STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

JAN 18 2017

S.C. SUPREME COURT

Appeal from York County

Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 2016-UP-448 (S.C. Ct. App. filed November 2, 2016)

THE STATE,

PETITIONER,

V.

COREY JAMAL WILLIAMS,

RESPONDENT

APPENDIX

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit
1675-1A York Highway
York, SC 29745

ATTORNEYS FOR PETITIONER

INDEX

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Appellant,

v.

Corey Jamal Williams, Respondent.

Appellate Case No. 2014-001886

Appeal From York County
Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2016-UP-448
Heard September 8, 2016 – Filed November 2, 2016

REVERSED

Attorney General Alan McCrory Wilson, Senior Assistant Deputy Attorney General John Benjamin Aplin, and Assistant Attorney General Jennifer Ellis Roberts, all of Columbia, and Solicitor Kevin Scott Brackett, of York, for Appellant.

Appellate Defender David Alexander, of Columbia, for Respondent.

PER CURIAM: The State argues the plea court erred in interpreting section 24-13-1530 of the South Carolina Code (2007) (the home detention statute) to allow a sentence of house arrest for a violent crime—trafficking in marijuana, ten to one hundred pounds, first offense—when the plain language of the statute unambiguously states it only applies to "low risk, nonviolent adult and juvenile offenders." We reverse and remand for resentencing.

The State concedes that its argument regarding section 44-53-370(e)(1)(a)(1) was not raised before the plea court and, thus, is not preserved for our review. *See State v. Passmore*, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005) ("The general rule of issue preservation states that if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal."). However, we find the State's objection to the applicability of the home detention statute to Williams' conviction for trafficking in marijuana was sufficiently specific to preserve the issue of sentencing for this court's review.

Moreover, we find the appeal is not moot. *See Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy."); *id.* ("Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief."); *id.* (providing the following three exceptions to the mootness doctrine: (1) the issue raised is capable of repetition but generally will evade review, (2) if the issue before the appellate court is a question "of imperative and manifest urgency," an appellate court may consider the question in order "to establish a rule for future conduct in matters of important public interest," and (3) if a decision by the trial court may affect future events, or may have collateral consequences for the parties, the appeal is not moot, despite the appellate court's inability to give effective relief in the present case); *id.* (holding South Carolina jurisprudence affords appellate courts flexibility and discretion in determining whether to utilize an exception to the mootness doctrine). Williams has not in fact completed his sentence of imprisonment as home detention does not constitute imprisonment. *Cf.* S.C. Code Ann. § 24-13-40 (Supp. 2015) (requiring sentencing credit for "time served prior to trial and sentencing" but allowing the sentencing court discretion to grant or deny sentencing credit for "time spent under monitored house arrest"); *id.* ("In every case in computing the time served by a prisoner, full credit against the sentence *must* be given for time served prior to trial and sentencing, and *may* be given for any time spent under monitored house arrest." (emphases added)).

As to the merits, we find the plea court abused its discretion when it sentenced Williams to one of year house arrest because the home detention statute does not apply to trafficking in marijuana, ten to one hundred pounds, first offense. *See* S.C. Code Ann. § 24-13-1530(A) (2007) ("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." (emphasis added)); S.C. Code Ann. § 16-1-60 (Supp. 2015) (including "drug trafficking as defined in Section 44-53-370(e)" as a violent crime); S.C. Code Ann. § 44-53-370(e)(1)(a)(1) (Supp. 2015) (providing the crime for which Williams was convicted—trafficking in marijuana, ten to one hundred pounds—"must be punished," for a first offense, to "a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars").

REVERSED.

WILLIAMS, THOMAS, and GEATHERS, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE 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.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

APPELLANT,

V.

COREY JAMAL WILLIAMS,

RESPONDENT

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 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.

STATE OF SOUTH CAROLINA
IN THE 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
Senior Assistant Deputy Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

By: _____
Jennifer Ellis Roberts

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

November 10, 2016

STATE OF SOUTH CAROLINA
IN THE 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.

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.

Angela Bennett

ANGELA BENNETT
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State, Appellant,

v.

Corey Jamal Williams, Respondent.

Appellate Case No. 2014-001886

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied. Additionally, Appellant's request to publish is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Jennifer Ellis Roberts, Esquire
Kevin Scott Brackett, Esquire
David Alexander, Esquire

John Benjamin Aplin, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Session
Brian M. Gibbons, Circuit Court Judge

Appellate Case No: 2014-001886

THE STATE

APPELLANT,

v.

COREY JAMAL WILLIAMS

RESPONDENT.

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense

P.O. Box 11589
Columbia, SC 29211
(803) 734-1330

ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803)734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

1675-1A York Highway
York, South Carolina 29745
(803) 628-3020

ATTORNEYS FOR APPELLANT

INDEX

State of South Carolina.,
County of York.

In the General Sessions Court of York

Case No.: 2014-GS-46-00481

State of South Carolina.,
Plaintiff.,
-vs-
Corey Jamal Williams.,
Defendant.

Transcript of Record
Guilty Plea

August 28, 2014
York, South Carolina

B E F O R E:

The Honorable Brian Gibbons, Judge.

A P P E A R A N C E S:

Mr. Matthew W. Shelton
Assistant Solicitor
Union and York Counties
1657-1A York Highway
York, South Carolina 29745
803-818-6605
For the Plaintiff

Mr. James Todd Rutherford
Attorney at Law
P.O. Box 1452
Columbia, South Carolina 29202-1452
803-256-3003
For the Defendant

Wanda Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit
To the Honorable John C. Hayes, III

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

I-N-D-E-X - CON'T

E-X-H-I-B-I-T-S

NO.	DESCRIPTION	ID.	EVD.
CT.1	1 page photo/cell phone		P.10
CT.2	1 page w. 4 photos/cell phone.		P.10

Reporter's Note: All Exhibits were filed with the York County Clerk of Court's Office.

(COURT IN SESSION IN THE MATTER OF STATE VERSUS COREY JAMAL WILLIAMS AT 10:03 A.M.)

SOLICITOR SHELTON: May it please the Court, Your Honor.

THE COURT: Yes, sir.

SOLICITOR SHELTON: Your Honor, the next case on the docket is State versus Corey Kamal Williams. At this time Mr. Williams is before the court with his retained attorney Mr. Todd Rutherford representing him on one count of trafficking marijuana ten to one hundred pounds first offense.

This case was recently on the trial docket; it's my understanding that Mr. Williams is here and wishes to enter a guilty plea as charged. It's been True Billed by the York County Grand Jury. It carries a minimum one year up to ten years; it's classified as a serious and violent offense.

This comes to you as a plea without an agreed upon negotiation or recommendation.

THE COURT: All right, thank you.

Mr. Rutherford, you represent Mr. Williams?

MR. RUTHERFORD: I do, Your Honor.

THE COURT: Have you had a full opportunity to go over this matter with your client?

MR. RUTHERFORD: I have, Your Honor.

THE COURT: Do you agree with his decision to plead guilty?

MR. RUTHERFORD: I do, Your Honor.

THE COURT: All right, Mr. Williams, raise your right hand for me.

Do you swear to tell me the truth?

MR. WILLIAMS: Yes.

