STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable L. Casey Manning, Circuit Court Judge
Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RYAN ONEAL GIST,

APPELLANT

APPELLATE CASE NO. 2024-001157

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court fail to exercise its discretion when it sentenced Appellant to fifteen (15) years' active incarceration within the South Carolina Department of Corrections when the circuit court believed it was constrained by the sentencing order of another circuit court judge?

STATEMENT OF THE CASE

On August 5, 2015, Appellant pled guilty before the Honorable L. Casey Manning to nine counts of armed robbery, two counts of common law robbery, and nine counts of possession of a weapon during the commission of a violent crime. R. 13, ll. 15-18; R. 26-27. Appellant was sentenced to concurrent terms of incarceration of twenty years on each armed robbery charge, five years on each weapons charge, twenty years on one common law robbery, and fifteen years on the other common law robbery. R. 26-27. Appellant's plea counsel, James Cheek, filed a timely motion for sentence reconsideration on August 6, 2015. R. 25.

Just over seven years later, on December 15, 2022, the motion for reconsideration was heard before Judge Manning. Judge Manning did not disturb the sentences for the weapons charges, but he reduced the armed robbery sentences to ten years each, concurrent. On the common law robberies, Judge Manning sentenced Appellant to fifteen years suspended to five years imprisonment, to run consecutively. The five-year sentences were to be served on home detention pursuant to S.C. Code Ann. §§ 24-13-1510 to -1590, the "Home Detention Act" (HDA). Judge Manning ordered "if the Defendant violates Home Detention, he shall be sentenced to fifteen years." The order was filed on January 4, 2023. R. 26-27.

On May 15, 2024, counsel for Appellant, Daniel J. McDonald, IV, filed a motion to reinstate Appellant's bond and home detention. R. 1. On May 30, 2024, the State moved the court for an order converting Appellant's home detention sentence to an active sentence within the South Carolina Department of Corrections. R. 3-9. On June 28, 2024, the parties appeared before the Honorable R. Keith Kelly for a hearing. Appellant was represented by Counsel McDonald. The State was represented by Solicitor Barry Barnette. R 10. At the end of the

hearing, Judge Kelly converted Appellant's home sentence to a fifteen-year active sentence within SCDC. R. 22, ll. 13-21; R. 34-52.

Appellant timely filed a Notice of Appeal. On March 5, 2025, undersigned counsel filed a brief and motion to be relieved as counsel, pursuant to Anders v. California, 386 U.S. 738 (1967), arguing that the circuit court judge failed to exercise his discretion when he sentenced Appellant to fifteen years' active incarceration within the South Carolina Department of Corrections where he believed he was constrained by the order of another circuit court judge. On April 6, 2026, this Court denied the motion to be relieved by a written Order and directed the parties to brief the following:

> Did the circuit court fail to exercise its discretion when it sentenced Appellant to fifteen years' active incarceration within the South Carolina Department of Corrections when the circuit court believed it was constrained by the sentencing order of another circuit court judge?
>
> The parties are also directed to address how sections 24-13-1570(B) and 24-21-460 of the South Carolina Code (2025) affect the circuit court's authority to impose less than the fifteen-year suspended sentence.

This brief of Appellant follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Pogue, 430 S.C. 384, 386, 844 S.E.2d 397, 398 (Ct. App. 2020) citing 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." Id. citing In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

ARGUMENT

The circuit court failed to exercise its discretion when it sentenced Appellant to fifteen years' active incarceration within the South Carolina Department of Corrections when the circuit court believed it was constrained by the sentencing order of another circuit court judge.

Relevant Facts

At the violation hearing, officer Nancy Vinson reviewed Appellant's alleged violations while in the home detention program. Appellant was placed on home detention on September 29, 2023. On November 20, 2023, Appellant "had interaction with law enforcement" for a possible domestic disturbance where there were signs that one of the parties involved had been drinking. However, there was no proof that Appellant had been drinking, and no charges were filed. R. 15, ll. 6-13. Counsel MacDonald objected to the State's presentation of numerous alleged violations where the basis for the violation and motion was Appellant's *admission* that he would test positive for marijuana. Counsel MacDonald argued that was the only conduct that the court should consider. Judge Kelly overruled Counsel MacDonald's objection, stating he would "consider all of it," and he allowed the State to place the following alleged violations on the record:

> [O]n February 8th of 2024 he was called because he was not properly charging his bracelet. It was at 31 percent.
>
> Then on February 9th he was called again. He was warned about constantly driving and turning around, told the officers that he admitted that he was looking for houses to move into.
>
> On 2/23 of '24 he did fail a drug test for T.H.C., but we did send it to Spartanburg Regional where they came back negative with the result. So, he was placed back on home detention.
>
> On March 18th of 2024 he had another interaction with law enforcement where they were called out for another domestic disturbance, but charges were not filed.

