

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
The Honorable Alison Renee Lee, Circuit Court Judge
Appellate Case Tracking Number 2016-002210

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NOV 02 2018

SC Court of Appeals

The State,

Appellant,

vs.

Jamie Simpson,

Respondent.

RETURN TO MOTION TO DISMISS APPEAL AS MOOT

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

On October 26, 2018, Respondent filed a Motion to Dismiss Appeal as Moot, maintaining the appeal has become moot because he has served his two year home detention sentence imposed by the circuit court. The State submits the appeal is not rendered moot by Respondent's service of his home detention as the central issue on appeal is the circuit court's authority to sentence Respondent to home detention. As a result, there relief may still be granted upon the State's appeal 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 issue on appeal is whether the plea judge had the authority to order Respondent to serve his **mandatory two year imprisonment** by home detention 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 sexual exploitation of a minor in the second degree is statutorily classified as **violent** by S.C. Code Ann. § 16-1-60. This issue is clearly not moot by virtue of the fact Respondent completed home detention he was not entitled to receive.

Further, the State submits Respondent has not completed the sentence required by section 16-15-405. The sentencing provision for second degree sexual exploitation of a minor 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). Respondent has not completed two years imprisonment, so he has not completed the sentence required by section 16-15-405.

As other Courts have concluded: “Home confinement is not incarceration.” United States v. Hager, 288 F.3d 136, 137 (4th Cir. 2002). The Fourth Circuit found home confinement or home detention was an “alternative” to incarceration and because it was an “alternative” it could not be the same thing. Id. (“The word alternative simply does not imply that two things are the same or equivalent.”); see also, United States v. Phipps, 68 F.3d 159, 162 (7th Cir. 1995) (finding home detention is not imprisonment but is instead a “substitute for imprisonment.”). As

this Court found in State v. Williams,^{1 2} Respondent “has not in fact completed his sentence of imprisonment as home detention does not constitute imprisonment.” 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) (Certiorari Dismissed as Improvidently Granted September 26, 2018).

Additionally, the State’s argument on appeal is that because second degree sexual exploitation is a violent crime, as defined in Section 16-1-60, the plea judge erred in sentencing Respondent to home detention 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. Here, the trial court’s sentence violates section 16-15-405 because it does not require two years of imprisonment as provided by the statute and violates 24-13-1530(A) because it allows home detention as part of sentencing for a violent offense when the benefit is reserved for nonviolent offenders.

Respondent maintains because home detention has been served, no further relief may be granted if the State wins its appeal. “A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief.” Mathis v. South Carolina State Highway Dep’t, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) Relief may still be granted as this Court can find the sentencing court abused its discretion in sentencing Respondent outside of

¹ The State acknowledges this is an unpublished case with no precedential value.

² It should also be noted this Court faced a strikingly similar motion in the State v. Williams appeal arguing the case was moot because Williams had served his home detention. This Court specifically found because Williams never served his required term of imprisonment, the appeal was not moot and the Court addressed the issue on its merits.

the statutory limits and remand to the circuit court to resentence Respondent in compliance with section 16-15-405.

Even if this Court finds this individual case moot, the Court can address a case if the issue that is moot is capable of repetition and evading review. See Byrd v. Irmo High School, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). “The utilization of an exception under the mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked.” Sloan v. Greenville County, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009).

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 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) and whether they are

applicable to a person convicted of a violent offense, which is a significant issue of statutory construction and a matter of great public interest.

Therefore, this Court should find the appeal is not moot because home detention does not equate to imprisonment as required under 16-15-405, Respondent was not properly sentenced to home detention under 24-13-1530, and relief can still be granted on the State's appeal arguing the sentence his received was improper and an abuse of discretion. Even if this Court finds the underlying appeal moot, this Court should address the issue because it is one capable of repetition yet evading review and is of significant public interest.


WHEREFORE, the State asks this Court to deny Respondent's Motion to Dismiss Appeal as Moot.

Respectfully submitted,

ALAN WILSON
Attorney General

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Senior Assistant Attorney General

BY:



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ATTORNEYS FOR APPELLANT

November 2, 2018

STATE OF SOUTH CAROLINA
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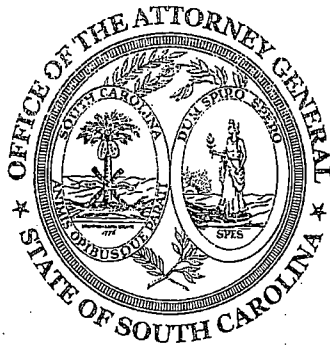
I, Anne A. Mueller, certify that I have served the Return to Motion to Dismiss Appeal as Moot on Respondent by depositing a copy of same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, 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 2nd day of November, 2018.


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ALAN WILSON
ATTORNEY GENERAL

November 2, 2018

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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Jamie Simpson
Appellate Case Tracking No. 2016-002210

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of a Return to Motion to Dismiss Appeal as Moot along with proof of service for filing in the above-referenced appeal.

Sincerely,

William M. Blich, Jr.
Senior Assistant Attorney General

Enclosures

cc: Susan B. Hackett, Esquire
Victim Advocacy Division