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SC Court of Appeals

TATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
The Honorable Alex Kinlaw, Circuit Court Judge
Appellate Case No. 2024-001653

THE STATE,

RESPONDENT,

v.

JEFFREY MICHAEL GEORGE,

APPELLANT

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities.....ii

Appellant’s Statement of issue on appeal.....iii

Respondent’s counter-statement of issue on appeal.....iv

Statement of the Case.....1

Statement of Facts.....2

Argument

 1. The trial judge did not err nor abuse his discretion in refusing to grant credit for the Appellant for time served while on monitored house arrest prior to trial since credit for this time is not mandatory, but left to the Sentencing Judge’s discretion pursuant to Section 24-13-40 of the South Carolina Code of Laws.....5

Conclusion.....9

TABLE OF AUTHORITIES

Cases

In re M.B.H., 387 S.C. 323, 692 S.E.2d 541 (2010).....6

State v. Franklin, 267 S.C. 240, 226 S.E.2d 898 (1976) 6

State v. Goodall, 221 S.C. 178, 69 S.E.2d 916 (1952).....6

State v. Hill, 314 S.C. 330, 444 S.E.2d 255 (1994)..... 7

State v. Smith, 276 S.C. 494, 280 S.E.2d 202 (1981).....6,7,8

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001)6

Tant v. South Carolina Dept. of Corrections, 408 S.C. 334 759 S.E.2d 398 (2014)..... 7

Statutes

S.C. Code Ann. §24-13-40 7

APPELLANT'S STATEMENT OF ISSUE 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?

RESPONDENT'S COUNTER-STATEMENT OF ISSUE ON APPEAL

1. Did the trial judge err or abuse his discretion in refusing to grant credit for time served during pre-trial monitored house arrest when credit for this time is not mandatory pursuant to Section 24-13-40 of the South Carolina Code of Laws?

STATEMENT OF THE CASE

Jeffrey Michael George (Appellant) was indicted by the Greenville County Grand Jury during the May 2021 term for the offenses of murder and kidnapping (Indictment No. 2021-GS-23-002637)(R*).

On September 16, 2024, Appellant appeared before the Honorable Alex Kinlaw to stand trial for the above referenced offenses. Appearing on behalf of the Appellant was his trial counsel Lucas Craig Marchant. Representing the State of South Carolina were Assistant Solicitors, Allen O. Fretwell, and Jesse Michael Williams of the Thirteenth Circuit Solicitor's Office.

After six days of testimony a jury of his peers found the Appellant guilty of both offenses. (Tr. p. 1268 l. 13-20). After the reciting of the verdict the Appellant appeared before the trial judge for sentencing. During sentencing Appellant's counsel requested that the trial judge give sentencing credit for Appellant's house arrest and GPS monitoring while out on bond. (Tr. p. 1273 l. 7-8). After this request the trial judge stated, "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 l. 24-25). It was then calculated that the Appellant had spent one hundred and forty-seven (147) days in pre-trial detention in the detention center. (Tr. p. 1275 l. 8). The trial judge proceeded to sentence the Appellant to a forty-eight (48) year period of incarceration for the offense of murder. (Tr. p. 1275 l. 12-15). The trial court also sentenced the Appellant to a thirty (30) year period of incarceration for the offense of kidnapping that was to be served concurrently with the murder sentence. (Tr. p. 1275 l. 16-20). The trial judge gave the Appellant one hundred and forty-seven (147) days credit for pre-trial detention. (Tr. p. 1275 l. 8; l. 21).

While he was serving his sentence the Appellant filed a timely notice of appeal before the South Carolina Court of Appeals. The initial brief of the Respondent supporting their argument follows.

