

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Session
Brian M. Gibbons, Circuit Court Judge

Appellate Case No: 2014-001886

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SC Court of Appeals

THE STATE

APPELLANT,

v.

COREY JAMAL WILLIAMS

RESPONDENT.

RECORD ON APPEAL

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Appellate Defender

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WITNESS

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No witnesses were called.

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT IN SESSION IN THE MATTER OF STATE VERSUS COREY
2 JAMAL WILLIAMS AT 10:03 A.M..)

3 SOLICITOR SHELTON: May it please the Court, Your
4 Honor.

5 THE COURT: Yes, sir.

6 SOLICITOR SHELTON: Your Honor, the next case on the
7 docket is State versus Corey Kamal Williams. At this time
8 Mr. Williams is before the court with his retained attorney
9 Mr. Todd Rutherford representing him on one count of
10 trafficking marijuana ten to one hundred pounds first
11 offense.

12 This case was recently on the trial docket; it's my
13 understanding that Mr. Williams is here and wishes to enter
14 a guilty plea as charged. It's been True Billed by the
15 York County Grand Jury. It carries a minimum one year up
16 to ten years; it's classified as a serious and violent
17 offense.

18 This comes to you as a plea without an agreed upon
19 negotiation or recommendation.

20 THE COURT: All right, thank you.

21 Mr. Rutherford, you represent Mr. Williams?

22 MR. RUTHERFORD: I do, Your Honor.

23 THE COURT: Have you had a full opportunity to go over
24 this matter with your client?

25 MR. RUTHERFORD: I have, Your Honor.

1 THE COURT: Do you agree with his decision to plead
2 guilty?

3 MR. RUTHERFORD: I do, Your Honor.

4 THE COURT: All right, Mr. Williams, raise your right
5 hand for me.

6 Do you swear to tell me the truth?

7 MR. WILLIAMS: Yes.

8 (WHEREUPON, COREY KAMAL
9 WILLIAMS, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
10 FOLLOWS:)

11 THE COURT: All right. Thank you. Lower your hand.

12 Now, Mr. Williams, I see you're thirty-seven years of
13 age?

14 MR. WILLIAMS: Yes.

15 THE COURT: What do you do for a living?

16 MR. WILLIAMS: I drive and load and unload trucks.

17 THE COURT: All right. Do you understand what you're
18 doing in court today?

19 MR. WILLIAMS: Yes, sir.

20 THE COURT: Do you understand this charge against you?

21 MR. WILLIAMS: Yes, sir.

22 THE COURT: You and your lawyer been over all the
23 evidence of the crime?

24 MR. WILLIAMS: Yes, sir, we have.

25 THE COURT: All right. And you understand the

1 possible punishment, you can receive ten years in jail?

2 MR. WILLIAMS: Yes, sir.

3 THE COURT: And you understand that that's a minimum
4 one year sentence?

5 MR. WILLIAMS: Yes, sir.

6 THE COURT: All right. Understanding the charge
7 against you as well as the potential penalty you can
8 receive, how do you plead?

9 MR. WILLIAMS: Guilty.

10 THE COURT: Has anybody forced, pressured, coerced, or
11 made you come to court today to tell me you did something
12 that you really didn't do?

13 MR. WILLIAMS: No, sir.

14 THE COURT: Did you do this?

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: Has anybody promised you anything or held
17 out any hope or reward to get you to plead guilty against
18 your will?

