

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

 ORIGINAL

Certiorari to Lexington County

R. Knox McMahon, Circuit Court Judge

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S.C. Supreme Court

Opinion No. 2012-UP-218 (S.C. Ct. App. filed 4/4/2012)
08-GS-32-3506, 3507

THE STATE,

PETITIONER,

V.

ADRIAN EAGLIN,

RESPONDENT

RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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ATTORNEY FOR RESPONDENT

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QUESTION PRESENTED

1
Did the Court of Appeals properly reverse and remand Respondent's case for resentencing when Respondent was not serving an active sentence and the trial court erroneously believed it was required to impose consecutive sentences under Section 16-3-630 of the South Carolina Code?

STATEMENT OF THE CASE

On November 10, 2008, Respondent Adrian Eaglin was indicted by the Lexington County Grand Jury for two counts of assaulting a correctional officer. App. 259 – 262.

On August 24-25, 2009, Respondent proceeded to trial before the Honorable R. Knox McMahon and a jury. App. 4. Respondent was represented by Elizabeth Fullwood and Sarah Hahn, and the State was represented by Deputy Solicitor C. Dayton Riddle and Assistant Solicitor Derrick Mobley. App. 4. The jury found Respondent guilty as charged. App. 245, ll. 1-18. The trial court then sentenced Respondent to “three years [imprisonment] on each charge.” App. 257, ll. 18-23. The sentences were to run consecutively for a total of six years imprisonment. App. 257, ll. 23-24.

On April 4, 2012, the South Carolina Court of Appeals reversed and remanded for resentencing. *State v. Eaglin*, Op. No. 2012-UP-218 (S.C. Ct. App. filed April 4, 2012). App. 292 – 293. The State subsequently filed a petition for rehearing on April 19, 2012. App. 294 – 302. The Court of Appeals issued an Order denying the State’s petition for rehearing on May 31, 2012. App. 303.

This Return to petition for a writ of certiorari to the Court of Appeals follows.

ARGUMENT

The Court of Appeals properly reversed and remanded Respondent's case for resentencing because Respondent was not serving an active sentence and the trial court erroneously believed it was required to impose consecutive sentences under Section 16-3-630 of the South Carolina Code.

Relevant Facts

On August 25, 2009, Respondent was convicted of assaulting two correctional officers¹ while awaiting trial on separate charges in county jail.² App. 245, ll. 1-18. Notably, Respondent was *not* serving an active sentence at the time of his convictions. App. 254, ll. 7-10. During sentencing, defense counsel requested that the trial court “consider making the sentences on these charges concurrent with each other based on the fact that both charges arose out of the same incident[.]” App. 251, ll. 20-25. The State opposed defense counsel’s request for concurrent sentences: “Your Honor, I don’t have anything in opposition to what [defense counsel] said, except for her one request that the charges run concurrently. *I don’t think by statute they can.*” App. 253, ll. 18-21 (emphasis added).

In response, the trial court responded, “*I looked [the statute] up earlier. It has to run consecutive to each other or consecutive to his active sentence, which he doesn’t have one.*” App. 253, ll. 22-24 (emphasis added). The State agreed that Respondent was not serving an active sentence, but claimed that “[the statute] says a sentence under this provision must be served consecutively to any other sentence the person is serving. *Your Honor, I might be wrong but I read*

¹ S.C. Code Ann. § 16-3-630 (2003) (“A person convicted of assault upon an employee of a state or local correction facility performing job-related duties must serve a mandatory minimum sentence of not less than six months nor more than five years. *A sentence under this provision must be served consecutively to any other sentence the person is serving.*”) (emphasis added).

² On February 11, 2010, Respondent was convicted of murder and was sentenced to life imprisonment without parole.

that to mean any other sentence that you impose today as well, but I may be wrong about that.” App. 253, l. 25 – 254, l. 6 (emphasis added). Defense counsel replied, “Your Honor, I would argue that these sentences would not be concurrent (sic) to any sentence he is currently serving because he is not serving one yet.” App. 254, ll. 7-10. The trial court subsequently sentenced Respondent to “three years [imprisonment] on each charge” to run consecutively. App. 257, ll. 21-24.

