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STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

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."

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.41.) 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 suspended upon two years' probation, the first year of which consists of house arrest with electronic monitoring. (R. 17.)

On September 2, 2014, Appellant filed a Notice of Appeal. This brief follows.

STATEMENT OF FACTS[1]

On Friday, August 2, 2013, officers from the York County Multi-jurisdictional Drug Unit observed Respondent driving his vehicle in and out of parking lots in a suspicious manner. After Respondent parked, the officers approached and knocked on the window of the vehicle. When he opened the door, the officers smelled a strong odor of marijuana. The officers observed that Respondent was very nervous and sweating heavily. Based on the smell of marijuana and his nervous behavior, the officers detained Respondent. They saw a large box in plain view in the cargo area of the vehicle. A K-9 drug dog that was in the vicinity alerted to the presence of drugs inside the box. The officers could also smell marijuana coming from the area. (R. 8, lines 2-25.)

Officers found over ten pounds of marijuana inside the box. Respondent told officers he planned to make money off the drugs in the box. At the time of arrest, he had over $600 on his person. Officers found pictures of a large box of marijuana on Respondent's cell phone. Additionally, officers found pictures of other bags of marijuana and pictures of large amounts of cash in a brief case, as well as multiple phones. (R. 9, lines 1-20.)

At the plea proceeding, the court conducted a standard colloquy establishing Respondent was freely, intelligently, and voluntarily pleading guilty to trafficking in marijuana, ten to one hundred pounds, first offense pursuant to section 44-53-370(e)(1)(a)(1). (R. 5, line 17-R. 7, lines 13; R.41.) He acknowledged the minimum sentence was one year. (R. 6, lines 3-5.) Respondent agreed with the recitation of facts given by the State, and the plea court accepted his plea. (R. 10, lines 18-23.) Defense counsel then requested Respondent be sentenced to ten years' imprisonment suspended to

[1] The following facts were recited by the State at Respondent's plea hearing.

one year of house arrest. (R. 12, lines 2-21.) He explained to the plea judge that other counties had used the Home Incarceration Program (HIP) in imposing sentences for trafficking.[2] (R. 13, lines 5-19.) The State responded by arguing that the HIP statute, section 24-13-1530, specifically applies only to nonviolent and juvenile offenders. (R. 14, lines 5-7.) The State pointed out that trafficking is a violent crime as defined by statute under section 16-1-60. (R. 14, lines 7-9.) The solicitor argued:

> Considering that on [its] face coupled with the fact that [Respondent] has a prior weapon conviction, a felony weapon conviction, also the fact that most of our recent murders have involved drugs, and there is a known nexus between drugs and violence, this is clearly a – something that is not envisioned by the sentence as far as – by the statute as far as the Solicitor's office is concerned.

(R. 14, lines 9-16.) The plea court ruled:

> I will just say from a practical standpoint this Court along with numerous other Circuit judges-I can't state all their names-has interpreted the Home Detention or the Home Incarceration Program, whatever you want to call it it[']s referred to [as] HIP in other counties to allow the Court leeway to sentence a situation such as this to house arrest.
>
> Now I can't cite the specific reasoning for that. I just know I've done it, I know many other judges who have done it, it's regularly done in Greenville, Pickens or that[] the Thirteenth Circuit has regularly done it. The Fifth Circuit has regularly done it, the Seventh Circuit. It will be unless I am instructed otherwise regularly done in the Sixth Circuit. And so I know you all's policy here in the Sixteenth Circuit is not to do it and that's fine.
>
> But of course I'm the judge, I'm the one who passes the sentence not the solicitor's office but I certainly think it[']s appropriate in this case to enact and order a sentence such as your lawyer has suggested . . . . So while I certainly understand the State's position as to the Court's ability to do this, I'm gonna fashion this sentence this way.

[2] S.C. Code Ann. § 24-13-1530 (2007).

