STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2015-000210

THE STATE, ... PETITIONER,

v.

ARTHUR M. FIELD, ... RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 7, 2018.

QUESTION PRESENTED

DID THE COURT OF APPEALS ERR WHEN IT AFFIRMED THE TRIAL COURT, WHICH ILLEGALLY GAVE RESPONDENT PRISON CREDIT FOR PRE-TRIAL TIME HE SIMPLY DID NOT EARN WHILE MERELY BEING MONITORED BUT NOT ON HOUSE ARREST, WHERE THE STATUTE CLEARLY AND UNAMBIGUOUSLY PROVIDES THAT PRISON CREDIT CAN ONLY BE GIVEN FOR "MONITORED HOUSE ARREST"?

STATEMENT OF THE CASE

This is a State's appeal arising from the denial of the State's motion to reconsider sentence.

On June 13, 2012, the State Grand Jury of South Carolina (the "State Grand Jury") returned a true billed indictment (the "Indictment") charging Respondent Arthur M. Field and his co-defendant Scott Pfeiffer with fourteen counts including securities fraud, forgery and conspiracy. **(App. pp. 1 – 91)**. Judge J. Cordell Maddox, Jr. was assigned continuing jurisdiction in the case.

Ultimately, Respondent pled guilty before the trial court on May 6, 2013 to all fourteen counts, under a plea agreement where the Court had discretion to sentence Respondent from zero to twenty-three years in prison. **(App. p. 157, p. 184)**. Sentencing was deferred pursuant to the agreement until after disposition of codefendant F. Scott Pfeiffer's case. Pfeiffer pled guilty on September 18, 2013. On October 8, 2013, Respondent was sentenced to a lead active sentence of twenty-six (26) months, with credit given for 33 days served pre-trial in county jail, and 15 months on house arrest pursuant to an amendment to S.C. Code Ann. § 24-13-40 (Supp. 2015) allowing such credit. Respondent was ordered to pay restitution of $2,877,711.73 to the victims of the CIF case. **(App. pp. 265 – 266, p. 271, p. 292)**.

The State filed and served a timely Motion for Reconsideration of Sentence on October 16, 2013. **(App. pp. 288 – 289)**. Meanwhile, Pfeiffer filed motions for reconsideration on September 20, 2013 and October 17, 2013. A hearing was held on the State's and Pfeiffer's motions on July 9, 2014. **(App. pp. 293 – 326)**. Judge Maddox

subsequently issued orders on January 23, 2015, in which he denied the State's motion to reconsider which is the subject of the instant appeal. **(App. pp. 327 – 328)**.

The Court of Appeals issued its first order denying relief on December 6, 2017. **(App. p. 375)**. Appellant's [1st] Petition for Rehearing was filed December 20, 2017. **(App. p. 378)**. Respondent filed a Return to Petition for Rehearing on February 5, 2018. **(App. p. 383)**. The Court of Appeals issued an Order denying Appellant's [1st] Petition for Rehearing on April 4, 2018, but also withdrew the prior opinion and substituted a new opinion. **(App. p. 388 – 390)**. Respondent filed Petition for Rehearing #2 on April 19, 2018. **(App. p. 391)**. The Court of Appeals denied Petition for Rehearing #2 on May 7, 2018. **(App. p. 396)**. This Petition for Certiorari per Rule 242, SCACR follows.

STATEMENT OF FACTS

As noted before, Respondent was indicted by the South Carolina State Grand Jury for two counts of conspiracy, eleven counts of securities fraud, and one count of forgery. The indictment generally alleged that Respondent and his codefendant defrauded South Carolina investors by concealing and misstating material information in connection with the offer and sale of notes by the now defunct Capital Investment Funding, LLC ("CIF"). **(App. pp. 1 – 91)**. Ultimately, CIF lost tens of millions of dollars of the money of some 688 victims. **(App. p. 203, p. 243).**

When Respondent was first indicted, his bond was set on June 21, 2012 by Judge G. Thomas Cooper, Jr. at a $2,000,000 surety. **(App. p. 112, pp. 151 – 154).** Ultimately, Respondent moved to reconsider the bond, and on July 19, 2012 Judge DeAndrea Benjamin lowered the bond to a $500,000 surety, along with home confinement including GPS tracking. **(App. p. 135, pp. 151 – 154).** Respondent made a subsequent motion to reconsider bond, which was heard before Judge Benjamin on December 13, 2012. At the hearing, Respondent's counsel expressly asked that he be taken off of the house arrest and the GPS monitoring. **(App. pp. 142 – 143).** The trial court ruled as follows:

> Well, what I'll do is at this point, I'll take, I'll take the house arrest off so he can go, but I'll leave the, I'm going to leave the bracelet on and give [Respondent's counsel] leave to come back in ninety days. Or, or if something else changes before then, within ninety days regarding the bracelets. But we'll, we'll take the house arrest off and the restrictions regarding the house arrest.

