

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Beaufort County
Michael G. Nettles, Circuit Court Judge

SC Court of Appeals

Opinion No. 2014-UP-362 (S.C. Ct. App. filed October 15, 2014)
2011-GS-70-1769

THE STATE,

RESPONDENT,

V.

JAMES HARRIS,

PETITIONER.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATION OF COUNSEL

The Court of Appeals issued its decision on October 15, 2014. App. 1-2. Counsel for Petitioner certifies that the petition for rehearing was made on October 30, 2014 and finally ruled upon by the Court of Appeals on November 21, 2014. App. 3-9.

QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals erred in affirming the Trial Court's use of Petitioner's prior out-of-state conviction for fleeing to elude police in enhancing Petitioner'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?

STATEMENT OF THE CASE

On September 15, 2011, Petitioner James Harris was indicted by the Beaufort County Grand Jury for (1) failure to stop for a blue light in violation of S.C. CODE ANN. § 56-5-750; and (2) unlawful carrying of a pistol in violation of S.C. CODE ANN. § 16-23-20. R. 129.

Harris appeared before the Honorable Michael G. Nettles and a jury on January 24-25, 2012. R. 1. Harris was represented by Matthew Walker, and the State was represented by Assistant Solicitor James Bannon. Id.

The jury found Harris guilty on both charges. R. 105, ll. 11-20. Judge Nettles sentenced Harris to thirty months for failure to stop for a blue light and one year for unlawful carrying of a pistol with the sentences to run concurrent. R. 113, ll. 14-22.

On October 15, 2014, the South Carolina Court of Appeals affirmed Petitioner's sentence for his failure to stop for a blue light conviction. *State v. Harris*, Opinion No. 2014-UP-362 (S.C. Ct. App. filed October 14, 2014); App. 1-2. Petitioner subsequently filed a petition for rehearing on October 30, 2014. App. 3-8. The Court of Appeals issued an order denying the petition for rehearing on November 21, 2014. App. 9.

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

ARGUMENT

The Court of Appeals erred in affirming the Trial Court's use of Petitioner's prior out-of-state conviction for fleeing to elude police in enhancing Petitioner'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.

During sentencing for Harris' conviction for failure to stop for a blue light in violation of S.C. CODE ANN. § 56-5-750, the Trial Court enhanced Harris' sentence based upon a conviction in the State of Georgia for fleeing to elude police in violation of GA. CODE ANN. § 40-6-395. R.116. (Court's Ex. 4); R. 106, l. 22 – 110; l. 14; 113, ll. 18-22.

In his appeal to the Court of Appeals, Harris argued the Trial Court erred in using his prior out-of-state conviction for fleeing to elude police in enhancing his 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. The Court of Appeals rejected this argument and affirmed Harris' sentence.

In its Opinion, the Court of Appeals 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 the Court of Appeals 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.” The Court of Appeals 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, Petitioner James Harris respectfully requests this Court to grant his Petition and issue a writ of certiorari to the Court of Appeals to review the decision with respect to his conviction and sentence for failure to stop for a blue light, reverse this portion of the Court of Appeals' Opinion, and remand his conviction for failure to stop for a blue light for resentencing as a first offender pursuant to S.C. CODE ANN. § 56-5-750(B)(1).

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER.

This 12th day of December, 2014.

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IN THE SUPREME COURT

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THE STATE,

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V.

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CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Christina Catoe Bigelow, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and the S.C. Court of Appeals this 12th day of December, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day
of December, 2014.

Bailey Reed (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021