(WHEREUPON, COREY KAMAL WILLIAMS, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

THE COURT: All right. Thank you. Lower your hand.

Now, Mr. Williams, I see you're thirty-seven years of age?

MR. WILLIAMS: Yes.

THE COURT: What do you do for a living?

MR. WILLIAMS: I drive and load and unload trucks.

THE COURT: All right. Do you understand what you're doing in court today?

MR. WILLIAMS: Yes, sir.

THE COURT: Do you understand this charge against you?

MR. WILLIAMS: Yes, sir.

THE COURT: You and your lawyer been over all the evidence of the crime?

MR. WILLIAMS: Yes, sir, we have.

THE COURT: All right. And you understand the

possible punishment, you can receive ten years in jail?

MR. WILLIAMS: Yes, sir.

THE COURT: And you understand that that's a minimum one year sentence?

MR. WILLIAMS: Yes, sir.

THE COURT: All right. Understanding the charge against you as well as the potential penalty you can receive, how do you plead?

MR. WILLIAMS: Guilty.

THE COURT: Has anybody forced, pressured, coerced, or made you come to court today to tell me you did something that you really didn't do?

MR. WILLIAMS: No, sir.

THE COURT: Did you do this?

MR. WILLIAMS: Yes, sir.

THE COURT: Has anybody promised you anything or held out any hope or reward to get you to plead guilty against your will?

MR. WILLIAMS: No, sir.

THE COURT: Are you satisfied with your lawyer?

MR. WILLIAMS: Yes, sir.

THE COURT: Has he answered all of your questions?

MR. WILLIAMS: Absolutely.

THE COURT: Do you understand all your constitutional rights?

MR. WILLIAMS: Yes, sir.

THE COURT: Have you all been over those?

MR. WILLIAMS: Yes we have.

THE COURT: Do you understand you give up all those rights when you plead guilty?

MR. WILLIAMS: Yes, sir.

THE COURT: Are you under the influence of anything today that would make you not understand what's going on?

MR. WILLIAMS: No, sir.

THE COURT: Do you understand what's going on?

MR. WILLIAMS: Yes, sir.

THE COURT: All right. You got a family?

MR. WILLIAMS: Yes, sir.

THE COURT: How many, how many kids?

MR. WILLIAMS: Oh, no kids.

THE COURT: Are you married?

MR. WILLIAMS: No, sir. I'm engaged.

THE COURT: What trucking company or what company do you work for?

MR. WILLIAMS: It's called Eli's Transport. It's owned by my father in Orangeburg, South Carolina.

THE COURT: All right. Listen carefully to what the State says happened and I'll come back to you. Okay.

Solicitor.

SOLICITOR SHELTON: Thank you, Your Honor, may it

please the Court.

On Friday, August 2nd, 2013 officers from the York County Multi-jurisdictional Drug Unit approached a man, and reportedly this defendant in this case, he was parked in a vehicle in a parking lot in York County. They had been observing him for some time driving his vehicle around this area, in and out of parking lots, going into a restroom - restaurant not ordering food. A number of things that caused them to be suspicious of his activity.

They approached him they did not engage in any kind of traffic stop or anything, he was parked in his vehicle and they approached him and knocked on the window of his vehicle. He opened the door and officers immediately smelled the strong odor of marijuana coming from inside the vehicle.

They also noted that Williams was very nervous and was sweating heavily even though the air conditioning was on in his vehicle. The officers detained Williams based on the smell of the marijuana and his nervous behavior. In the back of his SUV they found a large cardboard box in the cargo area in plain view. There was a K 9 that goes by the name of Justice who was in the vicinity; he conducted a free air sniff of the box and immediately alerted the presence of drugs inside. The officers could also smell marijuana emanating from the area.

Inside the box they found well over ten pounds of marijuana. Our certified chemist said it was ten pounds, seven ounces when she weighed it about six months ago. The Defense recently hired an independent analysis where they found it to be ten pounds and six ounces and a little bit of change so it's lost a little bit of weight in the six month period but still well above the trafficking level especially when he had it in his possession on the day in question.

At the Law Center Williams told officers he planned to make money off the contents of the box. He had over Six Hundred Dollars cash on him which was seized by officers in the forfeiture action. He consented to a search of his cell phone; on his phone officers saw pictures of what appeared to be a large block of marijuana wrapped in plastic similar to the one they found in his vehicle.

They also noted in the pictures other bags of marijuana and pictures of large amounts of currency in a brief case, multiple phones, and he also had multiple phones present with him at the time of this investigation.

At this time, Your Honor, I would like to offer up a couple of photographs as Court's Exhibits just so you can see what I'm speaking of.

THE COURT: Okay.

SOLICITOR SHELDON: It's one page, there's four

pictures and on the second page there is one picture and these were taken by the police of his cell phone and also the phones that he had.

THE COURT: Have them marked.

SOLICITOR SHELTON: Yes, sir. These will be Court's One and Two.

(WHEREUPON, COURT'S EXHIBITS ONE AND TWO, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SOLICITOR SHELTON: And I'm going to hand these up to Your Honor so you can see what I'm talking about.

And I provided copies of these to the Defense as part of discovery.

THE COURT: All right.

SOLICITOR SHELTON: And, Your Honor, Mr. Williams has one prior conviction on his record out in California. In 2007 he was convicted of a felony for possession of a machine gun. Those are the facts of the case.

THE COURT: All right, Mr. Williams, did you hear what the State just says are the facts of what happened here?

MR. WILLIAMS: Yes, sir.

THE COURT: Is that what happened?

MR. WILLIAMS: Yes.

THE COURT: I accept your plea.

Mr. Rutherford.

MR. RUTHERFORD: Thank you, Your Honor. May it please

the Court. My client and I have discussed the issue of going to trial. There were several issues present in the case, most notable of which is the profile that appears to be a black or Hispanic male traveling in a rental car as my client was. That seems to be a reason to be stopped in South Carolina.

He was followed to a gas station; they PC'd to approach him as the Solicitor stated was he had gone in and out of a gas station restaurant and didn't order food. Not PC'd for most people but certainly a PC for a black or Hispanic male in a rental car. They then approached the car and said that they smelled marijuana. The chemist we hired yesterday went up and looked at the marijuana. It was still sealed in the same package, had lost zero moisture or a half an ounce of moisture between the time that they weighed it when he was initially stopped and yesterday.

If it was sealed that tightly it is hard to imagine how anyone could smell raw marijuana coming from a package in a box that was sealed so tightly it has released no moisture yet the agent said they could. They then brought a dog in and were able to search the package based on that.

But, Your Honor, that leads us to our request. The trafficking statute starts off at ten pounds and goes up to a hundred. At a hundred pounds certainly someone suggest

that that would be at the top of the statute. This is ten pounds, six ounces at the bottom of the statute. Most importantly, Your Honor, as I stated with the issues that relate to the PC for the stop we believe that my client is - should be entitled to a house arrest sentence that Your Honor could suspend the ten years on the service of one year on house arrest. And, Your Honor, would pay for that house arrest out of his own pocket so at no cost to the State.

