

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 30 2016

SC Court of Appeals

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

THE STATE,

Appellant,

vs.

JOSIE DEAN JONES,

Respondent.

Appellate Case No. 2016-000273

FINAL REPLY BRIEF OF APPELLANT

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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. <u>State v. Taub</u> , 336 S.C. 310, 519 S.E.2d 797 (Ct. App. 1999) controls the result.	1
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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.

Jones claims the State's objection to the trial court's sentence did not preserve the issue for review. The trial court sentenced Jones to five years imprisonment suspended to eighteen months house detention and thirty-six months of probation. R. 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.

R. p. 27, lines 1-9. The trial court noted the objection, but did not amend the sentence. R. p. 27, line 10. The issue raised on appeal is preserved for this Court's review because the prosecution noted the statute (1) required a minimum term of imprisonment of three years, (2) does not allow any part of the sentence to be suspended, (3) does not allow probation to be granted, and (4) requires a fine of \$25,000. Accordingly, the State's objection to the variance from these requirements is preserved.

Jones claims that S.C. Code Ann. § 24-13-1530(A) allows this sentence. Under

section 24-13-1530(A):

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.

First, section 24-13-1530(A) is inapplicable because trafficking is a violent offense and the statute expressly excludes violent offenders. S.C. Code Ann. § 16-1-60. Further, even if trafficking was not excluded from eligibility for a home incarceration program, section 24-13-1530: (1) provides for a term of home detention **in lieu** of incarceration, but does not provide for giving a term of home detention/incarceration below the statutory mandatory minimum, (2) does not authorize suspending sentences otherwise prohibited by statute, and (3) does not authorize granting probation for trafficking or any other offense; and (4) does not authorize waiving statutorily mandatory fines.

Accordingly, the trial court lacked authority to deviate below a minimum three year prison sentence and was prohibited from suspending any part of the sentence, granting probation, or declining to impose a fine. State v. Taub, 336 S.C. 310, 317, 519 S.E.2d 797, 801 (Ct. App. 1999).

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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August 30, 2016

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant 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."

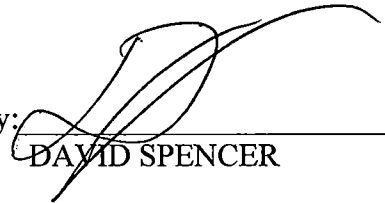
Respectfully submitted,

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the Final Reply Brief of Appellant on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record Laura R. Baer, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

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

This 30th day of August, 2016.


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