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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Debra R. McCaslin, Circuit Court Judge
Appellate Case No. 2025-000368

THE STATE,

Appellant,

vs.

CHAD EUGENE GIBBS,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the plea judge impermissibly exceed her sentencing authority and reversibly err by discretionarily awarding Gibbs 1,831 days of time served credit for time he spent free on bond while subject to a monitoring requirement when Gibbs was not on house arrest during that time period and, thus, was not eligible for and could not properly be awarded any discretionary time served credit pursuant to plain and unambiguous South Carolina law, which only permits such discretionary credit for time spent "under monitored house arrest"?

STATEMENT OF THE CASE

In February of 2020, Respondent Chad Eugene Gibbs was arrested following an investigation into allegations of sexual misconduct involving his fifteen-year-old stepdaughter. In August of 2020, the Lexington County Grand Jury indicted Gibbs for four counts of first-degree sexual exploitation of a minor, two counts of third-degree sexual exploitation of a minor, one count of attempted first-degree sexual exploitation of a minor, one count of criminal solicitation of a minor, three counts of third-degree criminal sexual conduct with a minor, and two counts of disseminating obscene material to a person under the age of eighteen. On February 24, 2025, Gibbs appeared in the Lexington County Court of General Sessions and—based on negotiations with the State—entered guilty pleas to two counts of second-degree sexual exploitation of a minor before the Honorable Debra R. McCaslin, circuit court judge.[1] The plea judge accepted Appellant's guilty pleas and sentenced him to an eight-year term of imprisonment. In addition to that, the plea judge—at the request of Gibbs's defense counsel and over opposition from the State—awarded Gibbs credit for time served in the amount of 1,831 days for time Gibbs spent while free on bond and subject to a monitoring requirement but *not* a house arrest requirement.[2] The State then timely filed a notice of appeal.

[1] Out of an abundance of caution, Gibbs waived presentment to the grand jury in connection to both the charges to which he pled guilty. (Tr. p. 17).

[2] In requesting the 1,831 days of credit for time served, defense counsel expressly described it as "the time that [Gibbs] spent monitored on GPS." (Tr. p. 43).

STATEMENT OF FACTS

On February 15, 2020, the then-fifteen-year-old minor victim ("Victim") disclosed to her mother that Gibbs, her stepfather at the time, had been sexually abusing her for a period of months. (Tr. p. 7; p. 17). Following that shocking disclosure, Victim's mother swiftly alerted the Lexington Police Department of the sexual abuse, and officers promptly responded to Victim's residence. (Tr. p. 7; pp. 11-12). While there, they obtained a statement from Victim about what had been occurring. (Tr. p. 7). And, as they were doing so, Gibbs drove by the residence. (Tr. p. 7). Victim and her mother saw Gibbs drive by and pointed out his vehicle to the officers. (Tr. pp. 7-8). In response, the officers pursued Gibbs's vehicle, initiated a traffic stop, and arranged for him to come in for an interview. (Tr. p. 8). Furthermore, based on what Victim had revealed, the officers took Gibbs's cell phone into custody. (Tr. p. 8).

Although Gibbs refuted the allegations and suggested Victim was merely retaliating against him for discipling her, the officers obtained a search warrant for Gibbs's phone based on the information Victim had provided. (Tr. p. 8). During the ensuing search, two videos were found on the phone that were obviously recorded without Victim's knowledge, and they contained footage of the minor victim while she was nude in the bathroom. (Tr. pp. 8-10). Disturbingly, those videos had both been recorded months earlier on October 11, 2019, and were captured after Gibbs covertly slid his phone under the bathroom door while Victim was alone inside.[3] (Tr. pp. 8-10). And, on one of the videos, Gibbs captured his own face after he pulled

[3] Later on, Gibbs—along with his defense counsel—claimed he had only been covertly recording Victim to find out whether she was smoking marijuana in the bathroom. (Tr. p. 10; pp. 33-34). No explanation appears to have been provided, though, for why he kept the recordings of the nude minor for months and months after he discovered she was not actually smoking marijuana in the bathroom that day. (Tr. p. 10; pp. 33-34).

the phone back from underneath the door to verify it was recording. (Tr. p. 9). Beyond that, officers also found "apps for sharing child-related videos" on the phone. (Tr. p. 10).

Ultimately, based on what was uncovered in the investigation, Gibbs was arrested on or about February 22, 2020. (Arrest Warrants). Shortly after that, Gibbs was released on bond.[4] (Arrest Warrants; Bond Form). Amongst the conditions of his release, Gibbs was required to submit to electronic monitoring. (Bond Form). Notably though, Gibbs was *not* ordered to remain on house arrest while free on bond. (Bond Form).