On 3/26 of '24 he went to a Li'L Cricket multiple times -- three times -- in a row within just a two-hour period. And he was called. He did not have a reason for this happening.

On 4/2 of 2024 there was a third domestic issue. He did call into the office. The reason he called in, as law enforcement wasn't called, but he'd left the house and was walking around in the Enoree area around the church and was giving the excuse for him not being at his home.

On 4/18 of '24 he was called and told to charge his bracelet before he died. This was 4/18. He had not charged it since April the 15th. They're supposed to charge an hour every day. He had charged 13 minutes in three days.

On 4/18 again, second issue of the day, he was questioned [,] or they had a writeup from his officer of him leaving his work, going to an Exxon, then goes to a Sonic, then a Bojangles but only for minutes at a time. He then goes home to get his charger because he needed to charge his bracelet. Then he goes to a post office. Back to work. Leaves again for another Exxon from work. Then he goes to a residential area, stops at [ ] Beauregard Street in Clinton at 4:14 p.m. Goes to Family Dollar in Clinton. Then goes back to the residential area but stops at [ ] Beauregard Street in Clinton. Stays there from 4:57 to 4:05 [sic], and then he goes back home. He called in and stated that what had happened was that the gentleman that was driving the car stopped and saw his baby mama and was not wanting to leave the residence [,] so he took the gentleman's car. He does not have a driver's license in the State of South Carolina. Drove it home and stated that him and the gentleman got in a fistfight at his house based on that. Law enforcement was not called out for this incident.

On 4/23 he was questioned about stopping at Laurel Apartments. He stated he did not go inside the apartments. Officer said you definitely went inside, it shows on G.P.S. He then admitted that he went inside those apartments to check on his mom and did admit to going into the apartments.

4/2/24, he was hanging out up the street again by the mailboxes. This was actually [,] he called back and said that that was due to his dog.

The dog had issues again on May 6th going up the street. He was hanging out again for 10 to 12 minutes, said the dog is now

> secured. But then also on the -- it was the 2nd, 3rd and 6th of May he was hanging out in the road again from his house.
>
> So, we go back out again on May the 7th. He admitted to marijuana use. Alcohol was found in the house after being warned previously. And he had several movement curfew violations, what I stated before in the notes that I have read.
>
> When we were putting him in the car he did stall with the officers. They did not charge him with resisting arrest, but he would not go ahead and get into the vehicle. Officers finally got him into the vehicle. After we got him in the vehicle and was driving down the road he began to bang his hair -- head on the partition in the patrol car causing it to split open and told the officer now you've got to take me to get medical attention. We then had to divert from going to the jail, drive to Spartanburg Regional and have his head glued back shut where he had busted it open hisself [sic].

R. 15, l. 25 – 19, l. 2.

Counsel MacDonald requested that Judge Kelly hold Appellant in contempt in lieu of an active SCDC sentence and reinstate him on home detention. Appellant had been on home detention for eight months prior to the actual violation that brought him into court, was working two jobs, and took care of his family. R.19, l. 8-R. 20, l. 12. Counsel MacDonald argued in the alternative "if you find that because this is a violation that you shall and must convert his home detention sentence to an active sentence, we would ask that his active sentence be the five years that his home detention sentence was." R. 20, ll. 13-17. He asserted that the amount of time that could be converted into an active sentence was the five years suspended to the home detention program and not the full fifteen-years. R. 20, ll. 18-24.

In ruling on the State's motion Judge Kelly stated:

> [M]r. Gist, the problem that I have is the problem that you have, is the same problem I have, Mr. MacDonald has. He did a great job for you, but *I am without authority to change another judge's order. I'm also without authority to deviate from a state*

> *statute, and the statute*[1] *says I shall convert. So, it's converted.* The motion is granted. It's converted, and it's the 15-years that he agreed to.

