreover, nothing in the record suggests that the sentence imposed was based upon Appellant's initial charge instead of reckless homicide, for which he pled guilty.

To the extent that Appellant argues that *State v. Boggs*⁴ supports his argument, this argument is without merit. *Boggs* concerned an instance where a defendant did not receive credit for pretrial detention that he was entitled to under section 24-13-40. *See Boggs*, 388 S.C. at 315-17, 696 S.E.2d at 598-99. Here, Judge Knie gave Appellant credit for his one day of pretrial detention.

⁴ 388 S.C. 314, 696 S.E.2d 314 (2010).

(II Tr. 46; Sentencing Sheet 1). However, *Boggs* involved only credit for pretrial detention, which a sentencing court has no discretion in awarding. *See generally Boggs*, 388 S.C. at 315-17, 696 S.E.2d at 598-99; S.C. Code Ann. § 24-13-40. This case is distinguished from *Boggs* in that Appellant wants discretionary credit for his time spent on SCRAM monitoring that Judge Knie did not award to him whereas *Boggs* concerns only non-discretionary credit for pretrial detention.

Because Appellant cannot point to anything in the record suggesting that Judge Knie improperly considered his initial charge of felony DUI when she sentenced Appellant within the statutory range for reckless homicide (the crime for which he pled guilty), Appellant cannot show that Judge Knie abused her discretion by denying him discretionary credit for his time spent on SCRAM monitoring or by denying his request for home incarceration.

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CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's conviction for reckless homicide, as well as his associated sentence.

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