In the months that followed, several orders were issued related to Gibbs's bond, including after Gibbs was formally indicted for multiple counts of first-degree sexual exploitation of a minor along with numerous other criminal offenses. (Tr. pp. 10-11; July 2020 Bond Order, pp. 1-3; Aug. 2020 Bond Order, pp. 1-2; Feb. 2021 Bond Order, pp. 1-3; Indictments). Critically though, the conditions of Gibbs's bond were *never* altered by any of those orders in a manner that subjected him to house arrest.[5] (July 2020 Bond Order, pp. 1-3; Aug. 2020 Bond Order, pp. 1-2; Feb. 2021 Bond Order, pp. 1-3).

Subsequently, in February of 2025, Gibbs—following negotiations with the State—appeared before the plea judge and entered guilty pleas to two counts of second-degree sexual exploitation of a minor. (Tr. pp. 3-6). In doing so, Gibbs confirmed he "materially" agreed with the factual allegations presented by the State and there was a factual basis for his charges.[6] (Tr.

[4] Based on contents of the arrest warrants and bond paperwork, Gibbs was released on bond on the very same day he was served with the arrest warrants. (Arrest Warrants; Bond Form).

[5] Indeed, during that period, Gibbs appears to have travelled to Massachusetts and Maine from his out-of-state residence while free on bond. (Consent Order to Travel).

[6] Defense counsel's only quibble with the prosecutor's factual recitation of Gibbs's crimes was defense counsel disputed Gibbs's phone contained any applications for "shar[ing] any child

p. 12). Gibbs further indicated he understood the consequences of entering his guilty pleas, was doing so freely and voluntarily, and was aware he could potentially be sentenced to no less than two years to as much as ten years for each of his charges. (Tr. pp. 4-6). Upon hearing that, the plea judge accepted Gibbs's guilty pleas. (Tr. p. 16).

After the guilty pleas were accepted, the plea judge listened to remarks from counsel, Victim, and Victim's parents.[7] (Tr. pp. 17-43). Following that, the plea judge asked for information about the time Gibbs had served up to that point. (Tr. p. 43).

Defense counsel addressed the matter first, asserted Gibbs's time served—which he identified as being accrued from February 21, 2020, to February 24, 2025—totaled 1,831 day, and maintained that time was comprised of "the time that he spent monitored on GPS." (Tr. p. 43). Defense counsel further asserted the plea judge was "able to give that credit" based on this Court's decision in "State vs. Arthur Fields," which supposedly stated it was up to a sentencing judge to determine how much credit a defendant would get for time spent "on GPS monitoring prior to incarceration."[8] (Tr. pp. 43-44).

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stuff." (Tr. p. 12). Instead, defense counsel appeared to suggest Gibbs had a "torrent" file-sharing application on his phone purely for the purpose of downloading music. (Tr. p. 34).

[7] As part of her remarks, Victim's mother noted Gibbs—whom she described as intelligent and manipulative—had been "living as if he was free for the past four years" while released on bond. (Tr. p. 22).

[8] Gibbs's defense counsel—who was also appellate counsel for Arthur M. Field—appears to have been referring to this Court's decision in State v. Field. State v. Field, Op. No. 2017-UP-455 (S.C. Ct. App. refiled Apr. 4, 2018). Notably, in that unpublished decision, this Court did *not* ultimately analyze whether discretionary time served credit could or could not properly be awarded to a defendant for time spent on bond while *not* subjected to both a monitoring requirement and a house arrest requirement. Id. Instead, in affirming, this Court simply held "the circuit court, in adjusting the sentence it imposed on Field's codefendant so that the active sentences for both defendants were similar acted within its discretion." Id.

In response, the prosecutor quickly noted the language of the controlling statute—Section 24-13-40 of the South Carolina Code of Laws—only allowed discretionary time served credit for time spent on "monitored house arrest." (Tr. p. 44). With that in mind, the prosecutor contended Gibbs was not eligible for time served credit since he was only subjected to a monitoring requirement while released on bond, reiterated the pertinent statute specifically included the words "house arrest" when identifying the conditions under which discretionary time served credit could be awarded, and noted Gibbs "was not on house arrest." (Tr. pp. 44-45).

In rebuttal, defense counsel again referred to "Fields' case" and alleged credit for the offender in that case was affirmed "for time where he was not even being monitored but he was simply meeting with the Attorney General's Office." (Tr. p. 46). Additionally, defense counsel asserted the decision in that case "[wa]s still valid law" and was purportedly not appealed to the Supreme Court by the State.[9] [10] (Tr. p. 46). Defense counsel then repeated his request for Gibbs to be awarded 1,831 days of time served credit while noting Gibbs was monitored "during that entire time." (Tr. p. 46).