The house arrest generally runs - and I discussed this with my client - about Seventy Dollars a day compared to the State's incarceration rate which the State's incarceration cost which last week was Nineteen Thousand Dollars, Nineteen Thousand, Six Hundred Dollars a person in general funds. Those include state and federal, Sixteen Thousand State; about Two Thousand federal per inmate. So the savings to the State is almost Twenty Thousand Dollars. Savings to the State is almost Sixteen Thousand Dollars, I apologize.

Your Honor, we believe that that would be - the sentence would be accomplished using house arrest. Ned Polk who is from Rock Hill could operate that house arrest at all cost to the Defendant. We would ask that the Defendant be made to be placed on house arrest by tomorrow afternoon at Five o'clock. If not then he would have to

turn himself in to the Detention Center to start his one year sentence in the Department of Corrections.

THE COURT: Talk to me about whether or not this type of offense qualifies for house arrest.

MR. RUTHERFORD: Your Honor, we passed the Home Detention Act some time ago. There was a question of which I believe has been answered in Greenville and Spartanburg as to whether it applied to cases like this. As Your Honor knows Spartanburg has instituted their HIP program; Richland County has started it, Greenville as well.

They do three year trafficking's on the Home Incarceration Program, Spartanburg, Greenville, and Richland County and I've done those in all counties. Further to legislature amended the law last year to allow someone to get pre-incarceration credit while they're serving on house arrest or any time served in the Department of Corrections would be answering any doubt as to whether you could get credit for home incarceration for a felon.

THE COURT: But you're saying the legislative intent - and I guess you speak as a legislator - the legislative intent - intent of that statute was to allow situations like this to be qualified for house arrest.

MR. RUTHERFORD: That's correct, Your Honor.

THE COURT: Okay.

SOLICITOR SHELTON: Your Honor, may I be heard on that?

THE COURT: Yes, sir, absolutely in regard to this record.

SOLICITOR SHELTON: I'm looking at 24-13-1530 of the Code of Laws; it specifically says this applies to non-violent adult and juvenile offenders this option. This is a violent offense as defined by the General Assembly and our Code of Laws. It's violent and serious. Considering that on it's face coupled with the fact that Mr. Williams has a prior weapon conviction, a felony weapon conviction, also the fact that most of our recent murders have involved drugs, and there is a known nexus between drugs and violence, this is clearly a - something that is not envisioned by the sentence as far as - by the statute as far as the Solicitor's office is concerned.

I've spoken with Solicitor Brackett about this as well that you have as well. This is not something our office consents to. We do not think that the statute quotes anything that deals with this concept. Any other statutes I may not be referencing do not apply to violent offenses as is trafficking marijuana. And all trafficking charges for that matter.

THE COURT: Okay. Thank you.

Anything else, Mr. Rutherford?

MR. RUTHERFORD: Nothing, Your Honor.

THE COURT: All right, Mr. Williams, anything you would like to tell me?

MR. WILLIAMS: Nothing from me, Your Honor. I would you know I do apologize for everything that's happened. It's been - it's been made evident - ever evident to me that everything that I've seen and that has transpired in this case I know for sure that no mistakes will be made by me criminally ever again in my life. So, you know, the lessons that need to be taught by prison I think I've learned already but I'm still not trying to you know down play or minimize anything that has been done.

THE COURT: All right. Thank you, sir.

All right, I'll try to write everything on the sentencing sheet so everybody will understand the intent of my sentence without having the record accompanying it.

All right, Solicitor, your argument is duly noted on the record. I will just say from a practical standpoint this Court along with numerous other Circuit judges - I can't state all their names - has interpreted the Home Detention or the Home Incarceration Program, whatever you want to call it its referred to HIP in other counties to allow the Court leeway to sentence a situation such as this to house arrest.

Now I can't cite the specific reasoning for that. I

just know I've done it, I know many other judges who have done it, it's regularly done in Greenville, Pickens or that's the Thirteenth Circuit has regularly done it. The Fifth Circuit has regularly done it, the Seventh Circuit. It will be unless I am instructed otherwise regularly done in the Sixth Circuit. And so I know you all's policy here in the Sixteenth Circuit is not to do it and that's fine.

But of course I'm the judge, I'm the one who passes the sentence not the solicitor's office but I certainly think its appropriate in this case to enact and order a sentence such as your lawyer has suggested, Mr. Williams.

But I want you to understand, this isn't an easy sentence. Now you go to jail for a year you know even though it's a violent serious offense, you have to serve eighty-five percent, you're eligible for parole after eight months. Okay. Well house arrest you're not. It's a day for day. Okay. And people think house arrest is easy. It's not. There's terms and conditions of it. You're wearing an electronic monitor. If you violate any of it you go ten years hanging over your head.

And I've had situations where on my sentences or on other judges sentences where I have revoked the house arrest and people go to jail for ten years. And sometimes even longer. So while I certainly understand the State's position as to the Court's ability to do this, I'm gonna

fashion this sentence this way.

All right, the sentence of the Court is ten years provided upon the service of one year of house arrest paid for by you, Polk to monitor with electronic monitoring.

Balance is suspended, you're on probation for two years. So the first year of your probation you're on house arrest with electronic monitoring. The second year of your probation you're just on probation. The terms and conditions while you're on it is substance abuse counseling, random drug and alcohol testing. Okay.

If you violate any terms and conditions of the probation I'm telling you I don't know what other judges do up here and that's certainly within their discretion, I'm telling you what I do, you know. And what I do is revoke in full and you go to jail for ten years. Okay.

Anything else for the record?

SOLICITOR SHELTON: Your Honor, can I put one other thing on the record?

THE COURT: Yes, sir.

SOLICITOR SHELTON: Its come to my attention that - I'm not familiar with the other circuits, but it's come to my attention that there are specific administrative orders in place in these other circuits that account for these possible sentences under the HIP Program and that the Probation Pardon and Parole Office's there are equipped to

deal within their normal course. We do not have such an administrative order in the Sixteenth Circuit. I'm not aware of whether or not our probation office is capable of enforcing this and that is certainly a factor that is outlined in the statute that I cited earlier.

You know a part of why we were discussing it earlier you know it's not just a matter of policy, there is no administrative order in place that creates a mechanism for this - for a court sentence to be carried out.

I want to put that on the record -

THE COURT: You got - -

SOLICITOR SHELTON: I would ask you considering that for you to reconsider your sentence. And at the minimum for the record I make a motion for you to reconsider this sentence given those factors.

THE COURT: Thank you.

MR. Rutherford.

MR. RUTHERFORD: Your Honor, just briefly.

As the Solicitor may not know, because this is conducted privately, he has nothing to do with these private sentences that are done in other parts of the county. Now would they have anything to do with this one until he reaches the status of probation.

But to correct one thing he said - not to correct but to add to - this sentence is much harsher than a one year

sentence. Your Honor stated that it would be an eighty-five percent but because it's less than twenty years it's really a violent sentence which means he would only serve in the Department of Corrections four months before he was eligible for parole as opposed to eight and a half. So he would actually only serve four months incarceration as opposed to a full one year on house arrest. so he would actually do more time on house arrest than he would if he went to the Department of Corrections.

THE COURT: All right. Anybody else wish to speak since we're making a record on this sentence?

