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

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

STATEMENT OF ISSUE ON APPEAL

Appellant's issue is not preserved for appeal because the State never requested any sentence of imprisonment from the trial court and has not sought (nor could it seek) a sentence of imprisonment on appeal, therefore this issue is waived and is also moot because appellant has served his sentence of imprisonment. The trial judge acted within his discretion in imposing a sentence of home detention where such a sentence is allowed under the Home Detention Act and section 24-13-40 of the South Carolina Code.

STATEMENT OF THE CASE

Respondent was indicted by a York County Grand Jury for trafficking in marijuana, ten to one hundred pounds, first offense. R. 4. On August 28, 2014, respondent pled guilty before the Honorable Brian Gibbons. R. 1. Matthew W. Shelton represented the State. R. 1. James Todd Rutherford represented respondent. R. 1. Judge Gibbons sentenced respondent to 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. R. 17, ll. 2 – 10. Judge Gibbons also imposed conditions of substance abuse counseling and random drug and alcohol testing. R. 17, ll. 5 – 10. The State appealed respondent's sentence.

On August 5, 2015, respondent filed a Motion to Dismiss Appeal as Moot on the grounds that respondent would complete his sentence of imprisonment on home detention on August 29, 2015. R. 24. Respondent also argued that the Court had no power to fashion any remedy since respondent would have already served his year of imprisonment before the appeal was decided. R. 25. On October 5, 2015, the Court denied the Motion to Dismiss without explanation. R. 40. This brief of respondent now follows.

ARGUMENT

Appellant's issue is not preserved for appeal because the State never requested any sentence of imprisonment from the trial court and has not sought (nor could it seek) a sentence of imprisonment on appeal, therefore this issue is waived and is also moot because appellant has served his sentence of imprisonment. The trial judge acted within his discretion in imposing a sentence of home detention where such a sentence is allowed under the Home Detention Act and section 24-13-40 of the South Carolina Code.

Preservation, Waiver, and Mootness

The State's issue is not preserved for review because it never requested a sentence of imprisonment either in the trial court or on appeal. Nor can the State now ask for a sentence of imprisonment in the Department of Corrections because respondent has already served the sentence ordered by the trial judge. Therefore the State has not requested any real remedy from either Court and now, after respondent has served his sentence, no remedy exists that can be granted to the State and the case is moot.

The State never asked for any sentence below, much less a sentence of imprisonment. When the solicitor called the case, he informed the trial judge, "This comes to you as a plea without an agreed upon negotiation or recommendation." R. 4, ll. 18- 19. At the end of the State's recitation of facts and respondent's record, it did not ask for any sentence at all. R. 10, ll. 14 – 17. During the discussion of whether Judge Gibbons would impose a sentence of home detention, the State only objected that the home detention statute did not apply. R. 14, l. 5 – 23. At no point did the State ask Judge Gibbons to impose a sentence to be served in the Department of Corrections or ask for any particular sentence from the court. R. 14, l. 5 – 23.

After Judge Gibbons imposed his sentence, the State expressed a concern whether his circuit's probation office could enforce the sentence. R. 17, l. 17 – 18, l. 15. The solicitor asked Judge Gibbons to reconsider his sentence "given these factors." R. 18, ll. 12 – 15. The State did not renew its earlier objection concerning the legality of the sentence. R. 18, ll. 12 – 15. Furthermore, the solicitor again failed to ask the trial judge to impose a sentence of imprisonment in the Department of Corrections, much less request a sentence of any determinate length. R. 18, ll. 12 – 15.

To the extent the State now argues on appeal that respondent must serve a year's imprisonment in the Department of Corrections, its failure to ask for any specific sentence of imprisonment below waived the issue now asserted on appeal. "The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal." State v. Policao, 402 S.C. 547, 556, 741 S.E.2d 774, 778 (Ct. App. 2013). "An objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error." State v. Byers, 392 S.C. 438, 446, 710 S.E.2d 55, 59 (2011). A party cannot argue one ground at trial and then an alternative ground on appeal. State v. Bailey, 298 S.C. 1, 5-6, 377 S.E.2d 581, 584 (1989). The State never requested any specific sentence from the trial court. It only made a vague request for resentencing. Therefore, the State's failure to ask for any specific sentence waives any request and violates the command that issues must be presented with specificity to the trial judge. The State never made any specific request for a sentence of imprisonment to be served in prison from the trial judge and therefore cannot now complain on appeal concerning the trial judge's ruling. The State's vague request below for

reconsideration of the sentence without any alternative or recommendation failed to preserve this issue for appeal.

