

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2014-001886

RECEIVED
NOV 26 2014
SC Court of Appeals

THE STATE,

Appellant,

v.

COREY J. WILLIAMS,

Respondent.

**MOTION TO HOLD APPEAL
IN ABEYANCE PENDING RESOLUTION OF
APPEALABILITY**

This matter comes before this Court on the request of the Court for written explanation that there is an issue preserved for appellate review during the guilty plea and sentencing proceeding from which this appeal arises. Appellant (the State) responded to the Court's request for written explanation, dated October 9, 2014, by the attached letter dated October 12, 2014. Having not received a response from the Court advising the State how to proceed, the State requests the Initial Brief of Appellant be held in abeyance pending the Court's resolution of the appealability explanation request and the State's subsequent response.

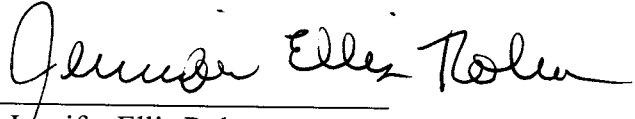
The State respectfully requests the motion to hold in abeyance be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: 

Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

Columbia, South Carolina
November 26, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No: 2014-001886

RECEIVED
NOV 26 2014
SC Court of Appeals

THE STATE,

Appellant,

vs.

COREY J. WILLIAMS,

Respondent.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Motion to Hold Appeal in Abeyance Pending Resolution of Appealability on respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, James Todd Rutherford, Esquire, P.O. Box 1452, Columbia, SC 29202

I further certify that all parties required by Rule to be served have been served.

This 26th day of November, 2014.



ANGELA BENNETT
Administrative Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

October 13, 2014

RECEIVED

NOV 26 2014

SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The State v. Corey Williams
Appellate Case No: 2014-001886

Dear Ms. Kitchings:

I am writing in response to the request of the Court for written explanation that there is an issue preserved for appellate review during the guilty plea and sentencing proceeding from which this appeal arises. Please be advised that the State filed and served the appeal from the State's objection during the sentencing proceeding to what it contended to the court of general sessions was an improper sentence in contravention of the home detention statute. The State properly objected to the sentence when it was pronounced with specific argument in support of the objection, thereby preserving the issue for review by this Court. I am attaching the sentence sheet and pages 11 – 14 of the transcript as support.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab

cc: James Todd Rutherford, Esquire
Assistant Attorney General Jennifer Ellis Roberts
Victim Services

1 the Court. My client and I have discussed the issue of
2 going to trial. There were several issues present in the
3 case, most notable of which is the profile that appears to
4 be a black or Hispanic male traveling in a rental car as my
5 client was. That seems to be a reason to be stopped in
6 South Carolina.

7 He was followed to a gas station; they PC'd to
8 approach him as the Solicitor stated was he had gone in and
9 out of a gas station restaurant and didn't order food. Not
10 PC'd for most people but certainly a PC for a black or
11 Hispanic male in a rental car. They then approached the
12 car and said that they smelled marijuana. The chemist we
13 hired yesterday went up and looked at the marijuana. It
14 was still sealed in the same package, had lost zero
15 moisture or a half an ounce of moisture between the time
16 that they weighed it when he was initially stopped and
17 yesterday.

18 If it was sealed that tightly it is hard to imagine
19 how anyone could smell raw marijuana coming from a package
20 in a box that was sealed so tightly it has released no
21 moisture yet the agent said they could. They then brought
22 a dog in and were able to search the package based on that.

23 . But, Your Honor, that leads us to our request. The
24 trafficking statute starts off at ten pounds and goes up to
25 a hundred. At a hundred pounds certainly someone suggest

1 that that would be at the top of the statute. This is ten
2 pounds, six ounces at the bottom of the statute. Most
3 importantly, Your Honor, as I stated with the issues that
4 relate to the PC for the stop we believe that my client is
5 - should be entitled to a house arrest sentence that Your
6 Honor could suspend the ten years on the service of one
7 year on house arrest. And, Your Honor, would pay for that
8 house arrest out of his own pocket so at no cost to the
9 State.

10 The house arrest generally runs - and I discussed this
11 with my client - about Seventy Dollars a day compared to
12 the State's incarceration rate which the State's
13 incarceration cost which last week was Nineteen Thousand
14 Dollars, Nineteen Thousand, Six Hundred Dollars a person in
15 general funds. Those include state and federal, Sixteen
16 Thousand State; about Two Thousand federal per inmate. So
17 the savings to the State is almost Twenty Thousand Dollars.
18 Savings to the State is almost Sixteen Thousand Dollars, I
19 apologize.