19 MR. WILLIAMS: No, sir.

20 THE COURT: Are you satisfied with your lawyer?

21 MR. WILLIAMS: Yes, sir.

22 THE COURT: Has he answered all of your questions?

23 MR. WILLIAMS: Absolutely.

24 THE COURT: Do you understand all your constitutional
25 rights?

1 MR. WILLIAMS: Yes, sir.

2 THE COURT: Have you all been over those?

3 MR. WILLIAMS: Yes we have.

4 THE COURT: Do you understand you give up all those
5 rights when you plead guilty?

6 MR. WILLIAMS: Yes, sir.

7 THE COURT: Are you under the influence of anything
8 today that would make you not understand what's going on?

9 MR. WILLIAMS: No, sir.

10 THE COURT: Do you understand what's going on?

11 MR. WILLIAMS: Yes, sir.

12 THE COURT: All right. You got a family?

13 MR. WILLIAMS: Yes, sir.

14 THE COURT: How many, how many kids?

15 MR. WILLIAMS: Oh, no kids.

16 THE COURT: Are you married?

17 MR. WILLIAMS: No, sir. I'm engaged.

18 THE COURT: What trucking company or what company do
19 you work for?

20 MR. WILLIAMS: It's called Eli's Transport. It's
21 owned by my father in Orangeburg, South Carolina.

22 THE COURT: All right. Listen carefully to what the
23 State says happened and I'll come back to you. Okay.

24 Solicitor.

25 SOLICITOR SHELTON: Thank you, Your Honor, may it

1 please the Court.

2 On Friday, August 2nd, 2013 officers from the York
3 County Multi-jurisdictional Drug Unit approached a man, and
4 reportedly this defendant in this case, he was parked in a
5 vehicle in a parking lot in York County. They had been
6 observing him for some time driving his vehicle around this
7 area, in and out of parking lots, going into a restroom -
8 restaurant not ordering food. A number of things that
9 caused them to be suspicious of his activity.

10 They approached him they did not engage in any kind of
11 traffic stop or anything, he was parked in his vehicle and
12 they approached him and knocked on the window of his
13 vehicle. He opened the door and officers immediately
14 smelled the strong odor of marijuana coming from inside the
15 vehicle.

16 They also noted that Williams was very nervous and was
17 sweating heavily even though the air conditioning was on in
18 his vehicle. The officers detained Williams based on the
19 smell of the marijuana and his nervous behavior. In the
20 back of his SUV they found a large cardboard box in the
21 cargo area in plain view. There was a K 9 that goes by the
22 name of Justice who was in the vicinity; he conducted a
23 free air sniff of the box and immediately alerted the
24 presence of drugs inside. The officers could also smell
25 marijuana emanating from the area.

1 Inside the box they found well over ten pounds of
2 marijuana. Our certified chemist said it was ten pounds,
3 seven ounces when she weighed it about six months ago. The
4 Defense recently hired an independent analysis where they
5 found it to be ten pounds and six ounces and a little bit
6 of change so it's lost a little bit of weight in the six
7 month period but still well above the trafficking level
8 especially when he had it in his possession on the day in
9 question.

10 At the Law Center Williams told officers he planned to
11 make money off the contents of the box. He had over Six
12 Hundred Dollars cash on him which was seized by officers in
13 the forfeiture action. He consented to a search of his
14 cell phone; on his phone officers saw pictures of what
15 appeared to be a large block of marijuana wrapped in
16 plastic similar to the one they found in his vehicle.

17 They also noted in the pictures other bags of
18 marijuana and pictures of large amounts of currency in a
19 brief case, multiple phones, and he also had multiple
20 phones present with him at the time of this investigation.

21 At this time, Your Honor, I would like to offer up a
22 couple of photographs as Court's Exhibits just so you can
23 see what I'm speaking of.

24 THE COURT: Okay.

25 SOLICITOR SHELDON: It's one page, there's four

1 pictures and on the second page there is one picture and
2 these were taken by the police of his cell phone and also
3 the phones that he had.

4 THE COURT: Have them marked.

5 SOLICITOR SHELTON: Yes, sir. These will be Court's
6 One and Two.

7 (WHEREUPON, COURT'S EXHIBITS ONE AND TWO, IDENTIFIED
8 AND MARKED, RECEIVED INTO EVIDENCE.)

9 SOLICITOR SHELTON: And I'm going to hand these up to
10 Your Honor so you can see what I'm talking about.

11 And I provided copies of these to the Defense as part
12 of discovery.

13 THE COURT: All right.

14 SOLICITOR SHELTON: And, Your Honor, Mr. Williams has
15 one prior conviction on his record out in California. In
16 2007 he was convicted of a felony for possession of a
17 machine gun. Those are the facts of the case.