(R. 15, line 18-R. 17, line 1.) The plea judge sentenced Respondent as follows: "[Y]ou're on probation for two years. So the first year of your probation you're on house arrest with electronic monitoring. The second year of your probation you're just on probation." (R. 17, lines 5-8.) The State then argued:

> It[']s come to my attention that-I'm not familiar with the other circuits, but it's come to my attention that there were specific administrative orders in place in these other circuits that account for these possible sentences under the HIP Program and that the Probation Pardon and Parole Officer[]s there are equipped to deal within their normal course. We do not have such an administrative order in the Sixteenth Circuit. I'm not aware of whether or not our probation office is capable of enforcing this and that is certainly a factor that is outlined in the statute that I cited earlier.
>
> You know part of why we were discussing it earlier you know it's not just a matter of policy, there is no administrative order in place that creates a mechanism for this-for a court sentence to be carried out.

(R. 17, line 20-R. 18, line 9.)

At that point, the State asked the plea judge to reconsider his sentence. (R. 18, lines 12-15.) The courtroom representative from the S.C. Department of Probation, Parole and Pardon Services (the Department) told the court she had not dealt with this issue much but her understanding, based on a case years ago in Greenville, was that the Department did not get involved until after the person finished house arrest and began probation. (R. 19, lines 12-20.) Defense counsel explained the parameters of the house arrest and indicated that Ned Polk, a private operator, would monitor the house arrest and report any violation to the Solicitor. (R. 12, lines 21-23; R. 19, line 21-R. 20, line 8.) The plea judge then stated that he had written on the sentencing sheet that any violation

during the year of house arrest would be reported to the Department.[3] (R. 20, lines 9-14.) After the State requested the plea judge issue an order requiring the monitoring company to have certain parameters, the plea judge requested defense counsel prepare one and indicated he would sign it.[4] (R. 21, lines 4-22.)

[3] Because the HIP contemplates using house arrest as "an alternative to incarceration" but does not actually place the person on probation, it appears the Department would have no jurisdiction to monitor or enforce the terms of the HIP.

[4] It appears no order was ever prepared by counsel despite the request.

ARGUMENT

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."

The State submits the plea court erred in suspending Respondent's ten-year sentence to one year of house arrest and one year of probation based on section 24-13-1530 of the South Carolina Code. The 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). 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. Thus, this Court should reverse and remand for resentencing within the confines of the statute.

All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). The court should look to the plain language of the statute. Binney v. State, 384 S.C. 539, 544, 683 S.E.2d 478, 480 (2009). If the language of a statute is unambiguous and conveys a clear and definite meaning, then the rules of statutory interpretation are not needed and the court has no right to impose a different meaning. State v. Gaines, 380 S.C. 23, 33, 667 S.E.2d 728, 733 (2008). In interpreting a statute, the court will give words their plain and ordinary

meaning and will not resort to forced construction that would limit or expand the statute. State v. Johnson, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011).

Because the language of the statute clearly provides it only applies to "low risk, nonviolent adult and juvenile offenders," there is no need for this Court to "resort to forced construction that would . . . expand the statute" to include violent offenders. Id. Indeed, because of the statute's unambiguous, clear, and definite language, the plea court and this Court have "no right to impose a different meaning." See Gaines, 380 S.C. at 33, 667 S.E.2d at 733.

As the plea judge himself explained, the only reason he even sentenced Respondent to house arrest was because he knew other judges had done it in other counties and circuits.[5] However, simply because it has been done in other counties and circuits does not change the plain language of the statute, which clearly only includes "low risk, nonviolent adult and juvenile offenders." As the State pointed out during the plea hearing, the circuits that have allowed house arrest sentences for crimes that fall outside the statutory language have established their own administrative orders regarding their use of the HIP. The State explained to the visiting plea judge that the Sixteenth Circuit has no administrative order in place that creates an improper mechanism for this. (R. 17, line 20-R. 18, line 10.)

