STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Brian Gibbons, Circuit Court Judge

Appellate Case No. 2014-001886

THE STATE,

Appellant,

v.

COREY JAMAL WILLIAMS,

Respondent.

INITIAL REPLY BRIEF OF APPELLANT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

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

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

1675-1A York Highway
Moss Justice Center
York, SC 29745
(803) 628-3020

ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUE ON REPLY

Appellant's argument that the plea court erred in interpreting S.C. Code Ann. § 24-13-1530 to allow a sentence of house arrest for the violent crime of trafficking when the plain language of the statute makes clear it only applies to "low risk, nonviolent adult and juvenile offenders" is preserved for review on appeal.

STATEMENT OF THE CASE

A York County Grand Jury indicted Respondent for trafficking in marijuana, ten to one hundred pounds, first offense pursuant to section 44-53-370(e)(1)(a)(1). (R.* Indictment.) On August 28, 2014, Respondent pled guilty before the Honorable Brian Gibbons. Todd Rutherford, Esquire, represented Respondent, and Assistant Solicitor Matthew Shelton, Esquire, represented the State. Judge Gibbons accepted Respondent's guilty plea and sentenced him to ten years' imprisonment "provided upon the service of one year of house arrest," the balance is suspended upon two years' probation, the first year of which consists of house arrest with electronic monitoring. (Tr. 17.) Admittedly, this sentence had caused some confusion as to whether Respondent was required to serve one year on house arrest first and then begin a two-year probationary period during which he would serve the first year as house arrest and the second year on traditional probation or whether, as Respondent stated in his brief, he was to serve the first year of probation concurrently with the sentence of imprisonment on home detention. Based on information obtained from both Assistant Solicitor Shelton and the S.C. Department of Probation, Parole and Pardon Services, it appears Respondent's year of house arrest has also counted toward his first year of probation and was completed on or about August 27, 2015.[1] Respondent's entire two-year probationary period is set to end on or about August 27, 2016.

On September 2, 2014, Appellant filed a Notice of Appeal and filed a Brief of Appellant. On August 5, 2015, Respondent filed a Motion to Dismiss Appeal as Moot,

[1] The State notes that it does not believe that a valid sentence would allow incarceration and probation to run concurrently. However, that is not the issue here and was not argued below. Furthermore, it does not affect the issue at hand, which is whether the HIP statute can be applied to violent offenses.

which this Court denied. Respondent filed his Brief of Respondent on November 19, 2015. This Reply Brief now follows.

ARGUMENT

Appellant's argument that the plea court erred in interpreting S.C. Code Ann. § 24-13-1530 to allow a sentence of house arrest for the violent crime of trafficking when the plain language of the statute makes clear it only applies to "low risk, nonviolent adult and juvenile offenders" is preserved for review on appeal.

Sentence

As explained in the Statement of the Case, confusion exists regarding the interpretation and implementation of the actual sentence the plea court imposed on Respondent. Yet, regardless of the plea court's intention, at this point the sentence Respondent is actually serving has amounted to exactly what he stated in his brief: "ten years' imprisonment suspended upon the service of one year's imprisonment served on home detention and two years' probation, with the first year of the probation to be served concurrently with the sentence of imprisonment on home detention." (Resp.Br.5.) Due to this confusion over the sentence, the State argued in part that "the plea judge had no power to suspend part of Respondent's sentence to what was essentially two years of probation with the first year consisting of house arrest." (App.Br.9.) Now knowing the sentence ***is*** essentially two years of probation, being served concurrently with one year of imprisonment on home detention, the State continues to stand by its secondary argument that the offense of trafficking in marijuana between ten pounds and a hundred pounds is non-suspendable and should not have been suspended to what amounts to a two-year probationary period.

However, the State admits confusion over the sentence has distracted both parties from the primary issue on appeal. Respondent correctly points out, "Appellant's sole argument on appeal is that [R]espondent cannot qualify for home detention because his

offense is classified as 'violent.'" (Resp.Br.9.) As such, the State will again address that issue and Respondent's argument that it is not preserved.

Preservation

Respondent maintains Appellant's argument is not preserved for review because the State did not specifically request any sentence of imprisonment from the plea court and has not sought a sentence of imprisonment on appeal. In addition to his argument that the issue is waived, he also argues the issue is moot because Respondent has now served his sentence of imprisonment. First, the issue was properly raised to the plea court when the State argued against the propriety of home detention for the offense and then asked the judge to reconsider his sentence. Second, the State specifically argued on appeal that this Court should remand for resentencing within the confines of the Home Incarceration Program (HIP) statute and that a trafficking conviction has a mandatory minimum sentence of one year, no part of which may be suspended nor probation granted. Therefore, this issue is preserved and is properly before this Court for appellate review.[2] The issue of mootness was address in a Motion to Dismiss Appeal as Moot and the State's Return to same. This Court denied Respondent's Motion.