(App. p. 147, 14-21). The Bond Order signed by Judge Benjamin similarly held that "[t]he Motion to Amend Bond as to House Arrest is granted; as to GPS tracking it is denied". **(App. pp. 151 – 154)**.

As noted before, Respondent pled guilty in May 2013 and sentencing was deferred pending resolution of the codefendant's case. Judge Maddox specifically noted that all bond conditions would remain the same pending Respondent's sentencing. **(App. pp. 182 – 183).**

Following the codefendant's plea and sentencing, Respondent was sentenced on October 8, 2013. Respondent's counsel misspoke in arguing that Judge Benjamin had declined to take him off of home confinement, and that Respondent had been on home confinement since he got out on bond. **(App. p. 253, lines 3 - 13)**. Later, Respondent argued that he should receive fifteen months for time he claimed he served on house arrest from bond in July of 2012 to sentencing in October of 2013. **(App. pp. 257 – 258)**. Respondent also argued to the judge that while under the statute one could get credit for pre-trial time on house arrest, one could not get good time for it. **(App. p. 258, lines 12-14)**. Ultimately, the trial court sentenced Respondent to a lead active sentence of twenty-six (26) months, with credit given for 33 days served pre-trial in county jail, and 15 months on house arrest. **(App. pp. 265 – 266)**.

SCDC processed Respondent through and out in five days based on its calculation of the credit given, and the State then filed a timely Motion for Reconsideration of Sentence, giving a procedural history, discussing the good time issue, and stating: "pursuant to the plea agreement any sentence is in the discretion of the Court, so the

State has simply filed this motion to reconsider to preserve jurisdiction in case the sentencing result is inconsistent with this Court's intent." **(App. pp. 288 – 289)**.

A hearing on Respondent and Pfeiffer's motion for reconsideration was held on July 9, 2014. The State's first point was that it appeared SCDC had given good time credit for the house arrest time, which had led to a result which seemed inconsistent with the judge's intent at the plea, and that it had simply filed the motion to reconsider to preserve jurisdiction in case the court wished to correct it. **(App. pp. 299 – 300).** Respondent argued that the judge could not resentence on reconsideration simply because the judge did not like how good time was calculated, and that the State had agreed to stay silent on sentencing. **(App. pp. 302 – 303).** The judge stated he "appreciated" and was "glad" the State filing the motion to preserve jurisdiction. **(App. p. 307, lines 8 - 9, p. 312, lines 24 - 25)**.

Second, the State argued that there was a factual error in the calculation of the time on house arrest Respondent actually served, as he only served 4.83 months because Judge Benjamin removed the house arrest in December of 2012. He did not serve the fifteen months that for which the judge had given him credit. **(App. pp. 303 – 307)**. Respondent argued that he should receive credit because he was still on monitoring and cooperating with the State at the time. **(App. pp. 309 – 312, p. 317)**. The State was clear that it was not arguing whether or not Respondent should get any credit for house arrest time – but only that any credit he was given be limited to the accurate amount of what he actually served. **(App. p. 307, lines 13 – 23, p. 316 lines 1 – 10)**.

The trial court agreed the State was correct about the court's intent, stating "quite frankly, the twenty-six months in prison is what I thought he was going to do minus some period of time". **(App. p. 319, lines 2 – 4)**. The parties disagreed on whether monitoring alone was sufficient for house arrest, with the State pointing out the statute said "monitored house arrest". **(App. p. 321)**.

The court ultimately thought the statute was ambiguous, stating that while he "frankly agree[d] with you-all [the State], and if it was appealed, [the court] would lose", he was going to leave the sentence the way it was. The court ultimately signed an order denying the State's motion, stating that while it did not dispute the State's contentions as to the proper amount of credit, it was electing instead to lower the codefendant's sentence. **(App. pp. 327 – 328)**.

On appeal by the State, the Court of Appeals initially found that the bond court only orally removed house arrest, but the written order retained house arrest and controlled. **(App. 376-77).** When the State pointed out on rehearing that this was completely incorrect and the written order did remove house arrest, the Court of Appeals completely reversed course and held that the trial court elected to "fix" the legally improper credit given to Respondent, by lowering his codefendant's sentence. **(App. 378-80, 389)**.

It is from these decisions that the State appeals.

