STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Alison Renee Lee, Circuit Court Judge
Appellate Case Tracking No. 2016-002210

The State, Appellant,

vs.

Jamie Lee Simpson, Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

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STATEMENT OF THE CASE

In January 2016, the Richland County Grand Jury indicted Respondent on four counts of sexual exploitation of a minor in the second degree. (True-billed Indictments; R.54-61). He pled guilty on October 18, 2016, to all four counts. (T. 17; Sentencing Sheets; R.17; 62-65). At sentencing, Respondent's counsel asked that the two year mandatory sentence be served as house arrest or home detention. The State objected. (T.35-37; R.35-37). Over the State's objection, the Honorable Alison Renee Lee sentenced Respondent to four years, suspended upon the service of two years in home detention and an addition two years of probation. The court imposed restrictions on the home detention including Respondent being restricted to his residence with the exemption of work, medical treatment, which would include continued counseling, and was placed on electronic monitoring. Further, he was prohibited from having access or accessing a personal computer. Finally, he was required by statute to register as a sex offender. (T.46; R.46). The State again noted its objection. (T.48-49; R.48-49). The State timely filed its Notice of appeal and this appeal follows.

STATEMENT OF FACTS

At the plea hearing, the State explained the nature of the charges. On February 19, 2014, Special Investigator, Lucinda McKellar, with the South Carolina Attorney General's Office, conducted an online proactive investigation using file sharing programs to identify individuals distributing child pornography. Investigator McKellar was able to download and receive five files of child pornography from a user identified through investigation as Respondent. The five files were all graphic videos of child pornography. The videos are of young children being forced to perform oral sex and being vaginally raped. One video includes a child approximately six years old being vaginally raped. She is crying and saying it hurts. (T.12; R.12).

During a second investigation in March 2014, Investigator McKellar was again able to download videos from Respondent. These videos contained children appearing to be as young as eight years of age being vaginally raped. (T.13; R.13).

After a search warrant was obtained and executed, several computers were seized. Respondent admitted to searching for and downloading child pornography via a file sharing network. He further admitted to using the search term of PTHC, which he stated meant pre-teen Hardcore. Child pornography or the remnants and artifacts of child pornography were found on several seized devices dating back to 2006. Additionally, other search terms were located related to child pornography including "rape" and "whore kids." (T.13-14; R.13-14).

Respondent admitted to the charges. When asked if there was anything he wished to add, change, or correct about the State's recitation of facts, he responded: "No ma'am." (T.16; R.16). He then admitted distributing the files and admitted the files contained minors engaged in sexual activity. (T.16; R.16).

ARGUMENT

I. The plea court erred in interpreting section 24-13-1530 of the South Carolina Code to allow a sentence of house arrest or home detention after Respondent was convicted of the violent crime of sexual exploitation of a minor second degree when the plain language of the statute makes clear it only applies to "low risk, nonviolent adult and juvenile offenders."

The circuit court erred in sentencing Respondent to two years house arrest as opposed to requiring incarceration. Section 24-13-1530 of the South Carolina Code does not apply to Respondent's conviction because sexual exploitation of a minor in the second degree is a violent crime and house arrest under section 24-13-1530 can only be given to "nonviolent adult offenders." Accordingly, this Court should vacate Respondent's sentence and remand for resentencing.

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the legislature. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). A statute's language must be construed in light of the intended purpose of the statute. Id. at 33, 667 S.E.2d at 733. Whenever possible, legislative intent should be found in the plain language of the statute itself. Id.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Pittman, 373 S.C. at 561, 647 S.E.2d at 161. The statute must also be read as a whole and in harmony with its purpose. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). "The statute must be interpreted with realistic circumstances and rationales in mind." State v. Elwell, 396 S.C. 330, 336, 721 S.E.2d 451, 454 (Ct. App. 2011); State v. Baker, 310 S.C.

510, 512, 427 S.E.2d 670, 672 (1993) ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.").