STATEMENT OF FACTS

On December 1, 2019, David Stokes picked up Bobby Ray Smith from his home. When he picked up Bobby Ray, Jeffrey Michael George (Appellant), was sitting in the car. David drove Appellant and Bobby Ray to the house of the Appellant's girlfriend Audrea Cook for the purpose of doing drugs. (Tr. p. 972 l. 3-12; Tr. p. 928 l. 15-18). Once they got to Audrea's house, she told them about a Russian named Ivan Gula (victim). She told them that the victim stole her car and raped her within the last couple of days. She also told them that she was afraid of him and that she wanted all of them to "mess him up for her." (Tr. p. 973 l. 11-15). Audrea told them to wait in the bedroom until the victim got there. (Tr. p. 975 l. 16-17). The victim arrived with three other people, Janice, Isaiah and the victim's best friend Terry. (Tr. p. 716 l. 14-17; p. 724 l. 17-19).

When the victim walked in the house Appellant and all the other men came out of the bedroom. The Appellant told the victim to get on the floor while pointing a gun at him. (Tr. p. 975 l. 18-19). David came out of the bedroom with a machete and started swinging at the victim, hitting him in the arms. (Tr. p. 976 l. 8-10; l. 15-17). While this was happening, the Appellant was still pointing the gun at the victim. (Tr. p. 918 l. 21-22). David was beating the victim with a machete, when Audrea told him to stop. (Tr. p. 979 l. 11-12). Audrea and another person at the scene named Patrick left to take Janice and Terry back home. (Tr. p. 979 l. 11-13). Before she left Audrea told the Appellant, David, and Bobby Ray to "finish up and clean up." (Tr. p. 979 l. 17). The only people that were left in the house were the victim, Appellant, David, Bobby Ray, and Isaiah. (Tr. p. 979 l. 22).

After the group of people left, the victim ran to the door, and Bobby Ray then hit the victim with a bat. Isaiah then hit the victim with a machete, and the victim fell to the floor. (Tr. p. 1980 l. 3-6). The Appellant then went up to the victim and told him, “My girlfriend’s got some good pussy don’t she?” Appellant then stabbed the victim twice in the back with a machete. (Tr. p. 980 l. 6-8). The victim lay on the floor for about forty-five minutes. They wanted David to “finish him off,” however, David couldn’t do it. (Tr. p. 981 l. 10-12). The Appellant then took a machete and stabbed the victim in the neck one last time. (Tr. p. 982 l. 3-4). After this, Bobby Ray and David went to David’s house to get a tarp and some fabric in which to wrap the victim’s body. (Tr. p. 982 l. 12-13). While they were wrapping up the victim’s body Appellant told them, “If anybody says anything I’m going to kill them.” (Tr. p. 985 l. 1-7). After this Bobby told them he was leaving, Appellant and David loaded the victim’s body into David’s truck. They took the body to David’s house. (Tr. p. 983 l. 17-19).

The next day Kurt Knutson was sleeping in a camper on David’s property. (Tr. p. 666 l. 14-15). Kurt woke up to find David digging a hole in the woods. (Tr. p. 666 l. 20-22). Kurt went outside, grabbed a shovel, and assisted David in digging the hole. (Tr. p. 666 l. 22-24). As they were digging and talking Kurt determined that David was burying a body. Kurt then asked David, “Should we dig the hole like a body size?” (Tr. p. 667 l. 12-13). David answered, “Yeah, A smallish guy.” (Tr. p. 667 l. 14-15). After burying the victim, Kurt called Deputy Kenneth League of the Greenville Sheriff’s Department. Kurt knew Deputy League, having dealt with him before. (Tr. p. 225 l. 23 – p. 226 l. 5). Kurt told Deputy League that he wished to speak with him face to face concerning the location of a body. (Tr. p. 226 l. 20-22; p. 226 l. 25 – p. 227 l. 1).

Once Kurt gave law enforcement directions to where the body was buried, law enforcement went to the location. At the location officers found a tree lying down with its roots up, and shovel

marks where there was a freshly dug hole. (Tr. p. 292 l. 16-20). The coroner's office was called to the location. The victim's body was dug up and placed on a blue tarp. The body was also wrapped in a leopard print blanket. (Tr. p. 295 l. 20-23). Law enforcement officers then obtained search warrants for the house where the crime occurred. (Tr. p. 302 l. 6-11). Within the house they found blood on the side of the couch. (Tr. p. 386 l. 4-6). In the master bedroom, Law enforcement also found a piece of duct tape, a black handled machete, a green handled machete, a rusted wooden-handled machete, a meat cleaver, a hatchet, and a sword. Each was swabbed by crime scene investigators and taken into custody. (Tr. p. 395 l. 24 – p. 397 l. 22).

