STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from York County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

APPELLANT,

V.

COREY JAMAL WILLIAMS,

RESPONDENT

APPELLATE CASE NO. 2014-001886

Opinion No. 2016-UP-448

PETITION FOR REHEARING

Respondent Corey Jamal Williams asks this Court to re-examine its opinion in this case and grant rehearing. Respectfully, the Court's opinion overlooks key points that indicate that the trial judge's sentence was a correct interpretation of the law and this case should be affirmed.

1. *The Court Did Not Address Respondent's Argument that Section 24-13-1590(1) of the Home Detention Act Specifically Allows Respondent's Sentence*

As argued by respondent in his brief and at oral argument, section 24-13-1590(1) of the Home Detention Act (the "Act") specifically allows a sentence of home detention for respondent's offense. S.C. Code Ann. § 24-13-1590(1). The Court's opinion does not cite

section 24-13-1590(1). The Court's opinion states that "the home detention statute does not apply to trafficking in marijuana, ten to one hundred pounds, first offense." Op. at 2. The opinion's citations indicate the Court looked outside of the Act to reach this conclusion. Op. at 2. Because the Act itself contains the answer to this sentencing question, it was error for the Court to look at other statutes to interpret a provision that is not ambiguous.

The Act specifically excludes certain drug crimes, but not respondent's crime. This means that the Act applies to respondent's crime. The Legislature's exclusion of some drug crimes, but not others, indicates its clear intent that the Act applies and respondent correctly received a sentence of home imprisonment.

Section 1590(1) states that the Act does not apply to two kinds of drug crimes: (1) Class A, B, or C felonies; or (2) exempt offenses under Section 16-1-10(D) that provide for a maximum term of imprisonment of twenty years or more. S.C. Code Ann. § 24-13-1590(1). **Respondent's offense does not fall into either of these two categories.** Respondent was convicted of violating section 44-53-370(e)(1)(a)(1). State's Brief of Appellant at 2. Section 44-53-370(e)(1)(a)(1) **is a Class E felony**, not a Class A, B, or C felony, so the first part of Section 1590(1) does not exclude respondent's offense from the Act. S.C. Code Ann. § 16-1-90(E).

As for the second part of Section 1590(1), respondent's offense is not listed as an "exempt offense" under S.C. Code Ann. 16-1-10(D). S.C. Code Ann. 16-1-10(D). Trafficking marijuana **third offense** is listed as an exempt offense, but **first offense** is not listed. S.C. Code Ann. 16-1-10(D). The maximum sentence for respondent's offense is ten years, not twenty. S.C. Code Ann. § 44-53-370(e)(1)(a)(1). Therefore, the second part of Section 1590(1) does not exclude respondent's offense from the Act's coverage. The Legislature's intentional omission of respondent's offense from the list of excluded drug crimes demonstrates the Legislature's intent

that the Act applies to respondent's offense. See State v. Burton, 301 S.C. 305, 391 S.E.2d 583 (1990).

The reasoning of Burton perfectly illustrates why the Act applies to respondent's offense. Burton dealt with whether the defendant's offense was eligible for a YOA sentence. Burton at 306-07, 391 S.E.2d at 583. Much as in this case, the State used a statute from another section of the code to argue the YOA act did not apply to the defendant's offense. Id. Relying on the exact same statutory construction urged by respondent here, the Supreme Court rejected the State's argument. Id.

The Court first stated the general rules of statutory construction that it must "attempt to ascertain and effectuate the intent of the legislature" and that penal statutes "are construed strictly against the State and in favor of the defendant." Id. at 307, 391 S.E.2d at 584. The Court then stated, "In determining the meaning of a statute, **it must be inferred that statutes specifically excluding certain things evidence the intent of the legislature to include all other things not mentioned.**" Id. (emphasis added).

When the Court examined the YOA statute, it determined that it had "specifically excluded YOA sentences for certain offenses" and because the YOA sentence was not specifically excluded, that means it was included. Id. Burton's reasoning applies here. Because the Act specifically excludes certain drug offenses, those not excluded—like respondent's—are included. The Court need look no further than section 1590(1) and Burton to determine the applicability of the Act to trafficking marijuana, first offense. The Court erred in not addressing this argument, should grant rehearing, and affirm respondent's sentence.

2. The Court Erred in Supplanting the Legislature's Intent to Vest Discretion in the Trial Judge with a Definition of "Violent" from Another Part of the Code

The Act leaves it to the trial judge's discretion whether an offender is violent. S.C. Code Ann. § 24-13-1530(A). The Act asks the trial judge to decide whether the **offender** is violent, not the **offense**. S.C. Code Ann. § 24-13-1530(A). The use of the word "may" indicates discretion vests with the trial judge. S.C. Code Ann. § 24-13-1530(A). Respectfully, the Court erred by importing the definition of "violent" from section 16-1-60, which applies to **offenses**, not **offenders**. Op. at 2. Judge Gibbons properly exercised his discretion when he determined respondent was not a violent offender.

Had the Legislature intended the word "violent" in the Act to be synonymous with section 16-1-60, it easily could have referred to this statute. The Legislature chose not to do so. The Legislature's reference to section 16-1-10(D) in section 1590(1) of the Act clearly shows that the Legislature knew how to reference the provisions of Title 16. S.C. Code Ann. § 24-13-1590(1). By not doing so, the Legislature expressly rejected the definitions of "violent" contained in title 16. Furthermore, as explained in section 1, above, looking to Title 16 for definitions is unnecessary when respondent's offense is specifically included in the Act.

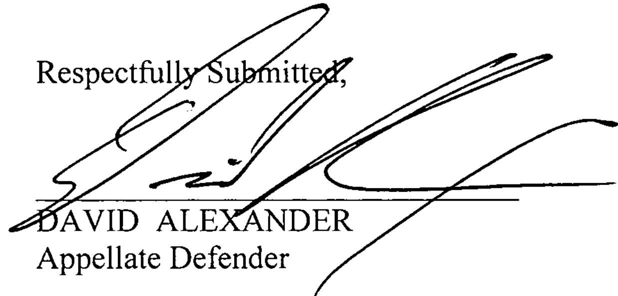
3. Home Detention Is a Sentence of Imprisonment

The Court erred in finding this appeal is not moot because respondent "has not in fact completed his sentence of imprisonment as home detention does not constitute imprisonment." Op. at 1. The Court's citations support respondent's argument that time spent on home detention counts as imprisonment. Op at 1. See S.C. Code Ann. § 24-13-40. At the very least, in the event this case is remanded, the Court should correct this portion of its opinion to state that it is in the sentencing judge's discretion to give respondent credit for time spent on home detention.

See S.C. Code Ann. § 24-13-40. It would be manifestly unjust in this case, where the State has not sought any specific sentence and respondent has already served his entire sentence as rendered by the trial judge, to remand this case with language that could be used to further imprison respondent. 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). This Court should grant rehearing and correct this portion of its opinion even if it does not affirm.

For the foregoing reasons, this Court should grant rehearing and affirm the sentence of the trial judge.

Respectfully Submitted,



DAVID ALEXANDER
Appellate Defender

This 2nd day of November, 2016.

ATTORNEY FOR RESPONDENT.

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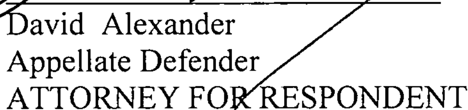
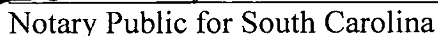
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin and 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 2nd day of November, 2016.



David Alexander
Appellate Defender
ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 2nd day of November, 2016.


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