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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.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Questions Presented 1

Statement of Case 1

Standard of Review 3

Arguments

Question 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 S.C. Code Ann. § 24-13-40? 4

Question II

 Did the sentencing court mistakenly believed 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? 8

Question III

 Did the sentencing court improperly consider the initial charge when deciding to deny credit for time served and deny home incarceration? 9

Conclusion 10

Certificate of Service 11

Rule 211, SCACR Certification 12

TABLE OF AUTHORITIES

Cases

<i>Charleston County Sch. Dist. v. State Budget and Control Bd.</i> , 313 S.C. 1, 437 S.E.2d 6 (1993).....	5
<i>Garrett v. State</i> , 320 S.C. 353, 465 S.E.2d 349 (1995).....	4
<i>Hodges v. Rainey</i> , 341 S.C. 79, 533 S.E.2d 578 (2000)	5
<i>In re Vincent J.</i> , 333 S.C. 233, 509 S.E.2d 261 (1998).....	5
<i>Samples v. Mitchell</i> , 329 S.C. 105, 495 S.E.2d 213 (Ct. App.1997)	3
<i>State v. Adams</i> , 409 S.C. 641, 763 S.E.2d 341 (2014).....	4
<i>State v. Blackmon</i> , 304 S.C. 270, 403 S.E.2d 660 (1991).....	5, 7
<i>State v. Blackwell</i> , 420 S.C. 127, 801 S.E.2d 713 (2017).....	3
<i>State v. Boggs</i> , 388 S.C. 314, 696 S.E.2d 597 (Ct. App. 2010).....	3, 4, 9, 10
<i>State v. Brown</i> , 426 S.C. 63, 824 S.E.2d 476 (Ct. App. 2019)	4, 6
<i>State v. Gamble</i> , 405 S.C. 409, 747 S.E.2d 784 (2013).....	3
<i>State v. Hawes</i> , 411 S.C. 188, 767 S.E.2d 707 (2015).....	3, 7
<i>State v. Jacobs</i> , 393 S.C. 584, 713 S.E.2d 621 (2011)	3
<i>State v. Lawrence</i> , 439 S.C. 611, 889 S.E.2d 557 (2023).....	4
<i>State v. McCord</i> , 349 S.C. 477, 562 S.E.2d 689 (Ct. App. 2002).....	10
<i>State v. Sidell</i> , 262 S.C. 397, 205 S.E.2d 2 (1974)	4
<i>State v. Simpson</i> , 429 S.C. 83, 837 S.E.2d 669 (Ct. App. 2020)	8

Statutes

S.C. Code Ann. § 16-1-60.....	8
S.C. Code Ann. § 18-1-90.....	3
S.C. Code Ann. § 24-13-40.....	1, 2, 4, 5, 6, 7

S.C. Code Ann. § 24-13-1520..... 6, 7

S.C. Code Ann. § 56-5-2910(A)..... 8, 9

Rules

Rule 203(d)(1)(B)(iv), SCACR 3

Rule 246(a), SCACR 3

QUESTIONS PRESENTED

Question 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 S.C. Code Ann. § 24-13-40?

Question II

Did the sentencing court mistakenly believed 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?

Question III

Did the sentencing court improperly consider the initial charge when deciding to deny credit for time served and deny home incarceration?

STATEMENT OF CASE

On January 5, 2018, Jason Shane Bishop was involved in a motor vehicle accident, involving multiple vehicles, on I-26 in Spartanburg County near Exit 19. As a result of the accident, Randy Steven Oberdier died, and Mr. Bishop sustained severe injuries requiring emergency surgery and long-term hospitalization. R. 16, 18-21.

On March 28, 2018, Mr. Bishop voluntarily surrendered himself at the Spartanburg County Detention Center, and law enforcement served an arrested warrant for felony driving under the influence ("DUI"). R. 1, 16.

On March 29, 2024, the Spartanburg County Magistrate Court set a \$5,000.00 surety bond with conditions including "SCRAM UNTIL TRIAL," "ZERO TOLERANCE FOR ALCOHOL AND RANDOM DRUG TESTING," and an order to "not depart the State without the permission of the court." R. 2-3 (emphasis original). Later the same day, the Honorable J. Derham Cole issued an order amending the conditions bond to allow Mr.

Bishop to reside in North Carolina at the address “where he was residing at the time of the incident giving rise to this charge.” R. 4-7.

On June 6, 2018, the Spartanburg County Grand Jury returned a true bill indictment for felony DUI. R. 8-9.

