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June 26, 2018

The Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

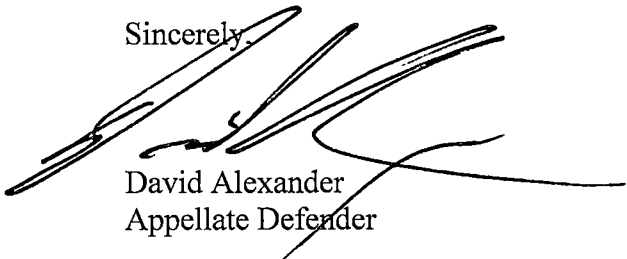
RECEIVED
JUN 26 2018
SC Court of Appeals

Re: State v. Courtney Price, App. Case No. 2016-000528

Dear Ms. Kitchings:

I am writing to let the Court know that the above-referenced case should be taken out of abeyance. On May 7, 2018, Judge McMahan signed an Order granting Ms. Price early parole eligibility and partial credit for time spent on home detention and this Order is attached. By copy of this letter, I am forwarding a copy of Judge McMahan's Order to the general counsel's office at the Department of Corrections and asking them to calculate Ms. Price's parole eligibility and sentence pursuant to the court's order. I would ask that the Court kindly set the deadline for the filing of appellant's initial brief and designation of matter for thirty days from today. If this is not acceptable to the Court, please contact me.

Sincerely,



David Alexander
Appellate Defender

c. J. Benjamin Aplin, Esq.
Bart Vincent, Esq.
Carl B. Grant, Esq.
Ashley Cornwell, Esq.
Client

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
v.)
COURTNEY LEOLA PRICE,)
DEFENDANT)

RECEIVED

ORDER

JUN 26 2018

SC Court of Appeals

Indictment No. 2014-GS-38-01443

FILED FOR RECORD
WINNIFRA B. CLARK
2018 MAY -7 PM 4:52
CLERK OF COURT
ORANGEBURG, SC

THIS MATTER COMES BEFORE THE COURT on remand from the South Carolina Court of Appeals. On June 27, 2017, the Court of Appeals granted the motion of Courtney Leola Price ("Price") to remand her case to obtain rulings from this Court on two motions made before the case was appealed: (1) Motion for Credit for Time Spent on Home Detention Pursuant to S.C. Code Ann. § 24-13-40; and (2) Motion for Early Parole Eligibility Pursuant to S.C. Code Ann. § 16-25-90.

On November 1, 2017, the Court held a hearing on these motions in Lexington County. Price waived venue and jurisdiction in Orangeburg County to allow the Court to hear her motions in Lexington County. Price was represented by Carl B. Grant of Orangeburg and David Alexander from Appellate Defense in Columbia. The State was represented by Ashley Cornwell. Pursuant to the Order of the Court of Appeals, the Court makes the following findings of fact and conclusions of law.

The Court has a vivid recollection of this murder trial as it was one of the best-remembered cases before this judge in his years on the bench. Both the solicitor and Mr. Grant were vigorous advocates and ably presented their arguments and evidence to the Court and to the jury. In making the findings contained in this Order, the Court relies not only on its own memory of the trial and

Received
MAY 08 2018
Jennifer Jacques

ATTEST: TRUE COPY
Winnifra B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

the extensive immunity hearing, but also the testimony and arguments presented at the hearing and the Court's review of the transcripts which were provided before the hearing.

Credit for Time Spent on Home Detention

1. It was undisputed that Price spent 503 days on home detention prior to her trial. Price presented the testimony of Shawn Ellore who managed and supervised Price's home detention. Based on its observations of Ms. Ellore at the hearing, the Court finds her a credible witness.

2. Ms. Ellore testified that Price had no violations of the terms of her home detention. The State cross-examined Ms. Ellore regarding an alleged bond violation, but Ms. Ellore testified that after a hearing on the alleged violation, the judge found Price had not violated her probation. The State did not dispute this was the prior ruling and the Court finds no reason to look past the prior ruling.

