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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY MICHAEL GEORGE,

APPELLANT

APPELLATE CASE NO. 2024-001653

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge abuse his discretion in refusing to credit Appellant with the time served on monitored house arrest pursuant to S.C. Code Ann. § 24-13-40?

STATEMENT OF THE CASE

In May of 2021, the Greenville County Grand Jury indicted Appellant, Jeffrey Michael George, for murder and kidnapping, indictment #2021-GS-23-002637. (R. p. **). On September 16, 2024, Appellant proceeded to jury trial before the Honorable Alex Kinlaw, Jr. Lucas C. Marchant represented Appellant. Allen O. Fretwell and Jesse M. Williams prosecuted the case. The jury found Appellant guilty as indicted. Judge Kinlaw sentenced Appellant to forty-eight (48) years for murder and thirty (30) years concurrent for kidnapping. (R. p. ** *sentencing sheets*). On September 23, 2024, a timely notice of intent to appeal was served. This appeal follows.

FACTS

On December 16, 2019, Kurt Knutson contacted law enforcement to provide information about the location of a body. (Tr. p. 225, line 13 – p. 226, lines 1-22). Knutson testified that he helped David Stokes bury a body. (Tr. p. 664, line 13 -p. 665, line 1). Knutson told Deputy Kenneth League with the Greenville County Sheriff's Office that Bobby Ray Smith set up a Russian who was involved with human trafficking. (Tr. p. 261, lines 2-20). Deputy League testified that Knutson told him that, according to Stokes, the Russian was held at gunpoint while “they” assaulted the Russian with a machete. (Tr. p. 261, lines 21-24). Stokes told Knutson that he, a Jeff, an Isaiah, and a fourth person were involved. (Tr. p. 262, line 20 – p. 263, lines 1-3). Knutson understood that the incident took place at Audrea Cook's home on C and S Drive. (Tr. p. 673, line 21 – p. 674, lines 1-8).

Law enforcement obtained search warrants for both the C and S Drive location as well as the location where Knutson said he helped Stokes bury a body on Cripple Creek Road. (Tr. p. 285, lines 3-17). The body was recovered and identified as Ivan Vladimirovich Gula. (Tr. p. 296, line 23 – p. 297, lines 1-17). The pathologist testified that the cause of death was multiple stab wounds. (Tr. p. 351, lines 3-5).

Bobby Ray Smith testified he first met Ivan at Audrea Cook's house at C and S Drive. (Tr. p. 892, lines 15-24). Smith testified that in December of 2019, Cook was angry because Ivan had taken her car and had not returned it. (Tr. p. 893, line 10 – 18; p. 894, line 25 – p. 895, lines 1-7). Smith testified that Cook wanted Ivan's “ass whooped.” (Tr. p. 895, line 7). Smith admitted that Ivan owed him five hundred dollars for methamphetamine. (Tr. p. 894, lines 11-24).

Smith testified that he went to Cook's house in the early evening of December 1, 2019. (Tr. p. 895, lines 23-25). When Smith arrived Appellant, Cook, and others were at the house. (Tr. p. 896, lines 8-10). Smith admitted that he left the house, picked up David Stokes and brought Stokes back to Cook's house to intimidate Ivan and get the money Ivan owed Smith. (Tr. p. 904, line 1 – p. 905, 906, lines 1-8). Stokes testified that when he arrived at Cook's house with Smith, everyone was doing drugs. (Tr. p. 972, line 1 - p. 973, lines 1-9). Stokes testified that Cook told him that a Russian dude stole her car and raped her a few nights ago. (Tr. p. 973, lines 11-13). Stokes claimed Cook, Smith, and Appellant asked Stokes to "mess up" the Russian guy and Stokes agreed. (Tr. p. 973, lines 13-21).

Smith testified that when Ivan arrived at Cook's house late that night in Cook's car, Stokes attacked Ivan with a machete and a meat cleaver. (Tr. p. 914, line 14 – p. 915, 916, lines 1-21). Smith testified Appellant had a gun in his hand. (Tr. p. 918, lines 20-22). Stokes admitted hitting Ivan with a machete. (Tr. p. 976, lines 8-21). According to Stokes, when Ivan arrived Appellant held Ivan at gunpoint. (Tr. p. 975, line 13-p. 976, lines 1-2). Stokes claimed that when Ivan went for the door, Smith hit him with a baseball bat, another individual named Isaiah hit him a couple of times with his machete, and Appellant stabbed him twice in the back with his machete. (Tr. p. 980, lines 3-8). Stokes further claimed that after he refused the request by Smith and Appellant to finish Ivan off, Appellant stabbed Ivan in the neck. (Tr. p. 981, line 10 – p. 982, lines 1-10).

