STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Brian M. Gibbons, Circuit Court Judge

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

2014-GS-46-00481

THE STATE,

PETITIONER,

V.

COREY JAMAL WILLIAMS,

RESPONDENT

APPELLATE CASE NO. 2016-002547

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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INDEX

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on November 28, 2016.

QUESTION PRESENTED

Whether the Court of Appeals erred in reversing the trial judge's sentence of home detention where such a sentence for appellant's offense is specifically included within the scope of the Home Detention Act and the statute also gives a sentencing judge discretion to determine whether a particular offender is violent?

STATEMENT OF THE CASE

Petitioner 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, petitioner pled guilty before the Honorable Brian Gibbons. R. 1. Matthew W. Shelton represented the State. R. 1. James Todd Rutherford represented petitioner. R. 1. Judge Gibbons sentenced petitioner 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 petitioner's sentence.

On August 5, 2015, petitioner filed in the Court of Appeals a Motion to Dismiss Appeal as Moot on the grounds that petitioner would complete his sentence of imprisonment on home detention on August 29, 2015. R. 24. Petitioner also argued that the court had no power to fashion any remedy since petitioner 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.

On September 9, 2016, the Court of Appeals heard oral argument. App. 1. Judges Williams, Thomas, and Geathers sat on the panel for the court. App. 3. On November 2, 2016, the court reversed petitioner's sentence in an unpublished, per curiam opinion. App. 1. After a timely petition for rehearing was denied, this petition for certiorari follows.

ARGUMENT

The Court of Appeals erred in reversing the trial judge's sentence of home detention where such a sentence for appellant's offense is specifically included within the scope of the Home Detention Act and the statute also gives a sentencing judge discretion to determine whether a particular offender is violent.

Reasons for Granting Certiorari

This Court should grant certiorari on the novel question of law presented by this case. Rule 242(b)(1), SCACR. As the State repeatedly asserted in opposition to petitioner's Motion to Dismiss this Appeal as Moot, the question raised by the State's appeal of petitioner's sentence is consistent with practice in many circuit courts. R. 32-34. Even though petitioner has served all of his sentence, the State convinced the Court of Appeals that the issue was substantial and was capable of repetition yet evading review. R. 40. App. 2. Despite the substantial, novel question, the decision rendered by the Court of Appeals solves nothing. First, it is legally incorrect and does a grave injustice to petitioner. Second, it is unpublished and cannot be used by the lower courts as guidance on a novel sentencing issue that the State contends is the subject of different application by the circuit courts. This Court should grant certiorari to correct the Court of Appeals' errors and provide guidance to the state's trial judges.

Factual and Procedural Background

Petitioner was indicted in York County for trafficking in marijuana, citing section 44-53-370(e)(1)(a) of the South Carolina Code. R. 41-42. At the plea hearing before Judge Gibbons, the solicitor told the court petitioner was pleading guilty to "trafficking marijuana ten to one hundred pounds first offense." R. 4, ll. 6 – 11. The plea was "without an agreed upon negotiation or recommendation." R. 4, ll. 18 – 19.

Petitioner told Judge Gibbons he was guilty. R. 6, ll. 6 – 9. He had no children and was engaged to be married. R. 7, ll. 12 – 17. He was employed by a trucking company in Orangeburg. R. 7, ll. 18 – 21. He had one prior weapons conviction from California in 2007. R. 10, ll. 14 – 17. The police stopped petitioner in a car and found drugs. R. 7, l. 25 – 10, l. 8. The solicitor made no mention of possession of guns or any uncooperative behavior by petitioner. R. 7, l. 25 – 10, l. 8. Judge Gibbons accepted the plea. R. 10, l. 23.

Petitioner's attorney requested a sentence of home detention with the costs to be paid fully by petitioner. R. 11, l. 23 – 13, l. 2. Plea counsel noted that his requested sentence would save the taxpayers approximately $16,000.00. R. 11, l. 23 – 13, l. 2. Judge Gibbons asked whether the offense qualified for home detention. R. 13, ll. 3 – 4. Plea counsel told the court that Greenville, Spartanburg, and Richland counties were using home detention in trafficking cases. R. 13, ll. 5 – 19. Plea counsel also cited the recent amendment allowing sentencing credit for pre-trial home detention. R. 13, ll. 5 – 19. See S.C. Code Ann. § 24-13-40. After hearing the solicitor's opposition, Judge Gibbons determined he had the discretion to impose a sentence of home detention. R. 14, l. 1 – 17, l. 15.

The State appealed. Petitioner moved to dismiss the appeal as moot. R. 24 - 27. The State opposed the motion, arguing that this case fell under the capable of repetition yet evading review exception to the mootness doctrine. R. 29 – 34. The Attorney General wrote that it was "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.**" R. 33-34 (emphasis added). The Court of Appeals denied the motion to dismiss. R. 40.