During trial, Katlin Appel, DNA analyst for the Greenville County Department of Public Safety testified. Ms. Appel was deemed qualified as an expert in the field of DNA analysis. (Tr. p. 529 l. 22 – p. 530 l. 1). Ms. Appel found that a blood spot on the duct tape matched the victim. (Tr. p. 532 l. 19-24). DNA obtained from the blood found on the blade of one of the machetes also belonged to the victim. (Tr. p. 533 l. 17-22). There was also blood found on the living room wall and the DNA matched the victim. (Tr. p. 535 l. 4-11).

Forensic pathologist Grace Dukes also testified. Dr. Dukes was deemed qualified as an expert in the field of forensic pathology. (Tr. p. 310 l. 19-25). Dr. Dukes performed the autopsy on the victim on December 17, 2019. (Tr. p. 311 l. 2-5). When the victim was brought in, he was unidentified. He had to be identified through fingerprints. (Tr. p. 311 l. 7-9). Dr. Dukes testified that the victim's body's condition was consistent with him dying about two and a half weeks earlier. (Tr. p. 325 l. 11-14). The victim had five stab wounds and some additional sharp-force and blunt-force injuries. (Tr. p. 327 l. 20-21).

Dr. Dukes found that the victim had one stab wound in the upper left portion of his neck at the jaw line. This wound went through the neck and severed the internal carotid artery. (Tr. p. 328

l. 14-21). A second stab wound was found at the top of the left shoulder. (Tr. p. 331 l. 10-11). The third stab wound was found at the upper back one step down from the shoulder wound. (Tr. p. 333 l. 1-2). This stab wound went into the victim's back, through his ribs lacerating his lung. (Tr. p. 333 l. 12-16). The fourth stab wound was at the mid-back causing injuries to the tenth, eleventh, and twelfth ribs. The knife also intersected with the victim's spinal column. (Tr. p. 336 l. 11-18). Dr. Dukes testified that there were injuries to the back, chest wall, ribs, and many muscles extending to the left side of the spinal column into the lower chest cavity, and in the upper adnominal cavity. (Tr. p. 337 l. 1-4).

The fifth wound was on the left side of the victim's back into the front posterior chest wall thorough the musculature cavity. There were also injuries to the two lower ribs. (Tr. p. 338 l. 16-23). The victim also had a depressed skull fracture at the top of his head. (Tr. p. 340 l. 5-7). Dr. Dukes determined that the cause of the victim's death was due to multiple stab wounds. (Tr. p. 351 l. 3-5).

ARGUMENTS

- 2. The trial judge did not err nor abuse his discretion in refusing to grant credit for the Appellant for time served while on monitored house arrest prior to trial since credit for this time is not mandatory but left to the Sentencing Judge's discretion pursuant to Section 24-13-40 of the South Carolina Code of Laws.**

Relevant Facts

At the conclusion of the trial, a jury of the Appellant's peers found him guilty of the offenses of murder and kidnapping. (Tr. p. 1268 l. 13-20). After the reading of the verdict, the Appellant appeared before the trial judge for sentencing. At the time of sentencing, trial counsel for the Appellant informed the trial judge that Appellant had been placed on house arrest as a condition of bond. Trial counsel requested that the Appellant receive credit for his pre-trial

detention on house arrest. The trial judge stated, “Jail credit, your calculation is based on HIP as part of the bond? I need to know how much time he spent in jail.” (Tr. p. 1273 l. 23-25).

At that time Appellant’s trial counsel and the assistant solicitor determined that the Appellant served a total of one hundred and forty-seven (147) days of pre-trial detention in the detention center. (Tr. p. 1275 l. 8). The trial judge sentenced the Appellant to a term of incarceration for forty-eight (48) years for murder and thirty (30) years for kidnapping to be served concurrently. (Tr. p. 1275 l. 10 – 21). The trial judge decided to award Appellant credit for one-hundred and forty-seven (147) days credit for both offenses. (Tr. p. 1275 l. 15; l. 21).