On September 11, 2023, Mr. Bishop waived presentment to the Grand Jury and pled guilty, before the Honorable Grace Gilchrist Knie, to the offense of reckless homicide. Judge Knie deferred sentencing. R. 10-14.

On March 21, 2024, Mr. Bishop suffered a stroke. On March 22, 2024, medical providers removed the SCRAM bracelet to perform an MRI. At the time, Mr. Bishop had spent 2186 days subject to SCRAM monitoring, without any violations.¹ R. 26-27, 30-36.

On June 25, 2024, Judge Knie sentenced Mr. Bishop seven years imprisonment with credit for time served of one day. Judge Knie denied Mr. Bishop’s request for credit for time served while subject to SCRAM monitoring. R. 29-78. *See also* Sentencing Memorandum, R. 80-171.

On June 27, 2024, Mr. Bishop moved to reconsider the sentence because the sentencing court “mistakenly believed the Court lacked discretion to award credit for time served on home detention with SCRAM monitoring” and “mistakenly believed the Court’s sentence could not include home incarceration because this offense involved a mandatory minimum sentence.” R. 172-78.

On August 8, 2024, Judge Knie convened a hearing on Mr. Bishop’s Motion to Reconsider the Sentence. R. 179-97. During the hearing, it became apparent that the

¹ After Mr. Bishop was released from the hospital and an inpatient rehabilitation center, he moved to amend the conditions of his bond to delete the conditions to delete the requirement of SCRAM monitoring. R. 25-28. The court never heard this motion.

sentencing court considered Mr. “Bishop was originally charged with felony DUI with a potential sentence of one year up to 25 years” (R. 194), and Mr. Bishop requested the sentencing court to consider *State v. Boggs*, 388 S.C. 314, 696 S.E.2d 597 (Ct. App. 2010), before issuing an order (R. 196).

On August 30, 2024, Judge Knie denied Mr. Bishop’s Motion to Reconsider the Sentence. R. 198-99.

On September 9, 2024, Mr. Bishop filed and served a notice of appeal. Pursuant to Rule 203(d)(1)(B)(iv), SCACR, Mr. Bishop identified the three questions presented in this brief.² R. 200-02. This brief follows.

STANDARD OF REVIEW

“In criminal cases, this Court only reviews errors of law.” *State v. Gamble*, 405 S.C. 409, 415, 747 S.E.2d 784, 787 (2013) (citing *State v. Jacobs*, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011)). This Court “is bound by factual findings of the trial court unless an abuse of discretion is shown.” *State v. Blackwell*, 420 S.C. 127, 136, 801 S.E.2d 713, 718 (2017) (internal citations and quotations omitted). “An abuse of discretion occurs when the court’s decision is unsupported by the evidence or controlled by an error of law.” *Id.* “A failure to exercise discretion amounts to an abuse of that discretion.” *State v. Hawes*,

² On September 10, 2024, pursuant to Rule 246(a), SCACR, and S.C. Code Ann. § 18-1-90, Mr. Bishop moved in the Circuit Court for an appeal bond. R. 204-08. On October 11, 2024, the Honorable J. Derham Cole convened a hearing on this motion. On January 15, 2025, Judge Cole denied the motion. R. 213-16. The order concluded the sentencing judge “did in fact exercise discretion and give the defendant some credit for time spent on SCRAM monitored pre-trial release.” R. 215. The record does not support this finding for two reasons. First, the sentencing judge’s standing policy of not giving credit for time spent on SCRAM monitoring contradicts this conclusion. Second, the sentencing judge made it clear that this standing policy is based on the court’s interpretation of the relevant statutes. *See* R. 194.

411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (citing *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App.1997). “[T]his Court reviews questions of law de novo.” *State v. Lawrence*, 439 S.C. 611, 616, 889 S.E.2d 557, 560 (2023) (citing *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014)).

“A judge is allowed broad discretion in sentencing within statutory limits.” *Garrett v. State*, 320 S.C. 353, 356, 465 S.E.2d 349, 350 (1995) (citing *State v. Sidell*, 262 S.C. 397, 205 S.E.2d 2 (1974). Sentencing errors are reviewable on appeal, and this Court can reverse sentences controlled by an error of law. *See, e.g. State v. Brown*, 426 S.C. 63, 824 S.E.2d 476 (Ct. App. 2019) (defendant entitled to credit for time served for the period of time he was civilly committed after he was found incompetent to stand trial and was deemed to have a genuine mental illness); *Boggs, supra* (plea judge’s denial of jail credit for time defendant served in pretrial detention based upon state’s decision to drop charge against defendant from armed robbery to strong arm robbery was an error at law).

ARGUMENTS

Question 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 S.C. Code Ann. § 24-13-40?