Madam Probation?

MADAM PROBATION: We haven't dealt with this much.

THE COURT: Right.

MADAM PROBATION: We have had a case come from I think Greenville several years ago. But my understanding was that they were on house arrest, with house arrest only, and we didn't touch 'em until they got through with house arrest and then we supervised probation. But that was years ago.

THE COURT: Mr. Rutherford, since you suggested Mr. Rogue obviously you've spoken with Mr. Polk about this previously or maybe worked with him before, what type of perimeters does he have for his house arrest?

MR. RUTHERFORD: Your Honor, they can go to work, they

can go home, they can go to church, they can go see their lawyer or to the doctor and that's it.

THE COURT: Okay. So any violation of that he reports to whom?

MR. RUTHERFORD: He reports to the Court. He reports to the Solicitor.

THE COURT: Reports to the Solicitor ---

MR. RUTHERFORD: That's correct.

THE COURT: --- or the way I fashioned this sentence I guess he can cause I wrote on here first year of probation he's on house arrest, it may not necessarily be an active probation but he - any violation of that would be reported to the Department -

Your department, Madam Probation.

That's now I intend this to happen -

MR. RUTHERFORD: Yes, Your Honor.

THE COURT: --- and kind of incorporate that on the record to make sure the community is protected in the event you do something.

Now people come in front of me all the time for violating probation. Okay. I hope you don't do that cause you know what's gonna happen if you do.

MR. WILLIAMS: Yes, sir.

THE COURT: Now you know the Solicitor, they don't agree with this sentence so they gonna come full bore at

you. Okay. So you know that?

MR. WILLIAMS: Yes, sir.

THE COURT: All right. Anything else?

SOLICITOR SHELTON: Yes, sir, Your Honor. I think especially with this being a private monitoring company was being proposed, I think the Court needs to issue some sort of order requiring them to have these parameters. I mean I know we have a sentencing sheet but I would recommend that Mr. Rutherford pose something to the Court obviously reviewing it through us first, cause a house arrest monitoring company isn't necessarily - they have a standard practice and generally are equal in York County. That's only when they are out on bond. So if there are any conditions or anything like that it might be better to reduce it in the order so it's very clear to them what the parameters are.

THE COURT: I'm amiable to signing that if Mr. Rutherford wants to prepare it. I wrote in on my sentencing sheet that Polk to monitor and report to DPPS of any violation. All right. I think that will be sufficient at this point in time but hopefully this will take care of that. Okay.

Mr. Williams, do you have any questions about what you're supposed to do?

MR. WILLIAMS: No, sir.

THE COURT: All right. Mr. Rutherford, any questions?

MR. RUTHERFORD: No, Your Honor.

THE COURT: All right. Anything further from the State?

SOLICITOR SHELTON: No, sir.

THE COURT: Anything further from Probation?

MADAM PROBATION: Your Honor, between now and when he's hooked up on a monitor he's allowed to be unmonitored?

THE COURT: Well Mr. Rutherford, did you ask for that, for me to delay that until tomorrow? I'm not inclined to do that. Okay. So he needs to be --

Yes, sir.

THE COURT: Okay. I'm sorry, I thought you were wanting to talk, I'm trying to make sure - -

All right, so he'll be taken into custody.

MR. RUTHERFORD: Yes, sir.

THE COURT: Okay. And then Mr. Polk will come up here and work all that out and get you rolling and you will be good to go. It may be tomorrow but it is what it is.

MR. WILLIAMS: Yes, sir.

THE COURT: Good luck to you.

MR. RUTHERFORD: Thank you, Your Honor.

THE COURT: Okay.

(END OF TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 28th day of August, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: September 12, 2014

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

MOTION TO DISMISS APPEAL AS MOOT

Respondent, through his undersigned counsel, would respectfully show unto this Court as follows.

1. The State has appealed the sentence given to respondent by the Honorable Brian Gibbons. On August 28, 2014, Judge Gibbons sentenced respondent to ten years' imprisonment suspended upon the service of one year's imprisonment served as home detention and two years' probation. Tr. 15, l. 13 – 17, l. 15 (A copy of the sentencing hearing is attached to this motion as "Exhibit A."). Matthew W. Shelton represented the State at the hearing. Tr. 1. Todd Rutherford represented respondent. Tr. 1.

2. The State's sole issue on appeal is whether Judge Gibbons had the authority to order that respondent's imprisonment be served as home detention pursuant to S.C. Code Ann. § 24-13-1530. (Initial Br. App. at 1). In its brief, the State asks for the relief of resentencing "within the confines of the statute." (Initial Br. App. at 11.) Although the State did not expressly say so in its brief, presumably the State intends that respondent receive a year's imprisonment in the Department of Corrections.

3. Respondent will complete his sentence of imprisonment on August 29, 2015. Therefore, respondent will have finished his sentence before the conclusion of this appeal.

4. A sentence of home detention is a sentence of imprisonment. "Home detention" is defined as a type of "confinement." S.C. Code Ann. § 24-13-1520(4). Furthermore, when computing credit for time served, time spent on house arrest may be given. S.C. Code Ann. § 24-13-40. Judge Gibbons aptly compared a sentence of home detention, which is served "day for day," with a sentence in the Department of Corrections where Respondent would have been eligible for parole after the service of eight months. Tr. 16, ll. 12 – 20. Respondent's counsel noted that he would have actually been eligible for parole after the service of four months' imprisonment. Tr. 18, l. 24 – 19, l. 9. When read together, it is clear from these statutes that home detention is considered imprisonment and—at least in terms of length—is harsher than a sentence in prison.

5. Because respondent will have finished his sentence of imprisonment before the end of this appeal, the State cannot receive the relief it has requested. Respondent cannot serve a year's imprisonment on home detention and then be resentenced to serve another year's imprisonment in the Department of Corrections. This renders the case moot. 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.

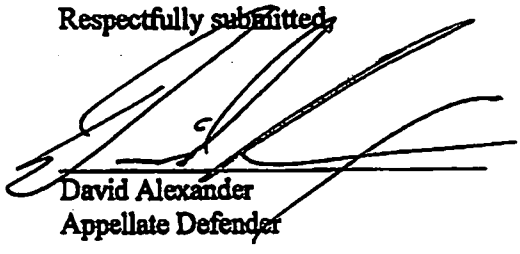
6. Respondent expects that the State will advocate that this Court use the exception of "capable of repetition but evading review" to hear this moot case. The Court should not apply that exception in this case for two reasons. First, the State cannot show that this question will always evade review. A trial judge could sentence a defendant to a longer period of home detention than received by respondent. Under that scenario, an appellant may not have served all of his period of imprisonment before the adjudication of his appeal. Indeed, respondent's counsel noted that people in several counties receive three-year home detention sentences. Tr. 13, ll. 5 – 19.

