

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County
Eugene C. Griffith, Jr., Circuit Court Judge

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MAR 07 2016
SC Court of Appeals

THE STATE,

Appellant,

vs.

JOSIE D. JONES,

Respondent.

Appellate Case No. 2016-000273

INITIAL BRIEF OF APPELLANT

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ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court erred in suspending Jones' prison sentence below the three year minimum and granting probation for Jones' conviction for trafficking in methamphetamine where the statute expressly requires a minimum three year prison sentence and prohibits suspending any part of the sentence or granting probation. State v. Taub, 336 S.C. 310, 519 S.E.2d 797 (Ct. App. 1999) controls the result.

STATEMENT OF THE CASE

Respondent Josie Jones was indicted by the Greenwood County Grand Jury for possession of controlled substance (15-GS-24-870) and trafficking 10 to 28 grams of methamphetamine (15-GS-24-871). Tr. pp. 15-16. On February 4, 2016, Respondent pled guilty as charged. Respondent was represented by Patricia Bolen, Esquire. The Honorable Eugene Griffith, Jr., sentenced Respondent to five years imprisonment suspended to eighteen months imprisonment, allowing that to be served as house detention, and five years probation. The State immediately objected and advised Judge Griffith that the sentence was in derogation of S.C. Code Ann. § 44-53-375(c)(1)(a), which does not allow the sentence to be suspended or probation granted. Judge Griffith noted the objection. Tr. pp. 26-27.

The State appealed the sentence. This initial brief follows.

STATEMENT OF FACTS

The Solicitor advised the plea court that in the early morning hours, the Sheriff's Office pulled over a suspicious vehicle and discovered that the vehicle was stolen. All three occupants in the vehicle were arrested, including Respondent. Respondent admitted she had a controlled substance, a suboxone strip, in her purse. She was searched at the Greenwood County Detention Center when she was booked, and she had two baggies of methamphetamine totaling 13.5 grams. Tr. p. 19. Respondent admitted that the facts recited were correct. Tr. p. 20.

ARGUMENT

The trial court erred in suspending Jones' prison sentence below the three year minimum and granting probation for Jones' conviction for trafficking in methamphetamine where the statute expressly requires a minimum three year prison sentence and prohibits suspending any part of the sentence or granting probation. State v. Taub, 336 S.C. 310, 519 S.E.2d 797 (Ct. App. 1999) controls the result.

The trial court erred by suspending Jones' prison sentence and granting probation.

Jones pled guilty to trafficking between 10 and 28 grams of methamphetamine. Under S.C.

Code Ann. § 44-53-375(C)(1)(a):

A person . . . who is knowingly in actual or constructive possession . . . of ten grams or more of methamphetamine . . . is guilty of a felony known as "trafficking in methamphetamine or cocaine base" and upon conviction **must be punished** as follows, if the quantity involved is:

(1) Ten grams or more, but less than twenty-eight grams:

(a) For a first offense, a term of imprisonment of not less than three years nor more than ten years, **no part of which may be suspended nor probation granted**, and a fine of twenty-five thousand dollars;

(Emphasis added).

The trial court sentenced Jones to five years imprisonment suspended to eighteen months house detention and probation. Tr. p. 26. The State immediately objected, arguing:

Your Honor, the State objects to that sentence pursuant to 44-53-375(c)(1)(a); provides that for someone convicted of trafficking of 10 grams or more but less than 28 grams, for a first offense a term of imprisonment of not less than 3 years, no more than 10 years, no part of which may be suspended nor probation granted and a fine of \$25,000.00 dollars. I just

wanted to note the State's objection to that sentence is not complying with the statute for the record.

Tr. p. 27, lines 1-9. The trial court noted the objection, but did not amend the sentence. Tr. p. 27, line 10. The trial court committed an error of law by suspending the sentence and granting probation.¹

The language of the statute is express and clear, so under the plain meaning of the rule, the trial court's sentence is in derogation of the law. When a statute's language is plain, unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court should not impose another meaning. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008).

Further, this Court has already concluded the statute prohibits a judge from giving a suspended sentence or granting probation. State v. Taub, 336 S.C. 310, 519 S.E.2d 797 (Ct. App. 1999). In that case, like the present case, the trial court sentenced the defendant to five years imprisonment suspended to probation over the State's objection. This Court agreed with the State that the trial court lacked authority to deviate below a minimum three year prison sentence and was prohibited from suspending any part of the sentence or granting probation. Id. at 317, 519 S.E.2d at 801.

A trial court abuses its power of discretion when it commits an error of law or makes a factual conclusion without any evidentiary support. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). In the instant case, the trial court abused its discretion, and this

¹ Trafficking is a violent offense. S.C. Code Ann. § 16-1-60. Therefore, the trial court further erred because home detention is not available in lieu of incarceration for violent offenses. See S.C. Code Ann. § 24-13-1530(A) (providing home incarceration for crimes without mandatory terms of incarceration for nonviolent offenders)

matter should be remanded for resentencing. Taub, supra.

CONCLUSION

For all of the foregoing reasons, the sentence of the lower court should be reversed and the matter should be remanded for resentencing for the trafficking methamphetamine conviction.

Respectfully submitted,

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March 7, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenwood County
Eugene C. Griffith, Jr., Circuit Court Judge

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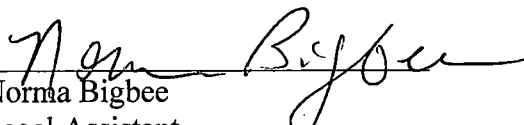
JOSIE D. JONES,

PROOF OF SERVICE

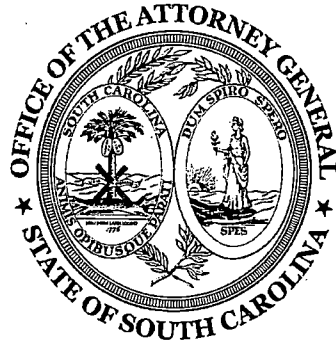
I, Norma Bigbee, certify that I have served the within **Initial Brief of Appellant and Designation of Matter** on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Patricia A. Bolen, Esquire, 600 Monument Street, Suite 208, Box P-133, Greenwood, SC 29646 .

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

This 7th day of March, 2016.



Norma Bigbee
Legal Assistant
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(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

March 7, 2016

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SC Court of Appeals

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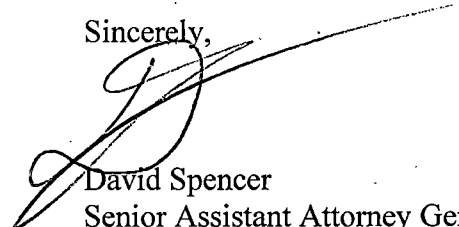
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: **State v. Josie D. Jones**
Appellate Case No: 2016-000273

Dear Ms. Kitchings:

Enclosed please find the original of the **Initial Brief of Appellant and Designation of Matter** in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this brief today.

Sincerely,



David Spencer
Senior Assistant Attorney General
Bar No: 68571

DS/nb
Enclosures

cc: Patricia A. Bolen, Esquire (2 copies enclosed)
Trisha Allen, Victim Services (1 copy enclosed)