18 THE COURT: All right, Mr. Williams, did you hear what
19 the State just says are the facts of what happened here?

20 MR. WILLIAMS: Yes, sir.

21 THE COURT: Is that what happened?

22 MR. WILLIAMS: Yes.

23 THE COURT: I accept your plea..

24 Mr. Rutherford.

25 MR. RUTHERFORD: Thank you, Your Honor. May it please

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?

1 MR. RUTHERFORD: Nothing, Your Honor.

2 THE COURT: All right, Mr. Williams, anything you
3 would like to tell me?

4 MR. WILLIAMS: Nothing from me, Your Honor. I would
5 you know I do apologize for everything that's happened.
6 It's been - it's been made evident - ever evident to me
7 that everything that I've seen and that has transpired in
8 this case I know for sure that no mistakes will be made by
9 me criminally ever again in my life. So, you know, the
10 lessons that need to be taught by prison I think I've
11 learned already but I'm still not trying to you know down
12 play or minimize anything that has been done.

13 THE COURT: All right. Thank you, sir.

14 All right, I'll try to write everything on the
15 sentencing sheet so everybody will understand the intent of
16 my sentence without having the record accompanying it.

17 All right, Solicitor, your argument is duly noted on
18 the record. I will just say from a practical standpoint
19 this Court along with numerous other Circuit judges - I
20 can't state all their names - has interpreted the Home
21 Detention or the Home Incarceration Program, whatever you
22 want to call it its referred to HIP in other counties to
23 allow the Court leeway to sentence a situation such as this
24 to house arrest.

25 Now I can't cite the specific reasoning for that. I

1 just know I've done it, I know many other judges who have
2 done it, it's regularly done in Greenville, Pickens or
3 that's the Thirteenth Circuit has regularly done it. The
4 Fifth Circuit has regularly done it, the Seventh Circuit.
5 It will be unless I am instructed otherwise regularly done
6 in the Sixth Circuit. And so I know you all's policy here
7 in the Sixteenth Circuit is not to do it and that's fine.

8 But of course I'm the judge, I'm the one who passes
9 the sentence not the solicitor's office but I certainly
10 think its appropriate in this case to enact and order a
11 sentence such as your lawyer has suggested, Mr. Williams.

12 But I want you to understand, this isn't an easy
13 sentence. Now you go to jail for a year you know even
14 though it's a violent serious offense, you have to serve
15 eighty-five percent, you're eligible for parole after eight
16 months. Okay. Well house arrest you're not. It's a day
17 for day. Okay. And people think house arrest is easy.
18 It's not. There's terms and conditions of it. You're
19 wearing an electronic monitor. If you violate any of it
20 you go ten years hanging over your head.

21 And I've had situations where on my sentences or on
22 other judges sentences where I have revoked the house
23 arrest and people go to jail for ten years. And sometimes
24 even longer. So while I certainly understand the State's
25 position as to the Court's ability to do this, I'm gonna

1 fashion this sentence this way.

2 All right, the sentence of the Court is ten years
3 provided upon the service of one year of house arrest paid
4 for by you, Polk to monitor with electronic monitoring.

5 Balance is suspended, you're on probation for two
6 years. So the first year of your probation you're on house
7 arrest with electronic monitoring. The second year of your
8 probation you're just on probation. The terms and
9 conditions while you're on it is substance abuse
10 counseling, random drug and alcohol testing. Okay.

11 If you violate any terms and conditions of the
12 probation I'm telling you I don't know what other judges do
13 up here and that's certainly within their discretion, I'm
14 telling you what I do, you know. And what I do is revoke
15 in full and you go to jail for ten years. Okay.