The Court of Appeals' Opinion

Despite the State's urging that the appellate courts needed to provide guidance to the lower courts, the Court of Appeals issued an unpublished decision reversing petitioner's sentence of home detention. App. 1 – 3. The court first found that the State's argument on appeal was preserved (ignoring a concession otherwise from the Attorney General). App. 2. The court then determined that the State's appeal was not moot because of the evading review exception and, alternatively, that petitioner had not completed his sentence because "home detention does not constitute imprisonment." App. 2. Reaching the merits, the court held Judge Gibbons abused his discretion because trafficking marijuana is labeled a violent crime under the general classification statute, S.C. Code Ann. § 16-1-60. App. 3. The petition for rehearing (and the brief of respondent) argued this was manifest error because the Home Detention Act (the "HDA") specifically allows such a sentence for trafficking marijuana, first offense. App. 4 – 6. Petitioner also argued that the statute does not automatically defer to the classification statute and gives discretion to sentencing judges to determine whether the offender present before them is violent. App. 7 - 8. The court denied the petition for rehearing. App. 14.

Discussion

The Court of Appeals' opinion contains a clear, manifest error of statutory interpretation that should be corrected by this Court. The Court of Appeals' opinion **did not even cite** the controlling statute: section 24-13-1590(1) of the HDA. S.C. Code Ann. § 24-13-1590(1). This controlling provision of the HDA **specifically allows a sentence of home detention for petitioner's offense.** S.C. Code Ann. § 24-13-1590(1).

Section 1590 of the HDA specifically states the drug offenses to which it applies. Id. The HDA specifically excludes certain drug crimes from its application, but not petitioner's crime.

This means that the HDA applies to petitioner's crime. The Legislature's exclusion of some drug crimes, but not others, indicates its clear intent that the HDA applies and petitioner correctly received a sentence of home imprisonment. "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).

The HDA states that it 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.**" S.C. Code Ann. § 24-13-1590(1) (emphasis added). Petitioner's offense does not fall into either of these two categories. Petitioner was convicted of violating section 44-53-370(e)(1)(a)(1). This offense **is a Class E felony**, not a Class A, B, or C felony, so the first part of Section 1590(1) does not exclude petitioner's offense from the HDA. S.C. Code Ann. § 16-1-90(E).

As for the second part of Section 1590(1), petitioner'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 petitioner'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 petitioner's offense from the HDA's coverage. The Legislature's intentional omission of petitioner's offense from the list of excluded drug crimes demonstrates the Legislature's intent that the Act applies to petitioner'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 petitioner'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 petitioner here, the Supreme Court rejected the State's argument. Id.

The Burton 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 petitioner'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 of Appeals made a critical mistake in not analyzing section 1590(1).

Additionally, the Court of Appeals erred in finding that the HDA does not vest discretion in the sentencing judge to determine whether an offender is violent. S.C. Code Ann. § 24-13-1530(A). The HDA asks the court 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

sentencing judge. S.C. Code Ann. § 24-13-1530(A). The Court of Appeals erred by importing the definition of "violent" from section 16-1-60, which applies to **offenses**, not **offenders**. App. 3.

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 dispatches 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.

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 above, looking to Title 16 for definitions is unnecessary when petitioner's offense is specifically included in the HDA. Judge Gibbons had the opportunity to

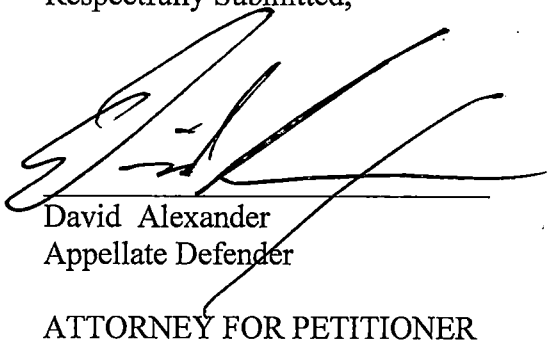
view petitioner, he heard the facts of the crime, he heard petitioner's work, family, and criminal history, and properly exercised his discretion when he determined respondent was not a violent offender.

Finally, the Court of Appeals erred in finding this appeal is not moot because petitioner "has not in fact completed his sentence of imprisonment as home detention does not constitute imprisonment." App. 2. The court's citations actually support petitioner's argument that time spent on home detention counts as imprisonment and petitioner can receive credit for this time against any sentence that could conceivably be imposed. App. 2. See S.C. Code Ann. § 24-13-40. At the very least, it is within 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 petitioner 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 certiorari and correct this portion of the Court of Appeals' opinion.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari, reverse the decision of the Court of Appeals, and reinstate Judge Gibbons' sentence of home detention.

Respectfully Submitted,



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of January, 2017.

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CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on 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 18th day of January, 2017.

David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th
day of January, 2017.

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