

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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NOV 10 2016

SC Court of Appeals

Appeal from York County
Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2014-001886

THE STATE,

Appellant,

v.

COREY JAMAL WILLIAMS,

Respondent.

**RETURN TO RESPONDENT'S PETITION FOR REHEARING AND APPELLANT'S
REQUEST TO PUBLISH**

On November 2, 2016, this Court issued an unpublished opinion in which it reversed and remanded for resentencing Respondent's sentence of home detention. State v. Williams, Op. No. 2016-UP-448 (S.C. Ct. App. filed Nov. 2, 2016). Pursuant to Rule 221(a), SCACR, Respondent petitioned this Court for rehearing, and Appellant (the State) now files this return. For the following reasons, Respondent's petition for rehearing should be denied.

The State agrees with this Court's finding that the "plea court abused its discretion when it sentenced Williams to one of year [sic] house arrest because the home detention statute does not apply to trafficking in marijuana, ten to one hundred pounds, first offense."

In his petition for rehearing, Respondent contends section 24-13-1590(1) of the Home Detention Act (the Act) allows a sentence of home detention for his offense—trafficking in marijuana, ten to one hundred pounds. He claims this Court looked outside the Act to reach its

conclusion. However, Respondent misconstrues the referenced portion of the statute as one of inclusion rather than exclusion. That portion of the statute actually refers to additional crimes—beyond those that are violent—that are also excluded. Indeed, there are certain crimes classified as “nonviolent” crimes,¹ such as possession with intent to distribute cocaine third offense,² a “Class A” felony,³ which are excluded by section 24-13-1590(1) in addition to the “violent” crimes excluded by section 24-13-1530(A). It does not mean, as Respondent claims, that the Act applies to Respondent’s crime simply because it is not listed in section 24-13-1590(1).

The State also submits this Court correctly found this issue is not moot. However, even if this issue were moot as to Respondent, it is capable of repetition and evading review. Judges around the state have been sentencing offenders, many of them for the offense of trafficking, to home detention for offenses that are statutorily categorized as violent. This Court needs to settle the legal rights afforded by S.C. Code Ann. § 24-13-1530(A), which is a significant issue of statutory construction and a matter of great public interest. Accordingly, the State requests that in addition to denying Respondent’s request for rehearing, this Court publish its opinion to establish precedent and provide guidance to the bench and bar.

Conclusion

Based on the foregoing, coupled with the arguments raised in the Final Brief of Appellant, the State respectfully requests that Respondent’s petition for rehearing be denied. Additionally, the State respectfully requests this Court publish the opinion.

Respectfully submitted,

ALAN WILSON
Attorney General

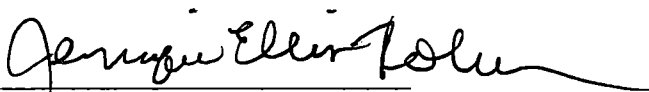
¹ S.C. Code Ann. § 16-1-70 (2015).

² S.C. Code Ann. § 44-53-370(b)(1) (2002 & Supp. 2015).

³ S.C. Code Ann. § 16-1-90(A) (2015).

J. BENJAMIN APLIN
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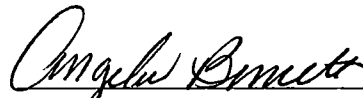
Respondent.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Return to Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 10th day of November, 2016.



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

November 10, 2016

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

RE: State v. Corey Jamal Williams
Appellate Case No. 2014-001886

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Return to Petition for Rehearing, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar # 79818

JER/ab
Enclosures

cc: David Alexander, Esquire
Victim Services