Furthermore, on appeal, the State has not asked for any specific remedy other than resentencing and has not argued that the only relief that presumably could be sought in this case—prison time—could be legally imposed. "The court does not concern itself with moot or speculative questions." Sloan v. Greenville County, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2008). "An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists." Id. In its response to respondent's motion to dismiss the appeal as moot, the State was careful not to assert that a trial court would have the authority to send respondent to jail after he completed his year of imprisonment on home detention. Furthermore, the State could not seek any real relief because the sentence of imprisonment has been served. 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. Since the State has sought no real remedy in this case, the issue is not preserved or properly presented in this appeal.

Furthermore, the case is moot and appellant has not asked for any relief which can be granted.[1] The Court should affirm.

Merits

The trial judge acted both within his discretion and his legal authority to sentence respondent to a year's imprisonment served as home detention. Appellant's sole argument on appeal is that respondent cannot qualify for home detention because his offense is classified as "violent." This argument fails because it ignores the clear language of the relevant statutes, which vest the discretion for determining whether an offender is violent with the trial court. Furthermore, the plain language of the Home Detention Act demonstrates that it specifically applies to respondent's offense.

The trial judge relied on two statutes for his authority to sentence respondent to a year's imprisonment served as home detention. First, the trial judge relied on the Home Detention Act (the "Act"). S.C. Code Ann. § 24-13-1510, *et seq.* R. 13, l. 5 – 17, l. 15. The Act plainly contemplates the use of home detention as an alternative to incarceration in the Department of Corrections. The Act defines "Home detention" as the "confinement of a person **convicted** or charged with a crime to his place of residence. . . ." S.C. Code Ann. § 24-13-1520(4). The Act also defines includes "an inmate" in its definition of "Participant." S.C. Code Ann. § 24-13-1520(5). By their plain meaning, these two definitions show that

[1] Respondent's Motion to Dismiss the Appeal as Moot was denied by Judge Cureton for the Court without explanation. R. ___. At the time respondent's motion was filed, the sentence of imprisonment was nearly complete. The State argued that the exception to mootness that the issue was capable of repetition yet evading review applied. Because Judge Cureton's Order did not have the effect of finally deciding the appeal, respondent could not ask for rehearing by the Court. Rule 240(i), SCACR. Therefore, respondent raises the mootness problem in this brief to bring this issue before the Court.

the Legislature intended for home detention as a substitute for inmates who were convicted of crimes.

The operative section of the Act also unambiguously places in a trial judge's hands the discretion to order home detention. S.C. Code Ann. § 24-13-1530. The title of this section states that home detention programs are an alternative to incarceration. S.C. Code Ann. § 24-13-1530. Section 1530(A) 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). The State's sole argument on appeal that the trial judge lacked discretion because respondent's conviction is classified as "violent" fails because the emphasized language above clearly states that the trial judge has the discretion to determine whether the person before them is low risk and nonviolent.

Had the Legislature intended to link the definition of "nonviolent" in the Act to the classification of offenses, it would have been a simple matter to do so. The Legislature could have inserted after the phrase "nonviolent" a reference to the statutes classifying offenses. The Legislature's choice not to do so demonstrates its unambiguous intent to leave the decision about whether an offender is violent in the hands of the trial judge. Furthermore, section 1530(A)'s use of "nonviolent" describes the offender, not the offense. Because it is offenses—and not offenders—that are classified as violent and nonviolent, section 1530(A) does not reference the classification statutes.