Here, the plea judge readily admitted he could not "cite the specific reasoning for" the fact that "other counties [] allow the Court leeway to sentence a situation such as this to house arrest." (R. 15, line 25.) This is likely because no valid reasoning exists to support the practice. He also admitted he was aware that the "policy here in the Sixteenth Circuit is not to do it and that's fine." (R. 16, lines 6-7.) Ultimately, he passed the

[5] It is worth noting the judge in this case was a visiting judge from the Sixth Circuit.

sentence in the manner he did because "of course I'm the judge." (R. 16, lines 8-11.) For this judge to sentence Respondent to house arrest based on what other circuits may do based on their own improper administrative orders, when he was fully aware no such order existed in the Sixteenth Circuit, was error and must be reversed.

Furthermore, the Supreme Court recognized in State v. Thomas, 372 S.C. 466, 642 S.E.2d 724 (2007), and State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011), that numerous penal statutes include explicit language prohibiting suspension of sentences. The Court declined to extend the general power to suspend sentences derived from S.C. Code Ann. § 24-21-410 to offenses where the legislature specifically mandated that no part of a sentence may be suspended. Thomas, 372 S.C. at 468, 642 S.E.2d at 725. Section 44-53-370(e), the trafficking statute, 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, 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. (R. 17, lines 5-8.)

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, as stated above, 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. Thomas, 372 S.C. at 468, 642 S.E.2d at 725. 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 in sentencing Respondent, a violent offender by statutory definition who was convicted of a non-suspendable offense, to house arrest. See S.C. Code Ann. § 16-1-60 (listing "violent crimes defined" and including drug trafficking as defined in Section 44-53-370(e)).

Respondent may argue the term "violent" as used in § 16-1-60 is different from the way it is used in the HIP statute. However, the State would submit that 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 he was NOT a low-risk, nonviolent offender by any stretch of that definition. As the State pointed out at the plea:

> Considering that on [its] face coupled with the fact that [Respondent] has a prior weapon conviction, a felony weapon conviction, also the fact that most of our recent murders have involved drugs, and there is a known nexus between drugs and violence, this is clearly a – something that is not envisioned by the sentence as far as – by the statute as far as the Solicitor's office is concerned.

(R. 14, lines 10-16.) (emphasis added.)

This Court has recognized the direct nexus between drugs and violence in State v. Williams, 380 S.C. 336, 669 S.E.2d 640 (Ct. App. 2008).

> Quite apart from the pernicious effects on the individual who consumes illegal drugs, such drugs relate to crime in at least three ways: (1) A drug user may commit crime because of drug-induced changes in physiological functions, cognitive ability, and mood; (2) A drug user may

> commit crime in order to obtain money to buy drugs; and (3) A violent crime may occur as part of the drug business or culture. Studies bear out these possibilities and demonstrate a direct nexus between illegal drugs and crimes of violence.

Id. at 348, 669 S.E.2d at 646-47 (quoting Harmelin v. Michigan, 501 U.S. 957, 1002-03 (1991) (emphasis added)). Therefore, the plea court abused its discretion in finding house arrest was an appropriate sentence for the crime of trafficking pursuant to section 24-13-1530 because Respondent simply could not be classified as a low-risk, nonviolent offender. Based on Respondent's record and the known nexus between drugs and violence, he was not nonviolent. Thus, the State asks this Court to reverse and remand for resentencing within the confines of the statute.

CONCLUSION

For all the foregoing reasons, the State respectfully requests that this Court reverse the decision of the circuit court and remand for resentencing.

Respectfully submitted,

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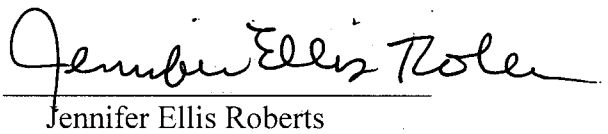
BY: 
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Appellant complies with Rule 211(b), SCACR.

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