R. 22, ll. 13-21 (emphasis added). Counsel MacDonald objected to the imposition of the fifteen-year sentence. R. 22, ll. 22-25. The order converting Appellant's home detention sentence into an active SCDC sentence was filed on July 1, 2024. In the order, Judge Kelly found Appellant had violated the terms of his home detention sentence and imposed the fifteen-year sentence ordered by Judge Manning. Appellant was given credit for fifty-two (52) days served pre-violation hearing and for 219 days served on home detention.[2] R. 34 - 52.

Discussion

The circuit court failed to exercise discretion when it imposed the full fifteen-year sentence on Appellant pursuant to S.C. Code Ann. 24-13-1570(B). The court could not modify the underlying fifteen-year sentence, nor could the court have continued Appellant on home detention. However, pursuant to S.C. Code Ann. § 24-21-460, the court was not obligated to impose the full fifteen-year sentence on Appellant. The circuit court had the discretion to revoke Appellant for a shorter period of incarceration but failed to recognize or exercise that discretion. "A failure to exercise discretion amounts to an abuse of that discretion." State v. Hawes, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015). This Court should remand this matter back to the circuit court for resentencing.

The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be

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1 The circuit court was referring to S.C. Code Ann. § 24-13-1570 (B).

2 Appellant's current sentence does not reflect that he served seven years and five months prior to being resentenced on the charges.

reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988); State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Additionally, statutes are not intended to be read in a piecemeal fashion, taking only those parts which best serve a particular position. Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission, 426 S.C. 97, 825 S.E.2d 721 (2019) (The intention of the legislature when enacting a statute must be gleaned from the entire section and not simply clauses taken out of context). Courts, when interpreting a statute, should not concentrate on isolated phrases within the statute; a statute must be read as a whole and sections that are part of the same general statutory law must be construed together and each one given effect. Id. "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

"Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention." State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (internal citation omitted). "Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct.App.1993). "[W]hen a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant." State v. Leopard, 349 S.C.

467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002). "This rule of lenity applies when a criminal statute is ambiguous and requires any doubt about a statute's scope be resolved in the defendant's favor." State v. Miles, 421 S.C. 154, 164, 805 S.E.2d 204, 210 (Ct. App. 2017).

The issue of interpretation of a statute is a question of law for the court. Univ. of S. California v. Moran, 365 S.C. 270, 275, 617 S.E.2d 135, 137 (Ct. App. 2005); see also Catawba Indian Tribe of South Carolina v. State of South Carolina, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007); Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). "This Court is free to decide questions of law with no particular deference to the lower court." Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).

Title 24 of the South Carolina Code of Laws sets forth the statutory scheme controlling "corrections, jails, probations, paroles, and pardons." Among other things, Title 24 establishes the Department of Corrections (DOC), state and local detention facility standards, offender management guidelines, inmate labor guidelines, rehabilitation programs, and alternative incarceration programs such as the Home Detention Act (HDA). Each chapter of Title 24 is part of the same general statutory law and therefore "must be read as a whole and must be construed together and each one given effect." Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission, 426 S.C. 97, 825 S.E.2d 721 (2019).

S.C. Code Ann. § 24-21-460[3] sets forth a court's powers when dealing with a violation of probation or of a suspended sentence. Upon a violation, the court "shall cause the defendant to be brought before it and *may revoke the* probation or *suspension of sentence*." S.C. Code Ann. § 24-21-460 (emphasis added). The statutory text dictates that one accused of a violation must be brought to court, and the court, in its discretion, may revoke probation or the suspended sentence as it sees fit. The statute next instructs that the court "*shall* proceed to deal with the case as if there had been no probation or suspension of sentence except *that the circuit judge before whom such defendant may be so brought shall have the right, in his discretion, to require the defendant to serve all or a portion only of the sentence imposed.*" Id. (emphasis added). The statute commands a circuit judge to proceed as if there had been no probation or suspended sentence imposed, except that the judge before whom the violation is brought has the discretion to require a defendant to serve all or only a portion of the originally imposed sentence.

Pursuant to S.C. Code Ann. § 24-13-1570(B), under the HDA:

> [N]otice must be given to the participant by the department that violation of the order for home detention subjects the participant to prosecution for the crime of escape as a misdemeanor, that commission of another crime revokes the order for home detention, *and that if there is a violation* or commission [of another crime], *the court shall sentence [the participant] to imprisonment.* (emphasis added).