Furthermore, appellant's argument that the Act does not apply to appellant's offense because of the mandatory minimum sentence of one year is expressly contradicted by the

Act. S.C. Code Ann. § 24-13-1590(1). Section 1590 of the Act specifically states the drug offenses to which it applies. Id. It states that the Act does not apply to drug offenses "which are classified as Class A, B, or C felonies **or which are classified as an exempt offense by Section 16-1-10(D) and provide for a maximum term of imprisonment of twenty years or more.**" Id. (emphasis added). The maximum sentence of imprisonment for respondent's offense was ten years, so by the express terms of the Act, it applies to respondent's sentence. S.C. Code Ann. § 44-53-370(e)(1)(a)(1) (providing for a maximum sentence of ten years); see also S.C. Code Ann. § 16-1-10(D) (classifying trafficking in marijuana in an amounts of 10 pounds or more, but less than 100 pounds as an exempt offense).

"If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning." Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003). These portions of the Act are specific, unambiguous, and clear, therefore the trial judge's interpretation of the Act was correct and he sentenced accordingly. The trial judge correctly interpreted section 1530(A)'s command that the offenders may be "selected by the court" and not by rote application of the classification scheme as vesting him with discretion to fashion the sentence given to respondent. The trial judge also correctly interpreted section 1590 as making the Act applicable to respondent's offense.

The trial judge also relied on the recent passage by the Legislature of an amendment to section 24-13-40 that allows a trial judge to give credit for house arrest against a sentence of incarceration. See 2013 South Carolina Laws Act 34 (H.B. 3193). R. 13, l. 11 – 17, l. 10. The amended section 24-13-40 provides that a prisoner "must" be given "full credit" for

time served prior to trial and "may be given" credit for "any time spent under monitored house arrest." Id. This section further demonstrates the intent of the Legislature to use the cost-saving measure of home detention as a substitute for expensive incarceration in prison. Section 24-13-40 also demolishes the State's argument that home detention cannot apply to a sentence with a mandatory minimum. Under the State's construction, a person who spent a year on home detention awaiting trial would be entitled to credit against a mandatory minimum sentence, but a person who makes bond (and therefore is presumably a much less dangerous offender in the eyes of the judge who set the bond) and is later sentenced to home detention is not allowed to use home detention as credit against his mandatory minimum sentence. Such a construction is absurd and is obviously not the Legislature's intent.

Finally, the State appears to argue that respondent's prior conviction for possession of a firearm makes him a high risk, violent offender as a matter of law. For this contention, the State cites the well-worn "nexus" between guns and drugs. See State v. Williams, 380 S.C. 336, 669 S.E.2d 640 (Ct. App. 2008). This quote comes from the United States Supreme Court's decision in Harmelin v. Michigan, 501 U.S. 957 (1991) which dealt with a challenge to life imprisonment for a drug offense under the Eighth Amendment. Nothing in Williams or Harmelin stand for the proposition that, as a matter of law, an **individual** offender is always a violent person because he committed a drug crime.

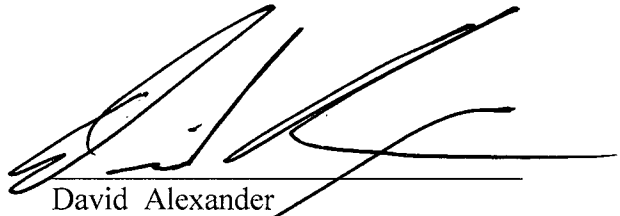
Respondent had one conviction for possession of a firearm in California in 2007. Respondent did not have any firearms when he was arrested for this crime. The arrest of appellant was peaceful. There was no hint of violence in the State's recitation of the facts. R. 8, l. 2 – 9, l. 20. This Court may not interfere with the trial judge's discretionary sentence. State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) ("The State is

correct in its assertion that this Court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression, or corrupt motive."); State v. Warren, 392 S.C. 235, 237-38, 708 S.E.2d 234, 235 (Ct. App. 2011) ("The authority to chance a sentence rests solely and exclusively within the discretion of the sentencing judge."). The trial judge used his discretion, properly considered respondent's crime and his history, and fashioned a legal sentence that cannot be disturbed on appeal.

CONCLUSION

For the foregoing reasons, the sentence of the trial court must be affirmed.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 27th day of January, 2016.

CERTIFICATE OF COUNSEL FOR RESPONDENT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 27, 2016

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Respondent 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, this 27th day of January, 2016.

David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT.

SUBSCRIBED AND SWORN TO before me
this 27th day of January, 2016.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.