STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE,

Appellant,

v.

COREY JAMAL WILLIAMS,

Respondent.

RETURN TO MOTION TO DISMISS APPEAL AS MOOT

The State of South Carolina respectfully requests that this Court accept its response and submits the following in opposition to Respondent's Motion to Dismiss Appeal as Moot:

1. Respondent, Corey Jamal Williams, was indicted at the February 2014 term of the General Sessions Court for York County for one count of trafficking in marijuana. On August 28, 2014, Appellant pled guilty before the Honorable Brian M. Gibbons. Assistant Solicitor Matthew W. Shelton represented the State at the plea proceeding, and Todd Rutherford, Esquire, represented Respondent. Judge Gibbons accepted Respondent's guilty plea and sentenced him to ten years' imprisonment suspended upon the service of one year's imprisonment served as home detention and two years' probation.[1] Thereafter, the State filed and served notice of appeal on

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[1] In its Initial Brief, Appellant mistakenly referred to Respondent's sentence in its Statement of the Case as "ten years' imprisonment suspended upon two years' probation, the first year of

September 2, 2014.

2. The issue on appeal is whether the plea judge had the authority to order Respondent to serve his imprisonment by house arrest when S.C. Code Ann. § 24-13-1530(A) (2007) clearly states that "home detention programs may be used as an alternative to incarceration for low risk, nonviolent adult and juvenile offenders," and Respondent's crime of trafficking is statutorily classified as violent by S.C. Code Ann. § 16-1-60.

3. The State filed its initial brief on January 30, 2015. On April 2, 2015, this Court sent a letter to counsel of record, Todd Rutherford and Chief Appellant Defender Robert Dudek, notifying them that the initial brief should have been served and filed and instructing them to file the brief within ten days of the letter. On April 27, 2015, Appellant Defender David Alexander filed a Petition in Which to File Extension to File Initial Brief of Respondent and Designation of Matter Out of Time. In it, he explained the affidavit of indigency necessary for Appellant Defense to accept the case was not completed in a timely manner, resulting in the filing deadline expiring before the case was assigned. This Court granted an extension until May 13, 2015. This Court subsequently granted a second extension until June 12, 2015. Respondent filed a third Petition for Extension on June 12, 2015, on which this Court did not rule. Finally, Respondent filed a "fourth and final" Motion for an Extension on July 13, 2015, which this Court granted until August 12, 2015, effectively bringing the due date close enough to the end date of his alleged "sentence of imprisonment" to argue mootness.

4. With the fourth filing deadline for the Initial Brief of Respondent rapidly approaching,

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which consists of house arrest with electronic monitoring." Additionally, Appellant incorrectly stated in its Argument section that the ten-year sentence was suspended to one year of house arrest and *one* year of probation. The actual sentence was ten years' imprisonment suspended upon the service of one year's imprisonment served as home detention and *two* years' probation, the first year of which consisted of house arrest, as indicated on the sentencing sheet. Unless Respondent objects or this Court prohibits it, Appellant will correct these errors in its Final Brief.

Respondent filed his Motion to Dismiss Appeal as Moot on August 5, 2015. In that motion, Respondent now argues that he "will complete his sentence of imprisonment on August 29, 2015" and, thus, he "will have finished his sentence before the conclusion of this appeal."

5. The State submits Respondent will not in fact complete his "sentence of imprisonment" on August 29, 2015. Respondent was charged under Section 44-53-370(e), the trafficking statute, which specifically provides that anyone convicted of trafficking in marijuana between ten pounds and a hundred pounds, as Respondent was, must be punished "for a first offense, [to] a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars." S.C. Code Ann. § 44-53-370(e)(1)(a)(1) (2002 & Supp. 2013). Therefore, Respondent will not have completed his sentence of imprisonment until he has served at least one year of imprisonment.

6. Black's Law Dictionary defines "imprison" as "1. To put into prison; to jail; incarcerate. 2. To keep (a person) somewhere so that the person is not at liberty, while preventing any departure." Black's Law Dictionary 875 (10th ed. 2014). Respondent has neither been incarcerated in a prison or jail nor been prevented from departure while under house arrest. Therefore, he has not been imprisoned and has not served his mandatory one year of imprisonment as required by the statute under which he was charged.