20 Your Honor, we believe that that would be - the
21 sentence would be accomplished using house arrest. Ned
22 Polk who is from Rock Hill could operate that house arrest
23 at all cost to the Defendant. We would ask that the
24 Defendant be made to be placed on house arrest by tomorrow
25 afternoon at Five o'clock. If not then he would have to

1 turn himself in to the Detention Center to start his one
2 year sentence in the Department of Corrections.

3 THE COURT: Talk to me about whether or not this type
4 of offense qualifies for house arrest.

5 MR. RUTHERFORD: Your Honor, we passed the Home
6 Detention Act some time ago. There was a question of which
7 I believe has been answered in Greenville and Spartanburg
8 as to whether it applied to cases like this. As Your Honor
9 knows Spartanburg has instituted their HIP program;
10 Richland County has started it, Greenville as well.

11 They do three year trafficking's on the Home
12 incarceration Program, Spartanburg, Greenville, and
13 Richland County and I've done those in all counties.
14 Further to legislature amended the law last year to allow
15 someone to get pre-incarceration credit while they're
16 serving on house arrest or any time served in the
17 Department of Corrections would be answering any doubt as
18 to whether you could get credit for home incarceration for
19 a felon.

20 THE COURT: But you're saying the legislative intent -
21 and I guess you speak as a legislator - the legislative
22 intent - intent of that statute was to allow situations
23 like this to be qualified for house arrest.

24 MR. RUTHERFORD: That's correct, Your Honor.

25 THE COURT: Okay.

1 SOLICITOR SHELTON: Your Honor, may I be heard on
2 that?

3 THE COURT: Yes, sir, absolutely in regard to this
4 record.

5 SOLICITOR SHELTON: I'm looking at 24-13-1530 of the
6 Code of Laws; it specifically says this applies to non-
7 violent adult and juvenile offenders this option. This is
8 a violent offense as defined by the General Assembly and
9 our Code of Laws. It's violent and serious. Considering
10 that on it's face coupled with the fact that Mr. Williams
11 has a prior weapon conviction, a felony weapon conviction,
12 also the fact that most of our recent murders have involved
13 drugs, and there is a known nexus between drugs and
14 violence, this is clearly a - something that is not
15 envisioned by the sentence as far as - by the statute as
16 far as the Solicitor's office is concerned.

17 I've spoken with Solicitor Brackett about this as well
18 that you have as well. This is not something our office
19 consents to. We do not think that the statute quotes
20 anything that deals with this concept. Any other statutes
21 I may not be referencing do not apply to violent offenses
22 as is trafficking marijuana. And all trafficking charges
23 for that matter.

24 THE COURT: Okay. Thank you.

25 Anything else, Mr. Rutherford?

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF York
STATE VS.
Corey Jamal Williams
AKA:
Race: BLACK Sex: M Age: 37
DOB: S#:
Address: 1098 Buttercup Road
City, State, Zip: Columbia, SC
DL#: 007355977 SID#: SC01134239

INDICTMENT/CASE#: 2014GS4600481
A/W#: 2013A4610201172
Date of Offense: 8/2/2013
S.C. Code § : 44-53-0370(e)(1)(a)1
CDR Code #: 2360

SENTENCE SHEET
ORIGINAL

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Trafficking in Marijuana, 10 pounds or more - 1st offense (1-10 years and \$10,000)

in violation of § 44-53-0370(e)(1)(a)1 of the S.C. Code of Laws, bearing CDR Code # 2360
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Matthew W Shelton, SC Bar# 74785 Defendant
Attorney for Defendant SC Bar# 12097

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of Home Detention 2 (1st yr of probation or house arrest)
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 2 (1st yr of probation or house arrest)

months and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$ 290.

PTUP days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
paid to Public Defender Fund

Other: electronic monitor Defendant pays for house arrest (Polk to monitor) & report to DPPS of any violation

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2118
Sentence Date: 8/28-14



ALAN WILSON
ATTORNEY GENERAL

November 26, 2014

RECEIVED
NOV 26 2014
SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Corey J. Williams
Appellate Case N: 2014-001886

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion to Hold Appeal in Abeyance Pending Resolution of Appealability along with proof of service in the above-referenced case.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
S.C. Bar No: 1871

JER/ab
Enclosures

cc: James Todd Rutherford, Esquire
Ms. Trisha Allen