This appeal requires this Court to interpret S.C. Code Ann. § 24-13-40, which provides:

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.

This appeal *does not* involve a situation where the sentencing court exercised discretion whether to award credit for time spent under monitored house arrest. The sentencing court

concluded it did not have discretion to award credit for SCRAM monitoring. During the hearing on the motion to reconsider the sentence, the court below underscored this belief by stating:

I have never given credit day for day for SCRAM since I've been on the bench. And the only credit that I give is HD GPS. Not HD, but HD GPS. And that is according to a statute that was put in place by our legislature. I don't make the law. I enforce it by my decisions.

R. 194.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)). “Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” *Id.* (citing *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998)). “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Id.* When a statute is penal in nature, the rule of lenity requires that any ambiguity must be construed strictly against the State and in favor of the defendant. *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

During the sentencing hearing, the court asked for the State and Mr. Bishop for their respective positions regarding whether section 24-13-40 authorizes credit for time served on home detention with SCRAM monitoring. The State relied on section 24-13-1520(3), which provides:

“Approved electronic monitoring device” means a device approved by the department which is primarily intended to record and transmit information as to the defendant’s presence or nonpresence in the home.

An approved electronic monitoring device may record or transmit: oral or wire communications or an auditory sound; visual images; or information regarding the offender's activities while inside the offender's home. These devices are subject to the required consent as set forth in Section 24-13-1550.

An approved electronic monitoring device may be used to record a conversation between the participant and the monitoring device, or the participant and the person supervising the participant, solely for the purpose of identification and not for the purpose of eavesdropping or conducting any other illegally intrusive monitoring.

See R. 69-70.

Nothing in section 24-13-40 requires use of a device that complies with section 24-13-1520(3); however, nothing in section 24-13-1520(3) limits an approved electronic monitoring device to a GPS device that constantly records a person's location. Mr. Bishop pointed to the Home Detention and SCRAM monitoring agreement which required him to be at home at certain times in order for the SCRAM monitor to transmit data to the Spartanburg Home Detention Program. Mr. Bishop, accordingly, argued below that the SCRAM monitor complies with section 24-13-1520 and section 24-13-40 and authorizes the sentencing court discretion to award credit. R. 35, 70.

It also is important to look at the nature and character of Mr. Bishop's Home Detention and SCRAM monitoring agreement. *See, e.g., Brown, supra* (defendant entitled to credit for time served for the period of time he was civilly committed after he was found incompetent to stand trial and was deemed to have a genuine mental illness).³ Conditions of Mr. Bishop's Home Detention and SCRAM monitoring included:

³ Brown was committed to the South Carolina Department of Mental Health, and "Patients in the [G. Weber Bryan Psychiatric Hospital]'s Forensics Division are primarily referred by jails and criminal courts from throughout the state, and are housed separately

- “I understand that while I am considered under the supervision of the Spartanburg County Jail and am still subject to its officers and staff’s supervision.”
- “I agree to remain in my residence as designated above at all times except as approved by the home detention staff.”

R. 102-03. Mr. Bishop had to be at home at certain times of the day for the SCRAM monitor to upload the data for review by the Detention Center officials. Sargent Vinson appeared during the sentencing hearing and verified Mr. Bishop’s compliance with the program. R. 33-35. During the hearing on the motion to reconsider the sentence, the court below observed, “I don’t think that anyone has tried ever in arguments to me to say that Mr. Bishop did not comply” with his agreement.⁴ R. 196.

Three considerations require this Court to reverse the sentencing court and order a new sentencing hearing. First, the express terms of Mr. Bishop’s Home Detention and SCRAM monitoring agreement comply with the plain meaning of sections 24-13-1520 and 24-13-40.⁵ Second, the sentencing court’s contrary belief is controlled by an error of law. *See, e.g., Boggs, supra*. Third, the sentencing court’s blanket policy of never awarding credit for time served for SCRAM monitoring constitutes a failure to exercise discretion and, therefore, is an abuse of discretion. *See, e.g., Hawes, supra*.

from patients in the Adult Services Division in a more secure area of the hospital.” *Brown*, 426 S.C. at 69, n. 1, 824 S.E.2d at 480, n. 1.

⁴ The bench and bar would benefit from this Court’s guidance regarding the exercise of discretion in granting credit for time served during monitored home detention. Surely, someone like Mr. Bishop who diligently complied with the requirements of his home detention agreement is entitled to different consideration than someone who repeatedly violated the conditions of the monitored home detention. For instance, this Court could hold there is a presumption a person is entitled to the credit unless the presumption is rebutted by evidence of non-compliance.