7. The State's argument on appeal is that because trafficking is a violent crime, as defined in Section 16-1-60, the plea judge erred in sentencing Respondent to house arrest for this crime. The trial court has broad discretion in giving sentences within the statutory limits. Brooks v. State, 325 S.C. 269, 271-72, 481 S.E.2d 712, 713 (1997). However, a plea judge abuses his discretion if the given sentence does not fall within specific statutory limits. Similarly, a judge abuses his discretion if he does not follow the plain language of a statute that explicitly prohibits

suspension of the sentence for a particular crime. State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). Here, the statute in question clearly and unambiguously limits house arrest to low-risk, nonviolent offenders. Additionally, Section 44-53-370(e) specifically prohibits suspension of any part of the mandatory minimum one-year sentence. S.C. Code Ann. § 44-53-370(e)(1)(a)(1) (2002 & Supp. 2013). Thus, the plea judge abused his discretion by sentencing Respondent, a violent offender by statutory definition who was convicted of a non-suspendable offense, to house arrest after suspending his non-suspendable ten-year sentence. See S.C. Code Ann. § 16-1-60 (listing "violent crimes defined" and including drug trafficking as defined in Section 44-53-370(e)). Because the sentence was not within the confines of the statute, and therefore was an illegal sentence based on an abuse of discretion by the plea judge, Respondent cannot possibly complete this illegal sentence before his brief is due.

8. Furthermore, even if this Court finds this issue is moot as to Respondent, the issue itself is certainly capable of repetition yet evading review. According to plea counsel, other counties have policies in place that substitute home detention for imprisonment.[2] Thus, Respondent's own argument concerning the prevalence of the practice supports the notion that the issue most certainly is capable of repetition. In Nelson v. Ozmint, where the petitioner was released from prison prior to the appeal, the Supreme Court found that even though his claim was moot, the issue was capable of repetition yet evading review because "most inmates will have served the year required by SCDC's interpretation of the statute before the lawfulness of the interpretation can be reviewed." 390 S.C. 432, 434–35, 702 S.E.2d 369, 370 (2010). The Court construed its opinion as an action for a declaratory judgment basing it on the following authorities: S.C. Code

[2] The fact that, as Respondent noted in his motion, the plea judge agreed with counsel that this practice exists should be of no moment to this Court when determining the meaning of the statute.

Ann. § 15-53-30 (2005) (a party whose rights, status, and other legal relations are affected by a statute may seek a court's determination of any question of construction or validity of the statute and obtain a declaration of the party's rights, status, or other legal relations thereunder); S.C. Code Ann. § 15-53-130 (2005) (purpose of the Declaratory Judgment Act is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and it is to be liberally construed and administered); Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992) (the Supreme Court can render a declaratory judgment when a justiciable controversy setting legal rights of parties exists). Here, this Court needs to settle the legal rights afforded by S.C. Code Ann. § 24-13-1530(A), which is a significant issue of statutory construction and a matter of great public interest.

9. Respondent argues another case would "provide a much better opportunity for the application of an exception to the mootness doctrine" and suggests this Court apply the exception to a case from one of the counties or circuits that allegedly has an administrative order in place. However, this practice was presented to the plea judge and encouraged by a state legislator who practices as an attorney in many different circuits, including the ones mentioned in the transcript. The judge was a visiting judge, and the circuit where this case took place did not have such an order.[3] Thus, it is apparent this issue could arise in any circuit where a defense attorney who successfully argues for it practices. See In re Vincent J., 333 S.C. 233, 235 n.1, 509 S.E.2d 261, 262 n.1 (1998) ("Although appellant has served the confinement part of his sentence, this case is not moot because this is a situation that is capable of repetition yet evading review."). While the State could not locate any written orders setting forth a procedure for sentencing people

[3] Indeed, the plea judge noted he knew the policy in the Sixteenth Circuit was not to do it.

convicted of violent crimes to house arrest in lieu of incarceration, it is aware from its research into the issue that the practice has been and continues to be followed in some circuits by some judges. This is all the more reason this issue needs to be resolved by this Court so that all circuits uniformly follow the same practice based on the statute.

10. Based on all the foregoing, the State prays this Court deny Respondent's Motion to Dismiss Appeal as Moot.

WHEREFORE, the State moves this Court to deny Respondent's request to dismiss the State's appeal as moot.

Respectfully submitted,

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August 17, 2015

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Respondent's Motion to Dismiss Appeal as Moot on Respondent by depositing two (2) copies of same in the United States mail, postage prepaid, addressed to: David Alexander, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211.

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

This 17th day of August, 2015.

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