

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

RECEIVED
FEB 20 2019
SC Court of Appeals

The State,

Appellant,

vs.

Jamie Lee Simpson,

Respondent.

APPELLANT'S SUPPLEMENTAL MEMORANDUM

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF ISSUES1

ARGUMENT2

 I. The issue before the Court, whether the trial court imposed an improper sentence by allowing home detention when the statute under which Respondent was convicted mandated incarceration, is not moot because Respondent has never served the two-year mandatory imprisonment required by section 16-15-405 of the South Carolina Code. Even if this Court were to determine the specific facts of this case render it moot, this Court should utilize its discretion and find the issue capable of repetition and evading review just as has clearly happened in this case.....2

CONCLUSION.....7

TABLE OF AUTHORITIES

Cases

<u>Brooks v. State</u> , 325 S.C. 269, 271-72, 481 S.E.2d 712, 713 (1997)	4
<u>Byrd v. Irmo High School</u> , 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996)	5
<u>Mathis v. S. C. State H'way Dep't</u> , 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).....	4
<u>Nelson v. Ozmint</u> , 390 S.C. 432, 434–35, 702 S.E.2d 369, 370 (2010).....	5
<u>Sloan v. Greenville County</u> , 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009).....	5
<u>State v. Williams</u> , Op. No. 2016–UP–448 (S.C. Ct. App. Filed November 2, 2016).....	4
<u>Town of Hilton Head Island v. Coalition of Expressway Opponents</u> , 307 S.C. 449, 415 S.E.2d 801 (1992).....	5
<u>United States v. Hager</u> , 288 F.3d 136, 137 (4th Cir. 2002)	3
<u>United States v. Phipps</u> , 68 F.3d 159, 162 (7th Cir. 1995).....	3

Statutes

S.C. Code Ann. § 15-53-130 (2005).....	5
S.C. Code Ann. § 15-53-30 (2005).....	5
S.C. Code Ann. § 16-15-405(D) (Supp. 2016)	3, 4, 6
S.C. Code Ann. § 16-1-60 (Supp. 2016).....	3, 4
S.C. Code Ann. § 24-13-1530(A) (2007)	3, 4, 5, 6

STATEMENT OF ISSUES

- I. The issue before the Court, whether the trial court imposed an improper sentence by allowing home detention when the statute under which Respondent was convicted mandated incarceration, is not moot because Respondent has never served the two-year mandatory imprisonment required by section 16-15-405 of the South Carolina Code. Even if this Court were to determine the specific facts of this case render it moot, this Court should utilize its discretion and find the issue capable of repetition and evading review just as has clearly happened in this case.

ARGUMENT

- I. **The issue before the Court, whether the trial court imposed an improper sentence by allowing home detention when the statute under which Respondent was convicted mandated incarceration, is not moot because Respondent has never served the two-year mandatory imprisonment required by section 16-15-405 of the South Carolina Code. Even if this Court were to determine the specific facts of this case render it moot, this Court should utilize its discretion and find the issue capable of repetition and evading review just as has clearly happened in this case.**

Respondent maintains this appeal has become moot because he has served his two year home detention sentence impermissibly imposed by the circuit court. The State submits the appeal is not rendered moot by Respondent's service of home detention, because the central issue on appeal is the circuit court's authority to even sentence Respondent to home detention when the statute under which he was convicted mandates a minimum two years imprisonment. As a result, relief may still be granted upon the State's appeal of the case in the form of requiring Respondent to serve the mandatory two-year imprisonment. Even if the issue is moot in this case, the issue is clearly one capable of repetition and evading review, as is clearly evinced by the instant appeal, and should be considered by this Court in its discretion.

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 Respondent “has not in fact completed his sentence of imprisonment as home detention does not constitute imprisonment.” State v. Williams, Op. No.

¹ The State acknowledges this is an unpublished case with no precedential value, but it is the only similar case the State has been able to locate.

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).²

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 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,

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.

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.” Nelson v. Ozmint, 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, of both Respondent and the State, afforded by S.C. Code Ann. § 24-13-1530(A) and whether home detention is 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 section 16-15-405, Respondent was not properly sentenced to home detention under section 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.

CONCLUSION

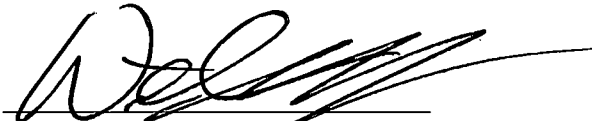
For all the foregoing reasons, it is respectfully submitted that the Court determine the issue presented in this case is not moot and relief may still be granted. In the alternative, the State asks the Court to determine the issue presented is clearly one capable of repetition yet evading review and address the significant legal issue presented. As a result, this Court should not dismiss this appeal as moot, but instead should consider the issue presented and determine that the circuit court improperly sentenced Respondent to home detention and reverse and remand the case for proper sentencing pursuant to section 16-15-405.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY:


William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

February 15, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

FEB 20 2019

SC 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.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Appellant's Supplemental Memorandum on Respondent by depositing a copy of the 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 15th day of February, 2019.



ANNE A. MUELLER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

February 15, 2019

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RECEIVED

FEB 20 2019

SC Court of Appeals

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

Dear Ms. Hackett:

I am enclosing a copy of Appellant's Supplemental Memorandum in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

William M. Blich, Jr.
Assistant Attorney General
S.C. Bar No. 15608

Enclosures

~~cc: Honorable Jenny A. Kitchings (original-enclosed)~~
Victim Services

neopost

FIRST-CLASS MAIL

02/15/2019

US POSTAGE

\$01.30⁰⁰



ZIP 29201
041L11237104



OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 11549
COLUMBIA, SC 29211-1549

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

RECEIVED
FEB 20 2019
SC Court of Appeals