

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Brian M. Gibbons, Circuit Court Judge

RECEIVED
AUG 05 2015
SC Court of Appeals

THE STATE,

APPELLANT,

V.

COREY JAMAL WILLIAMS,

RESPONDENT

APPELLATE CASE NO.2014-001886

MOTION TO DISMISS APPEAL AS MOOT

Respondent, through his undersigned counsel, would respectfully show unto this Court as follows.

1. The State has appealed the sentence given to respondent by the Honorable Brian Gibbons. On August 28, 2014, Judge Gibbons sentenced respondent to ten years' imprisonment suspended upon the service of one year's imprisonment served as home detention and two years' probation. Tr. 15, l. 13 – 17, l. 15 (A copy of the sentencing hearing is attached to this motion as "Exhibit A."). Matthew W. Shelton represented the State at the hearing. Tr. 1. Todd Rutherford represented respondent. Tr. 1.

2. The State's sole issue on appeal is whether Judge Gibbons had the authority to order that respondent's imprisonment be served as home detention pursuant to S.C. Code Ann. § 24-13-1530. (Initial Br. App. at 1). In its brief, the State asks for the relief of resentencing "within the confines of the statute." (Initial Br. App. at 11.) Although the State did not expressly say so in its brief, presumably the State intends that respondent receive a year's imprisonment in the Department of Corrections.

3. Respondent will complete his sentence of imprisonment on August 29, 2015. Therefore, respondent will have finished his sentence before the conclusion of this appeal.

4. A sentence of home detention is a sentence of imprisonment. "Home detention" is defined as a type of "confinement." S.C. Code Ann. § 24-13-1520(4). Furthermore, when computing credit for time served, time spent on house arrest may be given. S.C. Code Ann. § 24-13-40. Judge Gibbons aptly compared a sentence of home detention, which is served "day for day," with a sentence in the Department of Corrections where Respondent would have been eligible for parole after the service of eight months. Tr. 16, ll. 12 – 20. Respondent's counsel noted that he would have actually been eligible for parole after the service of four months' imprisonment. Tr. 18, l. 24 – 19, l. 9. When read together, it is clear from these statutes that home detention is considered imprisonment and—at least in terms of length—is harsher than a sentence in prison.

5. Because respondent will have finished his sentence of imprisonment before the end of this appeal, the State cannot receive the relief it has requested. Respondent cannot serve a year's imprisonment on home detention and then be resentenced to serve another year's imprisonment in the Department of Corrections. This renders the case moot. State

v. Pickelsimer, 388 S.C. 264, 270-71, 695 S.E.2d 845, 849 (2010). See also Matter of Angela Suzanne C., 286 S.C. 186, 188-89, 332 S.E.2d 542, 543-44 (1985) (finding that appeal was moot because defendant had already served her sentence and noting the State's argument that there was "no meaningful relief" which the court could grant). "It is settled law that this Court will not issue advisory opinions on questions for which no meaningful relief can be granted." Id.

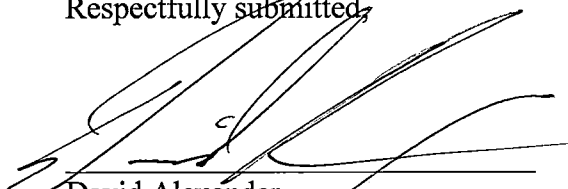
6. Respondent expects that the State will advocate that this Court use the exception of "capable of repetition but evading review" to hear this moot case. The Court should not apply that exception in this case for two reasons. First, the State cannot show that this question will always evade review. A trial judge could sentence a defendant to a longer period of home detention than received by respondent. Under that scenario, an appellant may not have served all of his period of imprisonment before the adjudication of his appeal. Indeed, respondent's counsel noted that people in several counties receive three-year home detention sentences. Tr. 13, ll. 5 – 19.

7. Second, as is demonstrated by the sentencing hearing and the State's brief, other cases should provide a much better opportunity for the application of an exception to the mootness doctrine. The trial judge agreed with respondent's counsel's statements that other circuits and counties have policies in place that substitute home detention for imprisonment in the Department of Corrections. Tr. 13, ll. 5 – 24. Tr. 15, l. 13 – 17, l. 15. The solicitor noted that other circuits have specific administrative orders in place regarding such sentences and that the county involved in this prosecution did not. Tr. 17, l. 20 - 18, l. 9. The Attorney General argued in its brief that such orders are "improper administrative orders." Initial Br. App. at 9. If the Court is to apply an exception to the

mootness doctrine, it should do so in a case arising from a county where such an “improper administrative order” exists because of the systemic reasons involved and where such sentences are given with regularity. The Court should decline to apply the exception to this moot case when the practice is not being repeated in York County, but apparently is being repeated in other counties. Cases arising from a county or circuit with such an administrative order would provide a much better reason for the Court to render a decision in a moot case than this case, which is merely a singular application to the specific facts involving respondent.

WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, and dismiss this appeal as moot.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

August 5, 2015

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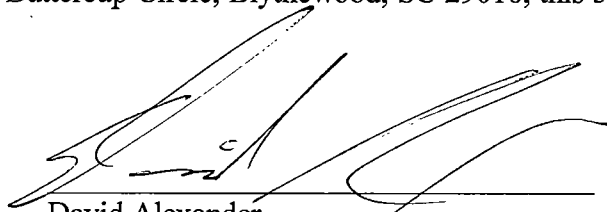
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CERTIFICATE OF SERVICE

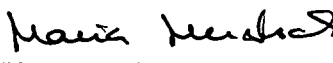
The undersigned attorney hereby certifies that a true copy of the Motion to Dismiss Appeal as Moot in the above referenced case has been served upon Jennifer Ellis Roberts., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Corey Jamal Williams at 1098 Buttercup Circle, Blythewood, SC 29016, this 5th day of August, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of August, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.