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3 S.C. Code Ann. § 24-21-460: Upon such arrest the court, or the court within the venue of which the violation occurs, shall cause the defendant to be brought before it and may revoke the probation or suspension of sentence and shall proceed to deal with the case as if there had been no probation or suspension of sentence except that the circuit judge before whom such defendant may be so brought shall have the right, in his discretion, to require the defendant to serve all or a portion only of the sentence imposed. Should only a portion of the sentence imposed be put into effect, the remainder of such sentence shall remain in full force and effect and the defendant may again, from time to time, be brought before the circuit court so long as all of his sentence has not been served and the period of probation has not expired.

Unlike S.C. Code Ann. § 24-21-460, here, the "shall" language is mandatory and requires that the court sentence the participant to traditional imprisonment upon a determination that a violation of the HDA has occurred. While a court in a standard probation revocation or violation of a suspended sentence hearing has the discretion to not revoke, revoke in full, or revoke in part, the HDA statue requires the imposition of a carceral sentence upon a violation. Critically, the statute does not specify how much of the sentence a court should or must impose, only that it must sentence the individual to imprisonment.

While one circuit court judge may not reverse an order of another circuit court judge, see Cook v. Taylor, 272 S.C. 536, 538, 252 S.E.2d 923, 924 (1979), § 24-21-460 explicitly gives the circuit judge before whom the defendant appears the discretion to impose all or some of the suspended sentence. The HDA modifies the general revocation provisions of § 24-21-460 to remove a court's discretion regarding whether a revocation will occur upon a violation. The HDA however does not strip the court of the mandate "to deal with the case as if there had been no [ ] suspension of sentence" nor does it remove the court's "discretion, to require the defendant to serve all or a portion only of the sentence imposed." See § 24-21-460.

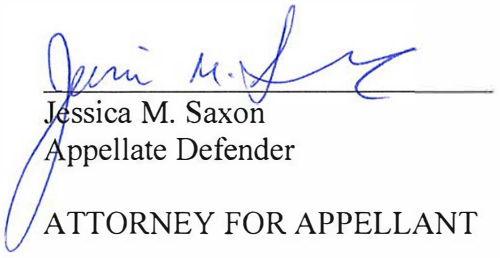
The circuit court was correct in that it could not change the underlying sentence of fifteen years as previously ordered by Judge Manning. The court was incorrect, however, in the assumption that it had to impose the entire fifteen-year sentence based on the language of Judge Manning's order and S.C. Code Ann. § 24-13-1570(B). Under S.C. Code. Ann. § 24-21-460, the circuit court had the authority to revoke the suspended sentence anywhere from one year to fifteen years – so long as the revocation resulted in actual imprisonment. S.C. Code. Ann. § 24-21-460 conveys discretion to a judge to determine how much of the originally imposed sentence will be activated. Judge Manning's order cannot be read to dictate that a revoking court could

only institute the fifteen-year sentence, as it would be in contravention of the legislative directive contained in S.C. Code. Ann. § 24-21-460.

The circuit court was not precluded from imposing a sentence of less than fifteen years of active time upon Appellant's termination from the home detention program. Under the dictates of § 43-13-1570(B), the circuit court was required to impose a prison sentence, but § 24-21-460 required the court to exercise its discretion to determine how much of the original sentence Appellant should serve. The circuit court misapprehended the scope of his discretion and improperly ruled that he *could not* do anything but impose the fifteen-year sentence. The statutory scheme allows the judge at revocation of probation or a suspended sentence to determine how much of the original sentence is to be activated. A prior order from another judge cannot remove the discretion that was vested in the circuit court by the General Assembly.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court remand the matter back to the circuit court for a new sentencing hearing.



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This 6th day of May, 2026.

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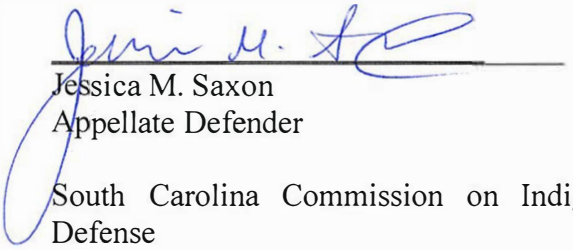
CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 6th day of May, 2026.



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