7. Second, as is demonstrated by the sentencing hearing and the State's brief, other cases should provide a much better opportunity for the application of an exception to the mootness doctrine. The trial judge agreed with respondent's counsel's statements that other circuits and counties have policies in place that substitute home detention for imprisonment in the Department of Corrections. Tr. 13, ll. 5 – 24. Tr. 15, l. 13 – 17, l. 15. The solicitor noted that other circuits have specific administrative orders in place regarding such sentences and that the county involved in this prosecution did not. Tr. 17, l. 20 - 18, l. 9. The Attorney General argued in its brief that such orders are "improper administrative orders." Initial Br. App. at 9. If the Court is to apply an exception to the

mootness doctrine, it should do so in a case arising from a county where such an "improper administrative order" exists because of the systemic reasons involved and where such sentences are given with regularity. The Court should decline to apply the exception to this moot case when the practice is not being repeated in York County, but apparently is being repeated in other counties. Cases arising from a county or circuit with such an administrative order would provide a much better reason for the Court to render a decision in a moot case than this case, which is merely a singular application to the specific facts involving respondent.

WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, and dismiss this appeal as moot.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

August 5, 2015

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

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion to Dismiss Appeal as Moot 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 and Corey Jamal Williams at 1098 Buttercup Circle, Blythewood, SC 29016, this 5th day of August, 2015.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of August, 2015.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA

IN THE 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 MOTION TO DISMISS APPEAL AS MOOT

The State of South Carolina respectfully requests that this Court accept its response and submits the following in opposition to Respondent's Motion to Dismiss Appeal as Moot:

1. Respondent, Corey Jamal Williams, was indicted at the February 2014 term of the General Sessions Court for York County for one count of trafficking in marijuana. On August 28, 2014, Appellant pled guilty before the Honorable Brian M. Gibbons. Assistant Solicitor Matthew W. Shelton represented the State at the plea proceeding, and Todd Rutherford, Esquire, represented Respondent. Judge Gibbons accepted Respondent's guilty plea and sentenced him to ten years' imprisonment suspended upon the service of one year's imprisonment served as home detention and two years' probation.[1] Thereafter, the State filed and served notice of appeal on

[1] In its Initial Brief, Appellant mistakenly referred to Respondent's sentence in its Statement of the Case as "ten years' imprisonment suspended upon two years' probation, the first year of

September 2, 2014.

2. The issue on appeal is whether the plea judge had the authority to order Respondent to serve his imprisonment by house arrest when S.C. Code Ann. § 24-13-1530(A) (2007) clearly states that "home detention programs may be used as an alternative to incarceration for low risk, nonviolent adult and juvenile offenders," and Respondent's crime of trafficking is statutorily classified as violent by S.C. Code Ann. § 16-1-60.

3. The State filed its initial brief on January 30, 2015. On April 2, 2015, this Court sent a letter to counsel of record, Todd Rutherford and Chief Appellant Defender Robert Dudek, notifying them that the initial brief should have been served and filed and instructing them to file the brief within ten days of the letter. On April 27, 2015, Appellant Defender David Alexander filed a Petition in Which to File Extension to File Initial Brief of Respondent and Designation of Matter Out of Time. In it, he explained the affidavit of indigency necessary for Appellant Defense to accept the case was not completed in a timely manner, resulting in the filing deadline expiring before the case was assigned. This Court granted an extension until May 13, 2015. This Court subsequently granted a second extension until June 12, 2015. Respondent filed a third Petition for Extension on June 12, 2015, on which this Court did not rule. Finally, Respondent filed a "fourth and final" Motion for an Extension on July 13, 2015, which this Court granted until August 12, 2015, effectively bringing the due date close enough to the end date of his alleged "sentence of imprisonment" to argue mootness.

4. With the fourth filing deadline for the Initial Brief of Respondent rapidly approaching,

---

which consists of house arrest with electronic monitoring." Additionally, Appellant incorrectly stated in its Argument section that the ten-year sentence was suspended to one year of house arrest and *one* year of probation. The actual sentence was ten years' imprisonment suspended upon the service of one year's imprisonment served as home detention and *two* years' probation, the first year of which consisted of house arrest, as indicated on the sentencing sheet. Unless Respondent objects or this Court prohibits it, Appellant will correct these errors in its Final Brief.

Respondent filed his Motion to Dismiss Appeal as Moot on August 5, 2015. In that motion, Respondent now argues that he "will complete his sentence of imprisonment on August 29, 2015" and, thus, he "will have finished his sentence before the conclusion of this appeal."

5. The State submits Respondent will not in fact complete his "sentence of imprisonment" on August 29, 2015. Respondent was charged under Section 44-53-370(e), the trafficking statute, which specifically provides that anyone convicted of trafficking in marijuana between ten pounds and a hundred pounds, as Respondent was, must be punished "for a first offense, [to] a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars." S.C. Code Ann. § 44-53-370(e)(1)(a)(1) (2002 & Supp. 2013). Therefore, Respondent will not have completed his sentence of imprisonment until he has served at least one year of imprisonment.

6. Black's Law Dictionary defines "imprison" as "1. To put into prison; to jail; incarcerate. 2. To keep (a person) somewhere so that the person is not at liberty, while preventing any departure." Black's Law Dictionary 875 (10th ed. 2014). Respondent has neither been incarcerated in a prison or jail nor been prevented from departure while under house arrest. Therefore, he has not been imprisoned and has not served his mandatory one year of imprisonment as required by the statute under which he was charged.

7. The State's argument on appeal is that because trafficking is a violent crime, as defined in Section 16-1-60, the plea judge erred in sentencing Respondent to house arrest for this crime. The trial court has broad discretion in giving sentences within the statutory limits. Brooks v. State, 325 S.C. 269, 271-72, 481 S.E.2d 712, 713 (1997). However, a plea judge abuses his discretion if the given sentence does not fall within specific statutory limits. Similarly, a judge abuses his discretion if he does not follow the plain language of a statute that explicitly prohibits

suspension of the sentence for a particular crime. State v. Thomas, 372 S.C. 466. 468, 642 S.E.2d 724, 725 (2007). Here. the statute in question clearly and unambiguously limits house arrest to low-risk. nonviolent offenders. Additionally, Section 44-53-370(e) specifically prohibits suspension of any part of the mandatory minimum one-year sentence. S.C. Code Ann. § 44-53-370(e)(1)(a)(1) (2002 & Supp. 2013). Thus. the plea judge abused his discretion by sentencing Respondent, a violent offender by statutory definition who was convicted of a non-suspendable offense, to house arrest after suspending his non-suspendable ten-year sentence. See S.C. Code Ann. § 16-1-60 (listing "violent crimes defined" and including drug trafficking as defined in Section 44-53-370(e)). Because the sentence was not within the confines of the statute. and therefore was an illegal sentence based on an abuse of discretion by the plea judge, Respondent cannot possibly complete this illegal sentence before his brief is due.

8. Furthermore, even if this Court finds this issue is moot as to Respondent, the issue itself is certainly capable of repetition yet evading review. According to plea counsel, other counties have policies in place that substitute home detention for imprisonment.[2] Thus, Respondent's own argument concerning the prevalence of the practice supports the notion that the issue most certainly is capable of repetition. In Nelson v. Ozmint, where the petitioner was released from prison prior to the appeal, the Supreme Court found that even though his claim was moot, the issue was capable of repetition yet evading review because "most inmates will have served the year required by SCDC's interpretation of the statute before the lawfulness of the interpretation can be reviewed." 390 S.C. 432, 434–35, 702 S.E.2d 369, 370 (2010). The Court construed its opinion as an action for a declaratory judgment basing it on the following authorities: S.C. Code

[2] The fact that, as Respondent noted in his motion, the plea judge agreed with counsel that this practice exists should be of no moment to this Court when determining the meaning of the statute.