Stokes testified he and Smith left to get material to wrap the body. (Tr. p. 982, lines 12-25). According to Stokes, when they returned and wrapped the body, he and Appellant moved the body from Cook's house to Stokes' house on Cripple Creek Road where Stokes buried it later that morning. (Tr. p. 983, line 15 – p. 984, lines 1-25; p. 987, lines 8-24). Stokes testified that

Knutson, who was staying in a camper parked in Stokes' yard, helped him bury the body. (Tr. p. 988, lines 1-12).

ARGUMENT

1. **The trial judge abused his discretion in refusing to credit Appellant with the time served on monitored house arrest pursuant to S.C. Code Ann. § 24-13-40.**

STANDARD OF REVIEW

“[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion.” State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). “ ‘A failure to exercise discretion amounts to an abuse of that discretion.’ Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997) (citations omitted).” State v. Hawes, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015).

ARGUMENT

S.C. Code Ann. § 24-13-40 provides in 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.” At sentencing Appellant requested credit for time served on monitored house arrest. (Tr. p. 1272, line 17 – p. 1273, lines 1-8). Counsel for Appellant told the judge, “As the State has just referenced, Mr. George has no prior record. I believe he’s 50 years of age now. He was arrested on December 18, 2019, remained in the custody of the Greenville County Law Enforcement Center, the detention center for I think, roughly four to five months. I don’t have the exact calculation with me. But he posted bond after a bond hearing. Part of the condition of bond in April of 2020, was house arrest with GPS monitoring.” (Tr. p. 1272, lines 17-25). Counsel asked that Appellant be given credit for time served since December 18, 2019, when Appellant was arrested. (Tr. p. 1273, lines 7-8).

The judge asked, “Jail credit, your calculation is based on HIP as a part of the bond? I need to know how much time he spent in jail.” (Tr. p. 1273, lines 23-25). It appears Appellant initially spent 110 days in jail before making bond and then an additional 37 days for a violation for a total of 147 days of pre-trial detention to which Appellant was statutorily entitled pursuant to S.C. Code Ann. § 24-13-40. (Tr. p. 1274, line 1 – p. 1275, lines 1-8). The judge sentenced Appellant to forty-eight (48) years for murder and thirty (30) years concurrent for kidnapping, giving 147 days of jail credit. (Tr. p. 1275, lines 10-21). The judge failed to address the requested credit for time served on monitored house arrest. The judge erred.

The statute, § 24-13-40, provides that credit **may** be given for time spent on monitored house arrest. It was within the judge’s discretion to give Appellant credit for the time spent on house arrest with GPS monitoring as requested. The judge, however, failed to exercise his discretion by failing to address the request and only giving credit for jail time credit. While it was equally within the judge’s discretion to deny the request for credit for time served on monitored house arrest, the judge did not address monitored house arrest and provided no explanation for denying credit for time served on house arrest. The failure to address and failure to provide an explanation equals a failure to exercise discretion.


In State v. Smith, 276 S.C. 494, 280 S.E.2d 200, (1981), the South Carolina Supreme Court found the sentencing judge failed to exercise discretion when he erroneously believed he was without authority to change the sentence. In Smith the South Carolina Supreme Court wrote, “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. Calloway v. Ford Motor Co., 281

N.C. 496, 189 S.E.2d 484 (1972); State Highway Commission v. Hemphill, 269 N.C. 535, 153 S.E.2d 22 (1967).” 276 S.C. at 498, 280 S.E.2d at 202.

In the present case the judge’s failure to address the request for credit for time served on house arrest with GPS monitoring is not sufficient to bring into operation a determination that discretion was exercised. As the judge in Smith, erroneously believed he was without authority to change the sentence, the judge in the present case could have erroneously believed he was without authority to give credit for time served on monitored house arrest. The judge provided no explanation that he was exercising his discretion to deny credit for time served on house arrest. The judge in the present case failed to exercise discretion. “ ‘A failure to exercise discretion amounts to an abuse of that discretion.’ Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997) (citations omitted).” State v. Hawes, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015). The trial judge in the present case abused his discretion in refusing to credit Appellant with the time served on monitored house arrest pursuant to S.C. Code Ann. § 24-13-40.

CONCLUSION

Based on the above argument, this Court should remand the case for a determination on credit for time served on monitored house arrest pursuant to S.C. Code Ann. § 24-13-40.


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This 30th day of May, 2025.