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *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.” *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). A trial judge generally has wide discretion in determining what sentence to impose. *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976). The authority to change a sentence rest 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). Appellant Court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive. *State v. Goodall*, 221 S.C. 175, 178, 69 S.E.2d 915, 916 (1952).

Discussion

The Appellant argues that the trial judge abused his discretion by not giving credit for the time the Appellant served on GPS monitored house arrest prior to trial. The Respondent argues

that the statute leaves it to the court's discretion, and it was clear that the trial judge did not wish for the Appellant to get any credit for pre-trial detention while on house arrest.

Section 24-13-40 of the South Carolina Code of Law specifically states, "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." S.C. Code Ann. §24-13-40. (emphasis added). It is clear by the statute that the trial court has the discretion to give credit for house arrest or not. Unlike time spent in a pre-trial detention center, house arrest credit is not mandatory. The word "may" ordinarily "signifies permission and generally means the action spoken of is optional or discretionary." *State v. Hill*, 314 S.C. 330, 332, 444 S.E.2d 255, 256 (1994).

The trial judge was clear that he did not wish to give any credit for pre-trial detention while on house arrest. When Appellant's counsel referenced the pre-trial detention, the sentencing judge responded, "[y]our calculation is based on HIP as a part of bond? I need to know how much time he spent in jail." (Tr. p. 1273 l. 23-25). This shows that the trial court was not going to consider any house arrest as part of the credit given. It is clear on the face of the sentencing sheets that the sentencing judge only wished to grant the Appellant one hundred and forty-seven (147) days credit for pre-trial detention. The Department of Corrections is confined to the face of the sentencing sheets absent ambiguity. *Tant v. South Carolina Dept. of Corrections*, 408 S.C. 334, 342, 759 S.E.2d 398, 402 (2014). There was no ambiguity, so, there is no doubt that the sentencing judge did not wish for the Appellant to receive any pre-trial detention credits for house arrest.

In the Appellant's brief there was a reliance on the South Carolina Supreme Court case of *State v. Smith*, 276 S.C. 494, 280 S.E.2d 200 (1981). Within *Smith*, the sentencing judge misinterpreted the law in deciding that the court did not have the ability to change a sealed

sentence. This misinterpretation was stated by the sentencing judge on the record. The South Carolina Supreme Court decided that the sentencing judge abused his discretion when he refused to exercise discretion. *Smith*, 276 S.C. at 498, 280 S.E.2d 202. In the present case there was no misinterpretation of the law. The sentencing judge voiced his intention not to give any credit for pre-trial house arrest which is within his discretion to do. The sentencing judge never said that he could not give credit for house arrest, he voiced his decision not to give it by ordering the Appellant's trial counsel and the solicitor to calculate only the pre-trial detention at the detention center. So, the *Smith* opinion does not apply to the present case. The sentencing judge was well within his authority not to give credit for house arrest. There was nothing raised by the Appellant revealing that the sentencing court was not aware of this, or that there was any ambiguity as to whether the sentencing judge was not going to allow credit for Appellant's pre-trial house arrest.

Within the Appellant's brief they argue that the sentencing judge erred by failing to exercise discretion by not addressing the request for giving credit for pre-trial house arrest. However, it is clear that the sentencing judge did address this issue. He specifically informed the Appellant's trial counsel that he wanted to hear only how much time the Appellant spent in the detention center. The sentencing judge could not have been clearer; he was not going to credit any pre-trial house arrest. The law allows the sentencing judge to do this, the statute is clear that the sentencing judge **may** include this time, however, the sentencing judge does not have to. There exists no error of law in the sentencing judge not allowing the Appellant any credit for the house arrest. Due to the fact the sentencing judge did not abuse his discretion, the decision regarding the Appellant's sentence was lawful; therefore, this case should be affirmed.

CONCLUSION

The Respondent argues that decisions made by the trial court were lawful and should be affirmed by this court.

Respectfully submitted,

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