16 Anything else for the record?

17 SOLICITOR SHELTON: Your Honor, can I put one other
18 thing on the record?

19 THE COURT: Yes, sir.

20 SOLICITOR SHELTON: Its come to my attention that -
21 I'm not familiar with the other circuits, but it's come to
22 my attention that there are specific administrative orders
23 in place in these other circuits that account for these
24 possible sentences under the HIP Program and that the
25 Probation Pardon and Parole Office's there are equipped to

1 deal within their normal course. We do not have such an
2 administrative order in the Sixteenth Circuit. I'm not
3 aware of whether or not our probation office is capable of
4 enforcing this and that is certainly a factor that is
5 outlined in the statute that I cited earlier.

6 You know a part of why we were discussing it earlier
7 you know it's not just a matter of policy, there is no
8 administrative order in place that creates a mechanism for
9 this - for a court sentence to be carried out.

10 I want to put that on the record -

11 THE COURT: You got - -

12 SOLICITOR SHELTON: I would ask you considering that
13 for you to reconsider your sentence. And at the minimum
14 for the record I make a motion for you to reconsider this
15 sentence given those factors.

16 THE COURT: Thank you.

17 MR. Rutherford.

18 MR. RUTHERFORD: Your Honor, just briefly.

19 As the Solicitor may not know, because this is
20 conducted privately, he has nothing to do with these
21 private sentences that are done in other parts of the
22 county. Now would they have anything to do with this one
23 until he reaches the status of probation.

24 But to correct one thing he said - not to correct but
25 to add to - this sentence is much harsher than a one year

1 sentence. Your Honor stated that it would be an eighty-
2 five percent but because it's less than twenty years it's
3 really a violent sentence which means he would only serve
4 in the Department of Corrections four months before he was
5 eligible for parole as opposed to eight and a half. So he
6 would actually only serve four months incarceration as
7 opposed to a full one year on house arrest. so he would
8 actually do more time on house arrest than he would if he
9 went to the Department of Corrections.

10 THE COURT: All right. Anybody else wish to speak
11 since we're making a record on this sentence?

12 Madam Probation?

13 MADAM PROBATION: We haven't dealt with this much.

14 THE COURT: Right.

15 MADAM PROBATION: We have had a case come from I think
16 Greenville several years ago. But my understanding was
17 that they were on house arrest, with house arrest only, and
18 we didn't touch 'em until they got through with house
19 arrest and then we supervised probation. But that was
20 years ago.

21 THE COURT: Mr. Rutherford, since you suggested Mr.
22 Fogue obviously you've spoken with Mr. Polk about this
23 previously or maybe worked with him before, what type of
24 perimeters does he have for his house arrest?

25 MR. RUTHERFORD: Your Honor, they can go to work, they

1 can go home, they can go to church, they can go see their
2 lawyer or to the doctor and that's it.

3 THE COURT: Okay. So any violation of that he reports
4 to whom?

5 MR. RUTHERFORD: He reports to the Court. He reports
6 to the Solicitor.

7 THE COURT: Reports to the Solicitor ---

8 MR. RUTHERFORD: That's correct.

9 THE COURT: --- or the way I fashioned this sentence I
10 guess he can cause I wrote on here first year of probation
11 he's on house arrest, it may not necessarily be an active
12 probation but he - any violation of that would be reported
13 to the Department -

14 Your department, Madam Probation.

15 That's now I intend this to happen -

16 MR. RUTHERFORD: Yes, Your Honor.

17 THE COURT: --- and kind of incorporate that on the
18 record to make sure the community is protected in the event
19 you do something.

20 Now people come in front of me all the time for
21 violating probation. Okay. I hope you don't do that cause
22 you know what's gonna happen if you do.

23 MR. WILLIAMS: Yes, sir.

24 THE COURT: Now you know the Solicitor, they don't
25 agree with this sentence so they gonna come full bore at

1 you. Okay. So you know that?

2 MR. WILLIAMS: Yes, sir.

3 THE COURT: All right. Anything else?

4 SOLICITOR SHELTON: Yes, sir, Your Honor. I think
5 especially with this being a private monitoring company was
6 being proposed, I think the Court needs to issue some sort
7 of order requiring them to have these parameters. I mean I
8 know we have a sentencing sheet but I would recommend that
9 Mr. Rutherford pose something to the Court obviously
10 reviewing it through us first, cause a house arrest
11 monitoring company isn't necessarily - they have a standard
12 practice and generally are equal in York County. That's
13 only when they are out on bond. So if there are any
14 conditions or anything like that it might be better to
15 reduce it in the order so it's very clear to them what the
16 parameters are.