Ann. § 15-53-30 (2005) (a party whose rights, status, and other legal relations are affected by a statute may seek a court's determination of any question of construction or validity of the statute and obtain a declaration of the party's rights, status, or other legal relations thereunder); S.C. Code Ann. § 15-53-130 (2005) (purpose of the Declaratory Judgment Act is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and it is to be liberally construed and administered); Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992) (the Supreme Court can render a declaratory judgment when a justiciable controversy setting legal rights of parties exists). Here, 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.

9. Respondent argues another case would "provide a much better opportunity for the application of an exception to the mootness doctrine" and suggests this Court apply the exception to a case from one of the counties or circuits that allegedly has an administrative order in place. However, this practice was presented to the plea judge and encouraged by a state legislator who practices as an attorney in many different circuits, including the ones mentioned in the transcript. The judge was a visiting judge, and the circuit where this case took place did not have such an order.[3] Thus, it is apparent this issue could arise in any circuit where a defense attorney who successfully argues for it practices. See In re Vincent J., 333 S.C. 233, 235 n.1, 509 S.E.2d 261, 262 n.1 (1998) ("Although appellant has served the confinement part of his sentence, this case is not moot because this is a situation that is capable of repetition yet evading review."). While the State could not locate any written orders setting forth a procedure for sentencing people

[3] Indeed, the plea judge noted he knew the policy in the Sixteenth Circuit was not to do it.

convicted of violent crimes to house arrest in lieu of incarceration, it is aware from its research into the issue that the practice has been and continues to be followed in some circuits by some judges. This is all the more reason this issue needs to be resolved by this Court so that all circuits uniformly follow the same practice based on the statute.

10. Based on all the foregoing, the State prays this Court deny Respondent's Motion to Dismiss Appeal as Moot.

WHEREFORE, the State moves this Court to deny Respondent's request to dismiss the State's appeal as moot.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BY: Jennifer Ellis Roberts
Jennifer Ellis Roberts
S.C. Bar No: 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

August 17, 2015

STATE OF SOUTH CAROLINA

IN THE 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.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Respondent's Motion to Dismiss Appeal as Moot on Respondent by depositing two (2) copies of same in the United States mail, postage prepaid, addressed to: David Alexander, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211.

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

This 17th day of August, 2015.

ANGELA BENNETT
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

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

REPLY TO RETURN TO MOTION TO DISMISS APPEAL AS MOOT

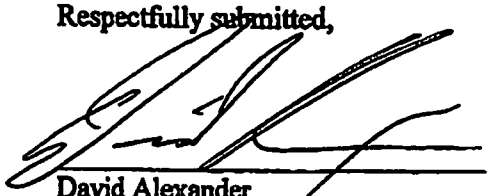
Respondent, through his undersigned counsel, would respectfully show unto this Court as follows. Respondent makes two points in reply to the State's Return to the Motion to Dismiss Appeal as Moot.

1. At no point in the State's Return did it assert that Respondent can be forced to serve a year in the Department of Corrections. The State argues that his sentence is illegal because imprisonment cannot mean home detention. Even if the State is correct, it failed to address what remedy can be granted in this case. It did not assert that, if the State prevails on the merits, the remedy is that respondent would then be forced to spend a year in prison. Nor could the State receive such a remedy. Without a remedy that can be granted by this Court, the case is moot.

2. Counsel also must reluctantly respond to the State's paragraphs 3 and 4 regarding the initial delay in acceptance of this case by Appellate Defense and the number of extensions taken by counsel for respondent. Counsel hopes it was not the State's intent to imply that counsel was attempting to game the system to moot this case. Counsel for respondent endeavors to work on cases with the most number of extensions before turning to cases with less extensions and reached this case in the normal course of his practice. When counsel reviewed this case and saw it was moot, counsel felt it was his duty to inform the Court of this fact and advance this argument for the benefit of his client. Counsel believes it is the prudent approach to raise the mootness issue now instead of wasting the Court's scarce resources reviewing and researching the merits only to then file a motion to dismiss the case as moot on August 29, 2015—nine days from now. Furthermore, even if this case had already been affirmed, since the State almost always petitions the Supreme Court for certiorari when it loses a case in this Court, the mootness problem still would have arisen even if no extensions were taken by either party.

WHEREFORE, Respondent prays that the Court dismiss this appeal as moot.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

August 20, 2015

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

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Reply to Return to Motion to Dismiss Appeal as Moot 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 and Corey Jamal Williams at 1098 Buttercup Circle, Blythewood, SC 29016, this 20th day of August, 2015.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of August, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

The South Carolina Court of Appeals

The State, Appellant,

v.

Corey Jamal Williams, Respondent.

Appellate Case No. 2014-001886

ORDER

Respondent's motion to dismiss is denied. Respondent shall serve and file his initial brief within thirty days of entry of this order.

FOR THE COURT

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
Jennifer Ellis Roberts, Esquire
Kevin Scott Brackett, Esquire
David Alexander, Esquire

FILED
10/20/15

WITNESSES

EU / Avidon

ARREST WARRANT NUMBER

013A4610201172

ACTION OF GRAND JURY

TRUE BILL

Rebecca M. Means

Foreperson of Grand Jury

Date: 2/20/14

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-46- 00481

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

February 20, Term 2014

THE STATE

vs.

COREY JAMAL WILLIAMS

Indictment for

TRAFFICKING IN MARIJUANA

SC Code: 44-53-370(e)(1)(a)
CDR Code: 2360

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on February 20, 2014, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN MARIJUANA

On or about August 2, 2013, the Defendant, Corey Jamal Williams, did knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of 10 pounds or more of marijuana. Said incident occurred in York County, South Carolina, all in violation of Section 44-53-370, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Brian Gibbons, Circuit Court Judge

Appellate Case No. 2014-001886

THE STATE,

Appellant,

v.

COREY JAMAL WILLIAMS,

Respondent.

FINAL BRIEF OF APPELLANT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

PO Box 11549
Columbia, S. C. 29211
(803) 734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

1675-1A York Highway
Moss Justice Center
York, SC 29745
(803) 628-3020

ATTORNEYS FOR APPELLANT.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Other Authorities:

STATEMENT OF ISSUE ON APPEAL

The plea court erred in interpreting S.C. Code Ann. § 24-13-1530 to allow a sentence of house arrest for the violent crime of trafficking when the plain language of the statute makes clear it only applies to "low risk, nonviolent adult and juvenile offenders."

STATEMENT OF THE CASE

A York County Grand Jury indicted Respondent for trafficking in marijuana, ten to one hundred pounds, first offense pursuant to section 44-53-370(e)(1)(a)(1). (R.41.) On August 28, 2014, Respondent pled guilty before the Honorable Brian Gibbons. Todd Rutherford, Esquire, represented Respondent, and Assistant Solicitor Matthew Shelton, Esquire, represented the State. Judge Gibbons accepted Respondent's guilty plea and sentenced him to ten years' imprisonment suspended upon two years' probation, the first year of which consists of house arrest with electronic monitoring. (R. 17.)