Section 24-13-1530 states in relevant part:

> 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) (Supp. 2016) (emphasis added). Significantly, section 16-1-60 of the South Carolina Code clearly and expressly defines sexual exploitation of a minor in the second degree as a **violent** offense.

The clear language of section 24-13-1530(A) indicates it applies only to "nonviolent" adults. Because of this clear, unambiguous language, there is no reason to "resort to subtle or forced construction to limit or expand the statute's operation." See State v. Gordon, 414 S.C. 94, 98, 777 S.E.2d 376, 378 (2015). As the State argued at trial, "the home detention program is to be used as an alternative for **nonviolent** offenders," and to allow a person convicted of a violent offense as defined by section 16-1-60 to be eligible for the alternative is clearly anathema to the legislative intent, and clear wording, of the statute. The only reasonable interpretation of section 24-13-1530 is in light of section 16-1-60 and to find the legislature clearly did not intend a person convicted of a "violent offense" to be considered a "nonviolent offender."[1] Additionally, the legislature is presumed to know the current statutes and specifically wrote section 24-13-1530 to include the term "nonviolent offender" knowing that another of their statutes defined what crimes constituted "violent offenses." See State v. McKnight, 352 S.C. 635, 648, 576

[1] The relevant provisions of Section 24-13-1530 do not appear to have been interpreted in any reported case in South Carolina. While it is unpublished and therefore not of precedential value, this Court recently addressed the issue in State v. Williams, Op. No. 2016–UP–448 (S.C.Ct. App. Filed November 2, 2016) (also found at 2016 WL 6471974 and Appellate Case No. 2014–001886).

S.E.2d 168, 175 (2003) ("There is a presumption that the legislature has knowledge of previous legislation . . . when later statutes are enacted concerning related subjects.").

The plea court specifically noted the statute only applied to "nonviolent" offenders and that the charges he pled guilty to were defined as violent crimes by statute. The plea court even indicated it caused her concern as to whether the statute and home detention would be available to Respondent. (T.44-45; R.44-45). The court, not relying on any other interpretation of the statute or analysis of the legislative intent, instead determined: "[t]he best I can do is to try it." The plea court then sentenced Respondent to house arrest for the mandatory two years. (T.45-46; R.45-46).

Additionally, section 16-15-405 states:

> A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not less than two years nor more than ten years. **No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum sentence.**

S.C. Code Ann. § 16-15-405(D) (Supp. 2016) (emphasis added). It seems highly incongruous the legislature would consider the crime of sexual exploitation of a minor second degree so serious as to mandate the minimum sentence cannot be suspended and require no parole until after someone has served a minimum of two years but allow the individual to be on house arrest to serve that two year sentence. See State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention."); Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) (same).

Finally, Respondent even if the term "violent **offense**" as used in section 16-1-60 is interpreted different from the way "nonviolent **offender**" is used in section 24-13-1530, the plea court erred in allowing Respondent to serve his sentence on house arrest. While Respondent's crimes do not allege an actual touching by Respondent, the nature of the material sought out and viewed by Respondent indicates he is not a "nonviolent offender." Using search terms such as pre-teen hardcore, rape, and "whore kids" indicates a desire to find violent and deviant child pornography. It is illogical that someone who enjoys and desires videos showing children screaming "It hurts" is a nonviolent offender. Further, the fact that he has evidence of child pornography on his computer spanning ten years certainly indicates he is not to be considered "low risk."

Accordingly, the plea court erred in allowing Respondent to serve his two-year mandatory sentence on house arrest under section 24-13-1530. This Court should vacate the sentence and remand for resentencing consistent with the intent of the legislature.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the sentence of the circuit court allowing Respondent to serve his mandatory two-year incarceration for a violation of section 16-15-405—clearly defined as a violent offense under section 16-1-60—on house arrest pursuant to section 24-13-1530 should be vacated and this case remanded for resentencing.

Respectfully submitted,

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November 17, 2017

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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