The Court of Appeals noted in the opinion that the trial court “did not indicate whether he based that decision on section 16-3-630 or on his discretionary power to impose consecutive or concurrent sentences.” App. 293. The Court also noted that “[t]he court could have imposed the consecutive sentences based on its interpretation of 16-3-630 or based on its view of the facts of the case.” App. 293. The Court found that “[w]hile we disagree with the trial court that it was required to issue consecutive sentences under section 16-3-630, we cannot tell whether the consecutive sentences were imposed based on the statute or on the judge’s discretionary sentencing power, regardless of the statute.” App. 293.

Discussion

The Court of Appeals properly reversed and remanded Respondent’s case for resentencing for two reasons. First, the issue was preserved for appellate review. *See* Rule 18(a), SCRCrimP. Second, the trial court failed to exercise its discretionary authority when it was warranted at sentencing. *See State v. Smith*, 276 S.C. 494, 280 S.E.2d 200 (1981).

Issue was Preserved for Review

The Court of Appeals properly found that the issue was preserved for review. *See* Rule 18(a), SCRCrimP (noting “[c]ounsel shall not attempt to further argue any matter after he has been heard and the ruling of the court has been pronounced”). Similarly, the issue was also preserved for review under the doctrine of futility. *See State v. Passmore*, 363 S.C. 568, 584-585,

611 S.E.2d 273, 282 (Ct. App. 2005) (“the doctrine of futility, recognizes that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused.”).

Sentencing Error

Section 16-3-630 of the South Carolina Code³ provides:

A person convicted of assault upon an employee of a state or local correction facility performing job-related duties must serve a mandatory minimum sentence of not less than six months nor more than five years. *A sentence under this provision must be served consecutively to any other sentence the person is serving.*

S.C. Code Ann. § 16-3-630 (2003) (emphasis added). In *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981), this Court found that “[i]t is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.” (emphasis added). The *Smith* Court also stated, “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.*” *Id.* at 498, 280 S.E.2d at 202 (emphasis added).

Furthermore, penal statutes are strictly construed against the State and in favor of the defendant. See *Williams v. State*, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991). If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation and the court has no right to look for or impose another meaning. See *State v. Morgan*, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002) (noting when the terms of a statute are clear, the court must apply those terms according to their literal

³ Repealed by Omnibus Crime Reduction and Sentencing Reform Act of 2010 (effective on June 2, 2010). See 2010 Act No. 273, § 7

meaning).


In this case, the Court of Appeals correctly found, “While we disagree with the trial court that it was required to issue consecutive sentences under section 16-3-630, we cannot tell whether the consecutive sentences were imposed based on the statute or on the judge’s discretionary sentencing power, regardless of the statute.” App. 293; *See Smith*, 276 S.C. at 498, 280 S.E.2d at 202 (finding “[i]t is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly. . . . [T]he 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.*”) (emphasis added). The trial court was not required to impose the sentences consecutively because Respondent was not serving an active sentence at the time of his convictions. App. 254, ll. 7-10; *See* S.C. Code Ann. § 16-3-630 (“A sentence under this provision *must be served consecutively to any other sentence the person is serving*”) (emphasis added)

Here, the issue was preserved for appellate review, and the trial court failed to exercise its discretionary authority when it was warranted at sentencing. Accordingly, the Court of Appeals properly reversed and remanded Respondent’s case for resentencing. *See* S.C. Code Ann. § 16-3-630; *see also Smith*, 276 S.C. at 498, 280 S.E.2d at 202.

CONCLUSION

Based on the foregoing reasons, Respondent Adrian Eaglin requests that the State's petition for writ of certiorari be denied.

Respectfully submitted,


Dayne J. Phillips
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 2nd day of August, 2012

STATE OF SOUTH CAROLINA
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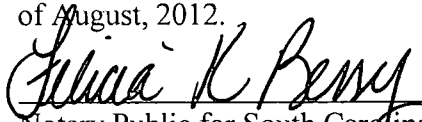
CERTIFICATE OF SERVICE

I certify that a true copy of the return to petition for writ of certiorari in this case have been served on Mark R. Farthing, Esquire, and the S.C. Court of Appeals this 2nd day of August, 2012.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 2nd day
of August, 2012.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020