On September 2, 2014, Appellant filed a Notice of Appeal. This brief follows.

STATEMENT OF FACTS[1]

On Friday, August 2, 2013, officers from the York County Multi-jurisdictional Drug Unit observed Respondent driving his vehicle in and out of parking lots in a suspicious manner. After Respondent parked, the officers approached and knocked on the window of the vehicle. When he opened the door, the officers smelled a strong odor of marijuana. The officers observed that Respondent was very nervous and sweating heavily. Based on the smell of marijuana and his nervous behavior, the officers detained Respondent. They saw a large box in plain view in the cargo area of the vehicle. A K-9 drug dog that was in the vicinity alerted to the presence of drugs inside the box. The officers could also smell marijuana coming from the area. (R. 8, lines 2-25.)

Officers found over ten pounds of marijuana inside the box. Respondent told officers he planned to make money off the drugs in the box. At the time of arrest, he had over $600 on his person. Officers found pictures of a large box of marijuana on Respondent's cell phone. Additionally, officers found pictures of other bags of marijuana and pictures of large amounts of cash in a brief case, as well as multiple phones. (R. 9, lines 1-20.)

At the plea proceeding, the court conducted a standard colloquy establishing Respondent was freely, intelligently, and voluntarily pleading guilty to trafficking in marijuana, ten to one hundred pounds, first offense pursuant to section 44-53-370(e)(1)(a)(1). (R. 5, line 17-R. 7, lines 13; R.41.) He acknowledged the minimum sentence was one year. (R. 6, lines 3-5.) Respondent agreed with the recitation of facts given by the State, and the plea court accepted his plea. (R. 10, lines 18-23.) Defense counsel then requested Respondent be sentenced to ten years' imprisonment suspended to

[1] The following facts were recited by the State at Respondent's plea hearing.

one year of house arrest. (R. 12, lines 2-21.) He explained to the plea judge that other counties had used the Home Incarceration Program (HIP) in imposing sentences for trafficking.[2] (R. 13, lines 5-19.) The State responded by arguing that the HIP statute, section 24-13-1530, specifically applies only to nonviolent and juvenile offenders. (R. 14, lines 5-7.) The State pointed out that trafficking is a violent crime as defined by statute under section 16-1-60. (R. 14, lines 7-9.) The solicitor argued:

> Considering that on [its] face coupled with the fact that [Respondent] has a prior weapon conviction, a felony weapon conviction, also the fact that most of our recent murders have involved drugs, and there is a known nexus between drugs and violence, this is clearly a – something that is not envisioned by the sentence as far as – by the statute as far as the Solicitor's office is concerned.

(R. 14, lines 9-16.) The plea court ruled:

> I will just say from a practical standpoint this Court along with numerous other Circuit judges-I can't state all their names-has interpreted the Home Detention or the Home Incarceration Program, whatever you want to call it it[']s referred to [as] HIP in other counties to allow the Court leeway to sentence a situation such as this to house arrest.
>
> Now I can't cite the specific reasoning for that. I just know I've done it, I know many other judges who have done it, it's regularly done in Greenville, Pickens or that[] the Thirteenth Circuit has regularly done it. The Fifth Circuit has regularly done it, the Seventh Circuit. It will be unless I am instructed otherwise regularly done in the Sixth Circuit. And so I know you all's policy here in the Sixteenth Circuit is not to do it and that's fine.
>
> But of course I'm the judge, I'm the one who passes the sentence not the solicitor's office but I certainly think it[']s appropriate in this case to enact and order a sentence such as your lawyer has suggested . . . . So while I certainly understand the State's position as to the Court's ability to do this, I'm gonna fashion this sentence this way.

[2] S.C. Code Ann. § 24-13-1530 (2007).

(R. 15, line 18-R. 17, line 1.) The plea judge sentenced Respondent as follows: "[Y]ou're on probation for two years. So the first year of your probation you're on house arrest with electronic monitoring. The second year of your probation you're just on probation." (R. 17, lines 5-8.) The State then argued:

> It[']s come to my attention that-I'm not familiar with the other circuits, but it's come to my attention that there were specific administrative orders in place in these other circuits that account for these possible sentences under the HIP Program and that the Probation Pardon and Parole Officer[]s there are equipped to deal within their normal course. We do not have such an administrative order in the Sixteenth Circuit. I'm not aware of whether or not our probation office is capable of enforcing this and that is certainly a factor that is outlined in the statute that I cited earlier.
>
> You know part of why we were discussing it earlier you know it's not just a matter of policy, there is no administrative order in place that creates a mechanism for this-for a court sentence to be carried out.

(R. 17, line 20-R. 18, line 9.)

At that point, the State asked the plea judge to reconsider his sentence. (R. 18, lines 12-15.) The courtroom representative from the S.C. Department of Probation, Parole and Pardon Services (the Department) told the court she had not dealt with this issue much but her understanding, based on a case years ago in Greenville, was that the Department did not get involved until after the person finished house arrest and began probation. (R. 19, lines 12-20.) Defense counsel explained the parameters of the house arrest and indicated that Ned Polk, a private operator, would monitor the house arrest and report any violation to the Solicitor. (R. 12, lines 21-23; R. 19, line 21-R. 20, line 8.) The plea judge then stated that he had written on the sentencing sheet that any violation

during the year of house arrest would be reported to the Department.[3] (R. 20, lines 9-14.) After the State requested the plea judge issue an order requiring the monitoring company to have certain parameters, the plea judge requested defense counsel prepare one and indicated he would sign it.[4] (R. 21, lines 4-22.)

[3] Because the HIP contemplates using house arrest as "an alternative to incarceration" but does not actually place the person on probation, it appears the Department would have no jurisdiction to monitor or enforce the terms of the HIP.

[4] It appears no order was ever prepared by counsel despite the request.

ARGUMENT

The plea court erred in interpreting S.C. Code Ann. § 24-13-1530 to allow a sentence of house arrest for the violent crime of trafficking when the plain language of the statute makes clear it only applies to "low risk, nonviolent adult and juvenile offenders."

The State submits the plea court erred in suspending Respondent's ten-year sentence to one year of house arrest and one year of probation based on section 24-13-1530 of the South Carolina Code. The statute 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) (2007) (emphasis added). Because trafficking is a violent crime, as defined in section 16-1-60, the plea judge erred in sentencing Respondent to house arrest for this crime. Thus, this Court should reverse and remand for resentencing within the confines of the statute.

All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). The court should look to the plain language of the statute. Binney v. State, 384 S.C. 539, 544, 683 S.E.2d 478, 480 (2009). If the language of a statute is unambiguous and conveys a clear and definite meaning, then the rules of statutory interpretation are not needed and the court has no right to impose a different meaning. State v. Gaines, 380 S.C. 23, 33, 667 S.E.2d 728, 733 (2008). In interpreting a statute, the court will give words their plain and ordinary

meaning and will not resort to forced construction that would limit or expand the statute. State v. Johnson, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011).