ARGUMENT

THE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE TRIAL COURT, WHICH ILLEGALLY GAVE RESPONDENT PRISON CREDIT FOR PRE-TRIAL TIME HE SIMPLY DID NOT EARN WHILE MERELY BEING MONITORED BUT NOT ON HOUSE ARREST, WHERE THE STATUTE CLEARLY AND UNAMBIGUOUSLY PROVIDES THAT PRISON CREDIT CAN ONLY BE GIVEN FOR "MONITORED HOUSE ARREST".

While the factual recitation is a bit involved, the legal analysis is not. Here, Respondent was given credit for pre-trial time when he was on GPS monitoring but not on house arrest, and he was not entitled to such time under the clear language of the statute.

The Court of Appeals initially issued an opinion in which it affirmed the trial court, by ruling that the bond court's written order controlled and it did not remove the house arrest. **(App. p. 326-27).**. The State filed a petition for rehearing pointing out that the Court of Appeals' conclusion was simply not the case – the bond order also clearly removed the house arrest component in writing. **(App. 153** *("Motion to Amend Bond as to House Arrest is granted, as to GPS tracking it is denied.")***)**.

This was the crucial point, as the statute unambiguously only allows pre-trial prison credit "for any time spent under monitored house arrest". S.C. Code Ann. § 24-13-40 (as amended by 2013 South Carolina Laws Act 34 (H.B. 3193)). As the State pointed out in its brief, "monitored" is but an adjective for "house arrest". Monitoring is alone not enough and neither is unmonitored house arrest. The statute does NOT say "monitoring and/or house arrest", or even just "house arrest". As such, since Respondent did not have house arrest after December 13, 2012 despite the fact that he was monitored, then by the plain and unambiguous language of the statute he was not legally entitled to credit beyond that

date.[1] **(App. 337, 340-41).**

Faced with its crucial factual conclusion being completely wrong and an inarguable point of statutory construction, the Court of Appeals on rehearing did a wholesale turnaround and this time affirmed on a completely different basis – with the idea that the circuit court "agreed with the State's contentions" that Respondent's sentence was contrary to law – but sought to somehow fix the error as to Appellant's sentence by instead lowering the sentence of a co-defendant.[2] State v. Field, Unpub. Op. No. 2017-UP-455 (S.C. Ct. App. filed December 6, 2017).

Appellant respectfully petitions for certiorari because the circuit court cannot ignore the law in its sentencing order, and give someone credit for prison time he neither could nor did earn under an unequivocal interpretation of statutory law, by simply lowering the sentence of a completely different person. Two wrongs do not make a right. The trial court gave Respondent credit that he is not legally entitled to receive and this is a clear error of law that should be corrected. See generally Crooks v. State, 326 S.C. 171, 485 S.E.2d 374 (2000) (reversing order of PCR court that improperly gave petitioner jail credit to which he was not entitled under the law).

A circuit court lacks discretion to fashion a sentence that is contrary to the law. The circuit court and the Court of Appeals should be reversed because Respondent received credit for fifteen months, when in fact he should have only received time when he was on

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[1] It should be noted that the original bill had only the words "house arrest", and it was subsequently only referred out of the House Committee on Judiciary when the bill was amended to make the word "monitored" a necessary modifier of "house arrest".
See http://www.scstatehouse.gov/sess120_2013-2014/bills/3193.htm

[2] Appellant notes that the validity of the modification of co-defendant's sentence is also pending before this Court in a separate matter State v. Pfeiffer, Unpub. Op. No. 2018-UP-130 (S.C. Ct. App. filed March 28, 2018) *petition for reh'g denied.*

"monitored" house arrest -- from July 21, 2012 until December 13, 2012, or 145 days.

CONCLUSION

For the foregoing reasons, it is respectfully submitted this Court should grant certiorari and reverse the Court of Appeals' decision to affirm the order of the trial court denying the State's motion for reconsideration.

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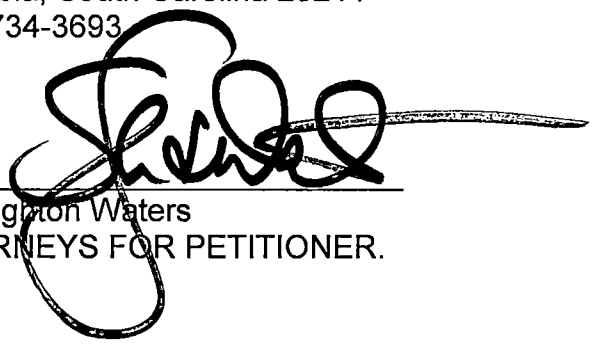

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June 6, 2018.

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THE STATE,

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ARTHUR M. FIELD,

Respondent.

PROOF OF SERVICE

I certify that I have served the *Petition for Writ of Certiorari and the Appendix* by depositing a copy in the United States Mail; postage prepaid, on June 6, 2018, addressed to his attorney of record:

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