As the discussion on the matter continued, the prosecutor indicated other circuit court judges had recently ruled discretionary time served credit could not properly be awarded to an

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[9] As an unpublished decision, this Court's decision in Field had no precedential value. See Rule 268, SCACR ("Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.").

[10] Contrary to defense counsel's assertion, the State did indeed petition for a writ of certiorari in the Field case, its petition was granted, and the Supreme Court—following briefing and oral argument—ultimately affirmed on issue preservation grounds. State v. Field, 429 S.C. 578, 582, 840 S.E.2d 548, 550 (2020). And, importantly, the Supreme Court expressly stated in its published decision "[t]he State present[ed] a strong argument on the merits" and it was "inclined to agree that the sentencing court *did not have authority* to give Field credit for the entire fifteen months" since he was only subjected to both a house arrest requirement and a monitoring requirement for the first five months he was free on bond. Id. at 580-581, 840 S.E.2d at 549-550 (emphasis added).

individual who was not on house arrest. (Tr. p. 47). Defense counsel responded by asserting to the plea judge: "Just so you know, I wrote that law."[11] (Tr. p. 47). Defense counsel then again contended the controlling statute left time served credit to "her authority" and explained he was requesting she award the credit to Gibbs because of the State's knowledge "as to his movements" while he was free on bond. (Tr. p. 47).

After considering the arguments of counsel, the plea judge—despite the State's argument such credit could not permissibly be awarded based on the controlling statutory language—indicated she was, in fact, going to award the requested time served credit to Gibbs since his bond was never revoked at any point. (Tr. p. 48). The plea judge then sentenced Gibbs to an aggregate eight-year term of imprisonment and awarded him credit for time served in the amount of 1,831 days. (Tr. p. 48). Following that, the State promptly appealed the plea judge's decision to award that credit for time served. (Notice of Appeal).

[11] Respectfully, as has long been recognized in our state, the opinion of a legislator involved in the enactment of a law as to its intended meaning cannot properly—and will not—be considered by a South Carolina court when construing a statute. See Creswick v. Univ. of S.C., 434 S.C. 77, 83, 862 S.E.2d 706, 709 (2021) ("[T]he Court may not look to the opinions of legislators or others concerned in the enactment of the law—expressed subsequent to enactment—to ascertain the intent of the legislature. It is well established that courts will disregard the subsequently expressed opinions of individual legislators as to the intent of the legislature as a whole when construing a statute." (citations omitted)); Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, __, 20 S.E.2d 813, 817 (1942) ("It is a settled principle in the interpretation of statutes that even where there is some ambiguity or uncertainty in the language used, *resort cannot be had* to the opinions of legislators or of others concerned in the enactment of the law, for the purpose of ascertaining the intent of the Legislature." (emphasis added)); see also Mims v. Arrow Fin. Servs., LLC, 565 U.S. 368, 385 (2012) ("[T]he views of a single legislator, even a bill's sponsor, are not controlling."); Roy v. Cnty. of Lexington, S.C., 141 F.3d 533, 539 (4th Cir. 1998) (explaining the remarks of an individual legislator are not regarded as "a reliable measure of [legislative] intent").

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); see State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974) ("A broad discretion is allowed the trial judge in imposing sentence within the legal limits."); see also State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) ("A trial judge generally has wide discretion in determining what sentence to impose."). However, a sentence that does not fall within the applicable statutory sentencing limits constitutes an illegal sentence, and an appellate court has a duty to correct such a sentence on appeal. State v. Plumer, 439 S.C. 346, 351, 887 S.E.2d 134, 137 (2023); see State v. Pogue, 430 S.C. 384, 387, 844 S.E.2d 397, 398 (Ct. App. 2020) (reversing and remanding for a new sentencing hearing because the sentence imposed was not authorized by the applicable statutory provision); see also United States v. Friend, 2 F.4th 369, 383 (4th Cir. 2021) ("When a court abuses its [sentencing] discretion, it is [the appellate] court's duty to correct the error."). Meanwhile, when conducting appellate review of an issue hinging on interpretation of a statute, the appellate court will review the matter de novo. State v. Whitner, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012).

ARGUMENT

The plea judge impermissibly exceeded her sentencing authority and reversibly erred by discretionarily awarding Gibbs 1,831 days of time served credit for time he spent free on bond while subject to a monitoring requirement because Gibbs was not on house arrest during that time period and, thus, was not eligible for and could not properly be awarded any discretionary time served credit pursuant to plain and unambiguous South Carolina law, which only permits such discretionary credit for time spent "under monitored house arrest."