17 THE COURT: I'm amiable to signing that if Mr.
18 Rutherford wants to prepare it. I wrote in on my
19 sentencing sheet that Polk to monitor and report to DPPS of
20 any violation. All right. I think that will be
21 sufficient at this point in time but hopefully this will
22 take care of that. Okay.

23 Mr. Williams, do you have any questions about what
24 you're supposed to do?

25 MR. WILLIAMS: No, sir.

1 THE COURT: All right. Mr. Rutherford, any questions?

2 MR. RUTHERFORD: No, Your Honor.

3 THE COURT: All right. Anything further from the
4 State?

5 SOLICITOR SHELTON: No, sir.

6 THE COURT: Anything further from Probation?

7 MADAM PROBATION: Your Honor, between now and when
8 he's hooked up on a monitor he's allowed to be unmonitored?

9 THE COURT: Well Mr. Rutherford, did you ask for that,
10 for me to delay that until tomorrow? I'm not inclined to
11 do that. Okay. So he needs to be --

12 Yes, sir.

13 THE COURT: Okay. I'm sorry, I thought you were
14 wanting to talk, I'm trying to make sure - -

15 All right, so he'll be taken into custody.

16 MR. RUTHERFORD: Yes, sir.

17 THE COURT: Okay. And then Mr. Polk will come up here
18 and work all that out and get you rolling and you will be
19 good to go. It may be tomorrow but it is what it is.

20 MR. WILLIAMS: Yes, sir.

21 THE COURT: Good luck to you.

22 MR. RUTHERFORD: Thank you, Your Honor.

23 THE COURT: Okay.

24 (END OF TRANSCRIPT OF RECORD.)

25

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Brian M. Gibbons, Circuit Court Judge

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.

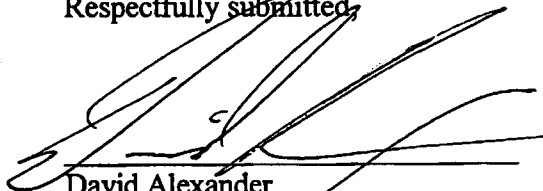
6. Respondent expects that the State will advocate that this Court use the exception of "capable of repetition but evading review" to hear this moot case. The Court should not apply that exception in this case for two reasons. First, the State cannot show that this question will always evade review. 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,

A handwritten signature in black ink, appearing to read "David Alexander", written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

August 5, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

APPELLANT,

V.

COREY JAMAL WILLIAMS,

RESPONDENT

Appellate Case No. 2014-001886

CERTIFICATE OF SERVICE

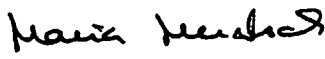
The undersigned attorney hereby certifies that a true copy of the Motion to Dismiss Appeal as Moot in the above referenced case has been served upon Jennifer Ellis Roberts., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Corey Jamal Williams at 1098 Buttercup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

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

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,

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.

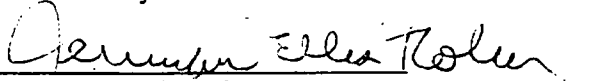
10. Based on all the foregoing, the State prays this Court deny Respondent's Motion to Dismiss Appeal as Moot.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BY: 
Jennifer Ellis Roberts
S.C. Bar No: 79818

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

ATTORNEYS FOR APPELLANT

August 17, 2015

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,

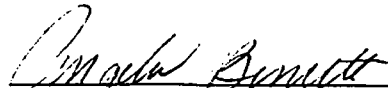
Respondent.

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.



ANGELA BENNETT
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Brian M. Gibbons, Circuit Court Judge

THE STATE,

APPELLANT,

V.