Because the language of the statute clearly provides it only applies to "low risk, nonviolent adult and juvenile offenders," there is no need for this Court to "resort to forced construction that would . . . expand the statute" to include violent offenders. Id. Indeed, because of the statute's unambiguous, clear, and definite language, the plea court and this Court have "no right to impose a different meaning." See Gaines, 380 S.C. at 33, 667 S.E.2d at 733.

As the plea judge himself explained, the only reason he even sentenced Respondent to house arrest was because he knew other judges had done it in other counties and circuits.[5] However, simply because it has been done in other counties and circuits does not change the plain language of the statute, which clearly only includes "low risk, nonviolent adult and juvenile offenders." As the State pointed out during the plea hearing, the circuits that have allowed house arrest sentences for crimes that fall outside the statutory language have established their own administrative orders regarding their use of the HIP. The State explained to the visiting plea judge that the Sixteenth Circuit has no administrative order in place that creates an improper mechanism for this. (R. 17, line 20-R. 18, line 10.)

Here, the plea judge readily admitted he could not "cite the specific reasoning for" the fact that "other counties [] allow the Court leeway to sentence a situation such as this to house arrest." (R. 15, line 25.) This is likely because no valid reasoning exists to support the practice. He also admitted he was aware that the "policy here in the Sixteenth Circuit is not to do it and that's fine." (R. 16, lines 6-7.) Ultimately, he passed the

[5] It is worth noting the judge in this case was a visiting judge from the Sixth Circuit.

sentence in the manner he did because "of course I'm the judge." (R. 16, lines 8-11.) For this judge to sentence Respondent to house arrest based on what other circuits may do based on their own improper administrative orders, when he was fully aware no such order existed in the Sixteenth Circuit, was error and must be reversed.

Furthermore, the Supreme Court recognized in State v. Thomas, 372 S.C. 466, 642 S.E.2d 724 (2007), and State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011), that numerous penal statutes include explicit language prohibiting suspension of sentences. The Court declined to extend the general power to suspend sentences derived from S.C. Code Ann. § 24-21-410 to offenses where the legislature specifically mandated that no part of a sentence may be suspended. Thomas, 372 S.C. at 468, 642 S.E.2d at 725. Section 44-53-370(e), the trafficking statute, specifically provides that anyone convicted of trafficking in marijuana between ten pounds and a hundred pounds, as Respondent was, must be punished "for a first offense, [to] a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars." S.C. Code Ann. § 44-53-370(e)(1)(a)(1) (2002 & Supp. 2013). Therefore, the plea judge had no power to suspend part of Respondent's sentence to what was essentially two years of probation with the first year consisting of house arrest. (R. 17, lines 5-8.)

The trial court has broad discretion in giving sentences within the statutory limits. Brooks v. State, 325 S.C. 269, 271-72, 481 S.E.2d 712, 713 (1997). However, a plea judge abuses his discretion if the given sentence does not fall within specific statutory limits. Similarly, as stated above, a judge abuses his discretion if he does not follow the plain language of a statute that explicitly prohibits suspension of the sentence for a particular crime. Thomas, 372 S.C. at 468, 642 S.E.2d at 725. Here, the statute in

question clearly and unambiguously limits house arrest to low-risk, nonviolent offenders. Additionally, Section 44-53-370(e) specifically prohibits suspension of any part of the mandatory minimum one-year sentence. S.C. Code Ann. § 44-53-370(e)(1)(a)(1) (2002 & Supp. 2013). Thus, the plea judge abused his discretion in sentencing Respondent, a violent offender by statutory definition who was convicted of a non-suspendable offense, to house arrest. See S.C. Code Ann. § 16-1-60 (listing "violent crimes defined" and including drug trafficking as defined in Section 44-53-370(e)).

Respondent may argue the term "violent" as used in § 16-1-60 is different from the way it is used in the HIP statute. However, the State would submit that even if being a statutorily defined "violent" offense were not sufficient to, in and of itself, exclude Respondent's crime from falling under the HIP statute, the nature of the crime itself would certainly be sufficient to demonstrate to the sentencing judge that he was NOT a low-risk, nonviolent offender by any stretch of that definition. As the State pointed out at the plea:

> Considering that on [its] face coupled with the fact that [Respondent] has a prior weapon conviction, a felony weapon conviction, also the fact that most of our recent murders have involved drugs, and there is a known nexus between drugs and violence, this is clearly a – something that is not envisioned by the sentence as far as – by the statute as far as the Solicitor's office is concerned.

(R. 14, lines 10-16.) (emphasis added.)

This Court has recognized the direct nexus between drugs and violence in State v. Williams, 380 S.C. 336, 669 S.E.2d 640 (Ct. App. 2008).

> Quite apart from the pernicious effects on the individual who consumes illegal drugs, such drugs relate to crime in at least three ways: (1) A drug user may commit crime because of drug-induced changes in physiological functions, cognitive ability, and mood; (2) A drug user may

> commit crime in order to obtain money to buy drugs; and (3) A violent crime may occur as part of the drug business or culture. Studies bear out these possibilities and demonstrate a direct nexus between illegal drugs and crimes of violence.

Id. at 348, 669 S.E.2d at 646-47 (quoting Harmelin v. Michigan, 501 U.S. 957, 1002-03 (1991) (emphasis added)). Therefore, the plea court abused its discretion in finding house arrest was an appropriate sentence for the crime of trafficking pursuant to section 24-13-1530 because Respondent simply could not be classified as a low-risk, nonviolent offender. Based on Respondent's record and the known nexus between drugs and violence, he was not nonviolent. Thus, the State asks this Court to reverse and remand for resentencing within the confines of the statute.

CONCLUSION

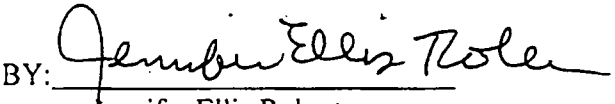
For all the foregoing reasons, the State respectfully requests that this Court reverse the decision of the circuit court and remand for resentencing.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: 
Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

January 6, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL YORK COUNTY
Court of General Sessions
Brian Gibbons, Circuit Court Judge

Appellate Case No. 2014-001886

THE STATE,

Appellant,

v.

COREY JAMAL WILLIAMS,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Appellant complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: Jennifer Ellis Roberts
Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

January 6, 2016

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

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR RESPONDENT.

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.

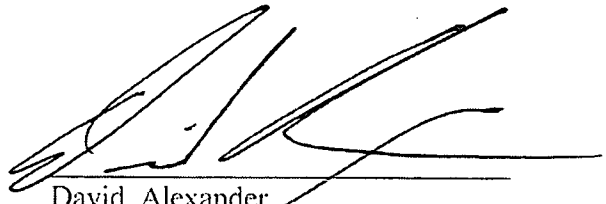
Respondent had one conviction for possession of a firearm in California in 2007. Respondent did not have any firearms when he was arrested for this crime. The arrest of appellant was peaceful. There was no hint of violence in the State's recitation of the facts. R. 8, l. 2 – 9, l. 20. This Court may 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

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Brian M. Gibbons, Judge

THE STATE, APPELLANT,

V.

COREY JAMAL WILLIAMS, RESPONDENT

APPELLATE CASE NO. 2014-001886

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.