After Gibbs pled guilty to two counts of second-degree sexual exploitation of a minor, the plea judge—over opposition from the State—awarded him a substantial amount of credit for time he had spent free on bond while monitored but *not* on house arrest. However, just as the prosecutor correctly argued to the plea judge, no credit could properly be awarded for any of the time Gibbs served while free on bond because he was not on monitored *house arrest*, which was a necessary requirement for him to be eligible for any discretionary time served credit pursuant to unambiguous South Carolina law. Accordingly, the plea judge exceeded her sentencing authority and committed an unmistakable error of law by awarding credit for time served to Gibbs that she was not actually legally authorized to award and to which he was not entitled. The plea judge's decision to improperly award 1,831 days of credit for time served to Gibbs must be reversed and that portion of Gibbs's sentence should be vacated.

In South Carolina, entitlement to credit for "time served" toward a criminal sentence is controlled by statute. S.C. Code Ann. § 24-13-40. Pursuant to the relevant statutory provision, prisoners are entitled to sentencing credit for time served pre-trial in limited circumstances. Id. Specifically, unless one of a few enunciated exceptions apply, prisoners *must* be given credit for time served in incarceration prior to trial and *may* be given credit for time spent "under monitored *house arrest*." Id. (emphasis added); see Allen v. State, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000) (explaining a criminal defendant must be given credit for time served

prior to trial "unless one of two exceptions exist: 1) either the prisoner was an escapee or 2) the prisoner was already serving a sentence on one offense"). Thus, sentencing judges in our state are—based on the plain language of the applicable statute—vested with discretion as to whether to award credit toward a sentence to an individual awaiting trial while free on bond if—and only if—that individual is on monitored *house arrest*. S.C. Code Ann. § 24-13-40; see Franklin, 267 S.C. at 246, 226 S.E.2d at 898 (recognizing circuit court judges in South Carolina ordinarily have wide sentencing discretion).

In the case sub judice, Gibbs—subsequent to his arrest and prior to the entry of his guilty pleas—was released on bond under the condition he would be subject to monitoring. Importantly though, Gibbs was *not* ordered to remain on house arrest and was never at any point subjected to a house arrest requirement during the entirety of the period he was free on bond. Thus, Gibbs never served any time on "monitored house arrest" in connection to his charges, and, tellingly, his defense counsel never even attempted to suggest he had when urging—successfully—the plea judge to award Gibbs a substantial amount of discretionary time served credit.

Critically though, pursuant to unambiguous South Carolina law, Gibbs was not entitled to any credit for the time he spent free on bond because he did not spend any of that time on "monitored house arrest." See S.C. Code Ann. § 24-13-40 (instructing time served credit "may be given for any time spent under monitored house arrest"); cf. In re Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463-464 (1995) ("Had the legislature intended the statute to apply in circumstances in which the trial court seeks disclosure, it would not have limited application of the statute to circumstances where a 'party' seeks to compel production."). Otherwise, the legislature's decision to include the words "house arrest" in the controlling statute would be

entirely meaningless. See State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) (instructing "a court must abide by the plain meaning of the words of a statute"); Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) ("When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning."); Steinke v. S.C. Dep't of Lab., Licensing & Regul., 336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999) ("We are constrained to avoid a construction that would read a provision out of a statute, and must reconcile conflicts if possible."); Decker, 322 S.C. at 219, 471 S.E.2d at 463 ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous[.]" (citation and internal quotations omitted)).

Therefore, the plea judge improperly exceeded her sentencing authority by awarding time served credit she was simply not authorized to award, and her decision to do so in Gibbs's case constituted an error of law that needs to be corrected. See Plumer, 439 S.C. at 350 n. 3, 887 S.E.2d at 137 n. 3 (recognizing a sentence is illegal when it is "in excess of that permitted by law"); see also State v. Dozier, 263 S.C. 267, 271, 210 S.E.2d 225, 226 (1974) (explaining a South Carolina appellate court "has no jurisdiction on appeal to correct a sentence alleged to be excessive *when it is within the limits prescribed by statute*" (emphasis added)); cf. State v. Taub, 336 S.C. 310, 318, 519 S.E.2d 797, 802 (Ct. App. 1999) (reversing Taub's sentence and remanding for resentencing because his sentence fell below the mandatory minimum sentencing limits established for his offense). The plea judge's decision to improperly award 1,831 days of credit for time served to Gibbs must be reversed and that portion of Gibbs's sentence should be vacated.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the plea judge's decision to award credit for time served that could not permissibly be awarded should be reversed and that portion of the sentence imposed should be vacated.

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