3. While home detention is confinement, the Court finds that such confinement, especially given the conditions placed on Price, is not as severe as confinement in the detention center. Price was allowed to work, go to the doctor, and visit her son. The statute governing this issue provides that credit "may be given for any time spent under monitored house arrest." S.C. Code Ann. § 24-13-40. The State presented no argument that Price's detention did not qualify as "monitored house arrest" under section 24-13-40 and the Court finds that Price's detention qualifies for discretionary credit under the statute.

4. Because of the less restrictive nature of her confinement, but also allowing for Price's compliance with its terms, the Court finds Price is entitled to credit for 251 days of credit. This credit is in addition to the credit for time spent in the county detention center which the Court

awarded at sentencing. The Department of Corrections shall award this credit against Price's sentence.

Parole Eligibility

1. The Court heard extensive testimony at both the immunity hearing and during the trial regarding abuse Price suffered at the hands of the victim, Samuel Simmons ("Simmons"). The jury ultimately acquitted Price of murder and convicted her of voluntary manslaughter. The Court sentenced Price to fifteen years' imprisonment.

2. A person convicted of "an offense against a household member is eligible for parole after serving one-fourth of [her] prison term when the inmate at the time . . . [she] was convicted of an offense against the household member . . . presented evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member." S.C. Code Ann. § 16-25-90.

3. The Court must make specific findings of fact regarding eligibility. State v. Blackwell-Selim, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011). The defendant bears the burden of presenting credible evidence of a history of abuse by the preponderance of the evidence. State v. Grooms, 343 S.C. 248, 253-54, 540 S.E.2d 99, 101-02 (2000). Mere production of evidence is insufficient. Id. The evidence produced by the defendant must be "trustworthy, not simply plausible." Id. at 253, 540 S.E.2d at 101. "[T]he defendant must do more than simply present evidence; she must persuade the trial judge her evidence is reliable." Id.

4. "Household member" is defined in the domestic violence statute as "persons who have a child in common." S.C. Code Ann. § 16-25-10(3)(c). It was undisputed at the trial that Price and Simmons have a child in common. Therefore, Price meets this element of the statute.

5. Price testified at the immunity hearing and at trial before the jury, giving the Court ample opportunity to observe her demeanor and assess her credibility. While the Court found certain portions of Price's testimony regarding the night of Simmons' death not credible, the Court does find credible Price's description of abuse suffered at Simmons' hands. Much of Price's testimony about Simmons' abuse was corroborated by other witnesses which increases the credibility of Price's testimony on these points.

6. The Court specifically finds credible and reliable the testimony and evidence regarding the following episodes of abuse:

- a. Simmons choked Price in her dorm room in 2009.
 - b. Simmons again choked Price in college in 2009.
 - c. Price's college roommate, Breanna Tilley, testified and the Court finds her testimony credible based on its observations and Tilley's demeanor. Tilley saw Simmons drag Price along the floor by her hair. Tilley also saw marks on Price's body.
 - d. Jamal Scott testified about what he saw while Price attended college and the Court finds his testimony credible. Scott saw bruises on Price and saw Simmons verbally abuse Price.
 - e. Simmons saw Price driving and chased her in his truck. Simmons' truck hit Price's car several times at highway speeds. Simmons eventually crashed his truck into a light pole. Dominique Price, the defendant's sister, testified about this incident and the Court finds her testimony credible. Dominique Price described the incident as a "high speed chase." She saw Simmons crash his truck into the light pole and heard Simmons, upon getting out of his truck, say, "I'm going to pistol
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whip that bitch.” Dominique Price saw bruises on her sister’s neck and arms and noticed her wearing long sleeves during the hot Orangeburg summers.

f. In the spring of 2011, Simmons called Price a “bitch,” told her to mind her own business, and shoved her to the ground.

g. In January 2012, Simmons grabbed Price around the neck, threw her to the ground, and dragged her across the yard. Price called the police after this incident. The police officer who was dispatched to investigate testified and the Court finds his testimony credible. Price told the officer that Simmons destroyed her phone. The officer’s report indicated he observed scratches on Price’s neck.

h. In the spring of 2012, Price and Simmons argued in the car and Price asked Simmons to stop so she could get out of the car. As Price put her foot out of the car, Simmons accelerated, scraping Price’s foot on the pavement.

i. In October 2013, after Price filed a petition for child support, she and Simmons argued. Simmons pushed Price’s head into the furniture and punched her, giving Price a black eye.

j. A daycare worker for Price and Simmons’ child overheard Simmons verbally abuse Price over the telephone. She saw a bruise on Price’s arm that Price attempted to conceal. She also saw Price with a black eye that Price attempted to conceal behind dark sunglasses.