COREY JAMAL WILLIAMS,

RESPONDENT

APPELLATE CASE NO.2014-001886

**REPLY TO RETURN TO MOTION TO
DISMISS APPEAL AS MOOT**

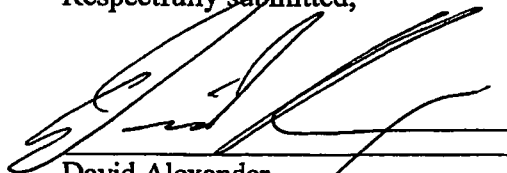
Respondent, through his undersigned counsel, would respectfully show unto this Court as follows. Respondent makes two points in reply to the State's Return to the Motion to Dismiss Appeal as Moot.

1. At no point in the State's Return did it assert that Respondent can be forced to serve a year in the Department of Corrections. The State argues that his sentence is illegal because imprisonment cannot mean home detention. Even if the State is correct, it failed to address what remedy can be granted in this case. It did not assert that, if the State prevails on the merits, the remedy is that respondent would then be forced to spend a year in prison. Nor could the State receive such a remedy. Without a remedy that can be granted by this Court, the case is moot.

2. Counsel also must reluctantly respond to the State's paragraphs 3 and 4 regarding the initial delay in acceptance of this case by Appellate Defense and the number of extensions taken by counsel for respondent. Counsel hopes it was not the State's intent to imply that counsel was attempting to game the system to moot this case. Counsel for respondent endeavors to work on cases with the most number of extensions before turning to cases with less extensions and reached this case in the normal course of his practice. When counsel reviewed this case and saw it was moot, counsel felt it was his duty to inform the Court of this fact and advance this argument for the benefit of his client. Counsel believes it is the prudent approach to raise the mootness issue now instead of wasting the Court's scarce resources reviewing and researching the merits only to then file a motion to dismiss the case as moot on August 29, 2015—nine days from now. Furthermore, even if this case had already been affirmed, since the State almost always petitions the Supreme Court for certiorari when it loses a case in this Court, the mootness problem still would have arisen even if no extensions were taken by either party.

WHEREFORE, Respondent prays that the Court dismiss this appeal as moot.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized and cursive.

David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

August 20, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

APPELLANT,

V.

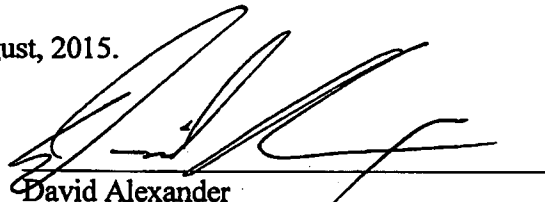
COREY JAMAL WILLIAMS,

RESPONDENT

Appellate Case No. 2014-001886


CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Reply to Return to 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 20th day of August, 2015.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of August, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

The South Carolina Court of Appeals

The State, Appellant,

v.

Corey Jamal Williams, Respondent.

Appellate Case No. 2014-001886

ORDER

Respondent's motion to dismiss is denied. Respondent shall serve and file his initial brief within thirty days of entry of this order.


FOR THE COURT

Columbia, South Carolina.

cc: Alan McCrory Wilson, Esquire
Jennifer Ellis Roberts, Esquire
Kevin Scott Brackett, Esquire
David Alexander, Esquire

FILED
10/20/15

*file
per
JER*

DOCKET NO. 2014-GS-46-00481

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

EU / Avidon

**The State of South Carolina
County of York**

Defendant

COURT OF GENERAL SESSIONS

I hereby appear in my own proper person and plead guilty to the within indictment or to

February 20, Term 2014

ARREST WARRANT NUMBER

013A4610201172

Defendant

THE STATE

vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

COREY JAMAL WILLIAMS

TRUE BILL

Indictment for

Rebecca W. Means
Representative of Grand Jury
Date: 2/20/14

TRAFFICKING IN MARIJUANA

VERDICT

SC Code: 44-53-370(e)(1)(a)
CDR Code: 2360

Representative of Petit Jury
Date:

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

BY: Jennifer Ellis Roberts
Jennifer Ellis Roberts
S.C. Bar No: 79818

January 6, 2016

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