In regard to whether the issue was raised, Respondent argues the State waived the issue because it failed to ask for any specific sentence of imprisonment and instead brought the plea without an agreed upon negotiation or recommendation. However, no legal or practical requirement exists that the State request a particular sentence during a plea. The entire argument before the plea court centered on whether the HIP statute, section 24-13-1530, allowed the plea judge to sentence Respondent to home detention for

[2] It is worth noting this Court requested a written explanation showing that there is an issue which can be reviewed on appeal in accordance with Rule 203(d)(1)(B)(iv), SCACR, and the State submitted such an explanation on October 13, 2014.

the violent crime of trafficking. As a result, the argument raised by the State in its Brief of Appellant was before the plea court.

In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court. State v. Stone, 376 S.C. 32, 36, 655 S.E.2d 487, 489 (2007). "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). The court may review the entire record to determine if a party raised an issue to the trial court and obtained a ruling on the issue, whether or not the party used the exact language or name of a legal doctrine in the argument. State v. Russell, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001). Here, the issue of whether the trial court could sentence Respondent to HIP when he was pleading guilty to a violent offense was raised to and ruled upon.

Merits

In regard to the substantive claim, Respondent argues section 24-13-40 "demolishes the State's argument that home detention cannot apply to a sentence with a mandatory minimum." (Resp.Br.12.) First, Respondent's statement misconstrues the State's secondary argument. The State actually argued this particular offense could not be suspended by statute. To the extent this sentence is a suspended sentence due to the home detention and the first year of probation being run concurrently, the State stands by that argument. As far as whether section 24-13-40 "demolishes" any of the State's arguments, it simply provides that credit may be given for any time spent under monitored house arrest. This has no impact on whether it would be proper for a plea court to suspend the one-year mandatory portion of the sentence to probation. It would not. However, if this sentence was not a suspended sentence and was indeed a one-year

sentence of home detention as an alternative to incarceration, the State still advances its primary argument that this particular violent offense of trafficking was not eligible for a home detention sentence.

The HIP statute provides: "Notwithstanding another provision of law which requires mandatory incarceration, electronic and nonelectronic home detention programs may be used as an alternative to incarceration for **low risk, nonviolent adult and juvenile offenders** as selected by the court if there is a home detention program available in the jurisdiction." S.C. Code Ann. § 24-13-1530(A) (2007) (emphasis added). Respondent argues the language of the statute shows that the Legislature intended to allow judges to decide whether an offender is violent because of the words "as selected by the court," which follow the words "low risk, nonviolent adult and juvenile offenders." Yet, rather than "as selected by the court" indicating the trial judge has the discretion to determine whether the offender is low risk and nonviolent, the State submits a plain reading of the statute shows the "home detention programs" themselves are what are "selected by the court." This is indicated by the further language "if there is a home detention program available." Nothing in the statute gives discretion to a judge to determine whether an offender is nonviolent. Our code of laws already addresses the types of crimes that are classified as violent and nonviolent. See S.C. Code Ann. § 16-1-60 to -70 (2003 & Supp. 2014). There is no need for a judge to have to determine whether an offender meets that definition when he or she can simply look at the list of offenses already provided in the statutes by the Legislature—the same Legislature that chose to limit home detention to nonviolent offenses.

Furthermore, as discussed thoroughly in the Brief of Appellant, even if being a statutorily defined "violent" offense were not sufficient to, in and of itself, exclude

Respondent's crime from falling under the HIP statute, the nature of the crime itself would certainly be sufficient to demonstrate to the sentencing judge that Respondent was NOT a low-risk, nonviolent offender by any stretch of that definition. Finally, any argument as to whether this issue is moot was sufficiently addressed in the State's Return to Respondent's Motion to Dismiss Appeal as Moot.

CONCLUSION

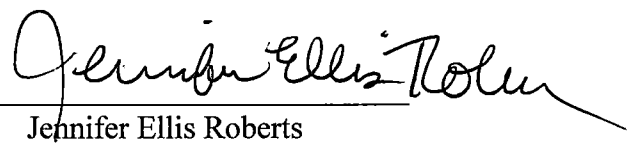
For all of the foregoing reasons, and the arguments contained in the Brief of Appellant, it is respectfully submitted that the plea court should be reversed and the matter remanded for resentencing.

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

December 8, 2015

STATE OF SOUTH CAROLINA
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Brian Gibbons, Circuit Court Judge

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THE STATE,

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COREY JAMAL WILLIAMS,

Respondent.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Reply Brief of Appellant on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 8th day of December, 2015.

ANGELA BENNETT
Legal Assistant

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

ALAN WILSON
ATTORNEY GENERAL

December 8, 2015

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

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

Dear Mr. Alexander,

I am enclosing two (2) copies of the Initial Reply Brief of Appellant in the above-referenced case.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar # 79818

JER/ab
Enclosures

cc: Honorable Jenny A. Kitchings
Victim Services

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283