7. At trial, Price called several character witnesses who testified regarding Price’s reputation for truthfulness. The Court finds these witnesses credible, including Rep. Jerry Govan, Jr., Rev. Jesse R. Robinson, and Dr. Sandra Glover. The Court, in part and in addition to its own

observations, bases its finding that Price's testimony regarding the specific instances of abuse is credible on the credibility and testimony of these character witnesses.

8. The Court finds the multiple serious instances of abuse detailed above meet the elements of domestic violence. See S.C. Code Ann. § 16-25-20.

9. Having met the elements of domestic violence pursuant to section 16-25-20, the Court finds that both the frequency and the severity of the instances of abuse qualify as a "history of criminal domestic violence" pursuant to section 16-25-90. See S.C. Code Ann. § 16-25-90.

10. The Court finds Price and Simmons had a tumultuous and toxic relationship and aggression between them frequently went both ways. The State argued at the hearing that Price's status as the sometimes aggressor prevents her from obtaining the benefit of section 16-25-90, but the Court finds no support for this argument in the plain language of the statute or in its intended operation. Section 16-25-90, by its availability to persons who have been found guilty and convicted of a crime, contemplates that those who receive early parole eligibility will necessarily, at some point, have acted unlawfully. Therefore, even if at times Price acted as the aggressor, these instances do not prevent her from qualifying for early parole eligibility under section 16-25-90.

- a. In making this finding, the Court relies on our Supreme Court's decision in State v. Hawes, 411 S.C. 188, 767 S.E.2d 707 (2015). In Hawes, much like this case, the defendant and his wife had a "decade-long tumultuous relationship, which included instances of mutual combat." Hawes at 190, 767 S.E.2d at 708. The trial court in Hawes indicated it was "compelled" to grant the defendant's motion because he presented evidence of abuse. Id. The Supreme Court reversed and remanded because the trial judge's findings indicated he did not exercise his discretion and
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therefore did not take into account that the defendant may have been the primary aggressor. Id.

- b. The Court interprets Hawes as instructing trial judges to consider the totality of the evidence regarding the history of abuse between the parties and to use its discretion to determine the question of eligibility. Pursuant to Hawes, the Court has carefully considered the history of Price and Simmons' relationship, including evidence that Price may sometimes have been the aggressor. The Court finds that such evidence and arguments of the State do not outweigh the evidence presented by Price regarding serious, multiple instances of abuse. Even considering that Price may sometimes have been the aggressor, the Court finds the abuse by Simmons more serious and more pervasive. As instructed by Hawes, Blackwell-Selim, and Grooms, the Court has carefully considered and weighed Price's evidence against evidence produced by the State.

11. Based on the above findings of fact and conclusions of law, the Court finds that Price has satisfied the Court and proved by the preponderance of the evidence that she suffered a history of criminal domestic violence at the hands of Simmons. S.C. Code Ann. § 16-25-90. The Court, in its discretion and based on the totality of the circumstances, concludes that Price shall be eligible for parole after serving one-fourth of her sentence. Id.

THEREFORE, IT IS ORDERED that the Department of Corrections shall award Price credit for two hundred fifty-one (251) days spent on monitored house arrest pursuant to S.C. Code Ann. § 24-13-40.

IT IS FURTHER ORDERED that Price shall be eligible for parole after serving one-fourth of her sentence pursuant to S.C. Code Ann. § 16-25-90.

IT IS SO ORDERED.



R. Knox McMahon
Circuit Judge

May 17, 2018
Lexington, South Carolina