⁵ Even if this Court finds the statutes ambiguous, the rule of lenity requires this Court to construe the statutes against the State and in favor of Mr. Bishop. *Blackmon, supra*.

Question 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?

Near the end of the sentencing hearing, the sentencing court referenced a case that held home detention could not be imposed to satisfy a mandatory minimum sentence. R. 71. The sentencing court apparently referenced *State v. Simpson*, 429 S.C. 83, 837 S.E.2d 669 (Ct. App. 2020). Mr. Bishop cited *Simpson* in his motion to reconsider the sentence, and the court below did not dispute his citation to this case during the motion hearing and subsequent order. R. 175-76, 187-89.

Simpson involved a guilty plea to four counts of second-degree sexual exploitation of a minor, which is classified as a violent offense with a minimum mandatory two-year sentence. *Simpson* held, "For offenses classified as 'violent' under § 16-1-60 of the South Carolina Code, § 24-13-1530 does not authorize the substitution of home detention for a statutory mandatory minimum term of imprisonment." 429 S.C. at 92, 837 S.E.2d at 673.

As pointed out in the Motion to Reconsider the Sentence (R. 175-76), the only possible reasons for considering *Simpson* would be to determine whether the Court could apply credit for time served on home detention with SCRAM monitoring towards a mandatory minimum sentence. Mr. Bishop, however, pled guilty to Reckless Homicide. "A person who is convicted of, pleads guilty to, or pleads nolo contendere to reckless vehicular homicide is guilty of a felony, and must be fined not less than one thousand dollars nor more than five thousand dollars *or* imprisoned not more than ten years, or both." S.C. Code Ann. § 56-5-2910(A) (emphasis added). The offense of reckless homicide, accordingly, **does not** require a mandatory minimum sentence. Additionally, section 16-1-

60 *does not* classify Reckless Homicide as a violent offense. *Simpson* is not applicable to Mr. Bishop's case.

As seen, Mr. Bishop's Sentencing Memorandum expressly requested credit for time served on home detention with SCRAM monitoring and a sentence of probation or, alternatively, a period of home detention followed by a term of probation. The sentencing court committed an error of law by concluding that home detention was not an available sentencing option. *See, e.g., Boggs, supra*. This Court should reverse the trial court and order a new sentencing hearing.

Question III

Did the sentencing court improperly consider the initial charge when deciding to deny credit for time served and deny home incarceration?

During the hearing on the motion to reconsider the sentence, before taking the matter under advisement, the court below stated:

And so I will just make a couple of comments that have not, I guess, yet been placed on the record today. And an appellate court will only get certain transcripts, so I think it's very important to make the record clear.

Mr. Jason Shane Bishop was originally charged with felony DUI with a potential sentence of one year up to 25 years. And then, based upon the decision of the charging agency, that charge was reduced to reckless homicide, okay, with a potential penalty of zero to ten years.

R. 194.

"In response to [these] remarks," Mr. Bishop "request[ed] the sentencing court "review *State vs. Boggs,*" *supra*, before issuing an order. R. 196. "Boggs was charged with armed robbery, and he exercised his right to a jury trial." *Boggs*, 388 S.C. at 315, 696 S.E.2d at 598. During the trial, the State reduced the charge to strong arm robbery, and "Boggs pled guilty and requested credit for the sixteen-and-a-half months he was detained

pretrial.” *Id.* “The plea judge sentenced Boggs to the maximum sentence of fifteen years,” “did not check the box [on the sentencing sheet] notifying the Department of Corrections that Boggs was to be given credit for time served,” and “hand wrote on the sentencing sheet: ‘request that Def not be given credit for time served as charge dropped from ar. robbery to st. ar. robbery.’” *Id.*, 388 S.C. at 316, 696 S.E.2d at 598. This Court held, “[T]he plea judge committed an error of law when he denied Boggs credit for time served based upon the State’s decision to drop the charge from armed robbery to strong arm robbery.” *Id.* See also *State v. McCord*, 349 S.C. 477, 562 S.E.2d 689 (Ct. App. 2002) (Trial court could not deny defendant credit for time served prior to trial and sentencing based on fact that court had not given defendant a life sentence).

This Court should reverse the sentencing court and order a new sentencing hearing because the court below committed an error of law by improperly considered the original charge as reason for not granting credit for time served on home detention and SCRAM monitoring.

CONCLUSION

For the foregoing reasons, this Court should reverse the sentencing court and remand this matter for a new sentencing hearing.

Respectfully Submitted,

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Rule 211, SCACR Certification

This Final Brief of Appellant complies with Rule 211(b), SCACR.

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Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel’s primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

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