

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Michael G. Nettles, Circuit Court Judge

Opinion No. 2014-UP-362 (S.C. Court of Appeals filed October 15, 2014)

THE STATE,

RESPONDENT,

V.

JAMES HARRIS,

APPELLANT.

APPELLATE CASE NO. 2012-207968

RECEIVED

OCT 30 2014

PETITION FOR REHEARING

SC Court of Appeals

The Appellant, James Harris, respectfully petitions the Court for a rehearing of its Opinion No. 2014-UP-362 pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court:

On October 15, 2014, this Court filed its unpublished opinion affirming Appellant's sentence for his conviction for failing to stop for a blue light. In his appeal, Appellant argued the Trial Court erred in using Appellant's prior out-of-state conviction for fleeing to elude police in enhancing Appellant's sentence under S.C. CODE ANN. § 56-5-750(B)(2) for failure to stop for a blue light where § 56-5-750(B)(2) does not permit the use of out-of-state convictions as predicate offenses.

In its Opinion, this Court cited to State v. Zulfer, 345 S.C. 258, 547 S.E.2d 885 (Ct. App. 2001) for the principle that when the plain language of a statute provides for the enhancement of the offense based on a prior conviction and the language does not limit the prior conviction to one in South Carolina, consideration of the out-of-state conviction is appropriate.

However, South Carolina's failure to stop for a blue light statute does limit prior convictions to those in South Carolina. The statute provides:

(A) In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. An attempt to increase the speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light is prima facie evidence of a violation of this section. Failure to see the flashing light or hear the siren does not excuse a failure to stop when the distance between the vehicles and other road conditions are such that it would be reasonable for a driver to hear or see the signals from the law enforcement vehicle.

(B) A person who violates the provisions of subsection (A):

(1) for a first offense where no great bodily injury or death resulted from the violation, is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years. The Department of Motor Vehicles must suspend the person's driver's license for at least thirty days; or

(2) for a second or subsequent offense where no great bodily injury or death resulted from the violation, is guilty of a felony and, upon conviction, must be imprisoned for not more than five years. The person's driver's license must be suspended by the department for a period of one year from the date of the conviction.

S.C. CODE ANN. § 56-5-750.

The statute permits the enhancement of a sentence for a person "who violates the provisions of subsection (A)" of South Carolina's failure to stop for a blue light statute "for a second or subsequent offense." § 56-5-750(B)(2). The statute is clear that only

a previous violation of South Carolina's statute for failure to stop for a blue light can serve as a sentence enhancement. Code section 56-5-750(B)(2) thus limits prior convictions to those involving a prior violation of that particular statute and does not permit out-of-state convictions for similar statutes to serve as a sentence enhancement.

In addition, a person only violates § 56-5-750(A) by failing to stop when signaled by a law enforcement vehicle "while driving on a road, street, or highway of the State [of South Carolina] . . ." This statute obviously refers to roadways in South Carolina and therefore, a person can only violate § 56-5-750(A) by driving on a roadway in South Carolina, not in another state. As such, a person can only have a second offense of violating § 56-5-750(A) if the person has had a first offense of violating this code section while driving on a South Carolina roadway. § 56-5-750(B)(2); see State v. Cardin, 156 A.2d 118, 118-19 (N.H. 1959) (holding prior conviction of similar offense in Massachusetts could not be considered in determining whether a second offense of operating a motor vehicle while under the influence of intoxicating liquor had been committed where under New Hampshire's statute, reference is only to a public way within New Hampshire).

The facts of this case are distinguishable from State v. Zulfer, 345 S.C. 258, 262, 547 S.E.2d 885, 887 (Ct. App. 2001) where this Court held that the first degree burglary statute unambiguously permitted the use of out-of-state convictions as predicate offenses where the plain language of the burglary statute provided for the enhancement of the offense of burglary based on a "prior record of two or more convictions for burglary or housebreaking or a combination of both." This Court determined that "[n]owhere does the language of the statute limit a prior record of convictions for burglary or

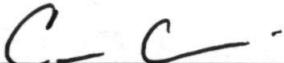
housebreaking to only those that occurred within South Carolina. In not so limiting a prior record of convictions, the plain language of our burglary statute permits an enhancement of the offense based on a prior record of out-of-state convictions for burglary or housebreaking or a combination of both.” Id.

In contrast to Zulfer, the failure to stop for a blue light statute does limit a prior record of convictions to only violations of that particular statute and thus only those violations that occurred in South Carolina. See § 56-5-750(B)(2). Accordingly, the Trial Court erred in using Harris’ Georgia conviction for fleeing to elude police to enhance Harris’ sentence for violating § 56-5-750(A). Harris should be resentenced as a first offender under § 56-5-750(B)(1) and found guilty of a misdemeanor instead of a felony. This would allow Harris to eventually take advantage of the provisions of § 56-5-750(F) which permit a person convicted of a first offense to apply to the court for an order expunging the records of the arrest and conviction.

CONCLUSION

For the reasons set forth herein, Appellant James Harris respectfully requests that the Opinion of the Court of Appeals with respect to his sentence for his conviction for failure to stop for a blue light be withdrawn and that his conviction for failure to stop for a blue light be remanded for resentencing as a first offender pursuant to S.C. CODE ANN. § 56-5-750(B)(1).

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

This 30th day of October, 2014.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
OCT 30 2014
SC Court of Appeals

Appeal from Beaufort County
Michael G. Nettles, Circuit Court Judge

Opinion No. 2014-UP-362 (S.C. Court of Appeals filed October 15, 2014)

THE STATE,

RESPONDENT,

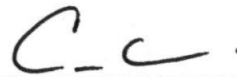
V.

JAMES HARRIS,

APPELLANT.

CERTIFICATE OF SERVICE

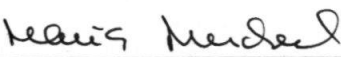
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Christina Catoe Bigelow, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. James Harris, 2239 Causton Bluff Rd., Savannah, GA 31404-1315, this 30th day of October, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 30th day
of October, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.