

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Richland County  
Alison Renee Lee, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

APPELLANT,

V.

JAMIE SIMPSON,

RESPONDENT

APPELLATE CASE NO. 2016-002210  
\_\_\_\_\_

SUPPLEMENTAL MEMORANDUM  
\_\_\_\_\_

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**ISSUE PRESENTED**

Is the state's appeal regarding the propriety of Respondent's sentence to home detention pursuant to the Home Detention Act moot because Respondent successfully completed his sentence?

## ARGUMENT

The state's appeal regarding the propriety of Respondent's sentence to home detention pursuant to the Home Detention Act is moot because Respondent successfully completed his sentence.

### Relevant facts

Respondent pled guilty on October 18, 2016. R. 1. Judge Lee sentenced Respondent to four years' imprisonment, which she suspended upon the service of two years in home detention supervised through electronic monitoring to be followed by two years of probation. R. 46, 1. 2-18. On October 27, 2016, the state filed and served its notice of appeal. Appellant filed its brief on March 13, 2017. The state's sole issue on appeal is whether Judge Lee had the authority to order that Respondent's imprisonment be served as home detention pursuant to S.C. Code Ann. § 24-13-1530. In its brief, the state asked that Respondent's sentence on home detention to be vacated and the case remanded for resentencing. Although the state did not expressly say so in its brief, presumably the state intends for Respondent to serve at least two years' imprisonment in the Department of Corrections.

Respondent filed his brief on August 30, 2017. Respondent successfully completed his sentence of imprisonment on home detention on October 17, 2018. See Exhibit #1 (affidavit of compliance from Offender Management Services). On October 26, 2018, Respondent moved to dismiss the appeal as moot because Respondent completed his sentence of incarceration on home detention. Appellant filed a return opposing the motion to dismiss. On November 19, 2018, the Honorable H. Bruce Williams, writing for the Court, denied Respondent's motion to dismiss as moot. However, in the order, Judge Williams noted that nothing in the order precluded the parties from moving to amend the briefs to address the issue of mootness. On December 6,

2018, Respondent moved to amend the final briefs to address the mootness issue. On January 23, 2019, the Honorable Stephanie P. McDonald, writing for the court, denied Respondent's motion to amend the final briefs. Judge McDonald stated that the parties may submit supplemental memoranda addressing the issue of mootness. This memorandum follows pursuant to this Court's order.

### **Discussion**

"The Court does not concern itself with moot or speculative questions." Sloan v. Greenville County, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). "An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists." Id. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." Id. "Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief." Id. "A criminal case is moot only if there is no possibility that any legal consequences will be imposed." State v. Green, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (Ct. App. 1999) (quoting Sibron v. New York, 392 U.S. 40, 57 (1968)).

A sentence of home detention is a sentence of imprisonment. "Home detention" is defined as a type of "confinement." S.C. Code Ann. § 24-13-1520(4). Furthermore, when computing credit for time served, time spent on house arrest may be given. S.C. Code Ann. § 24-13-40. Thus, it is clear the legislature views time served while in home detention as time serving a sentence of imprisonment, and this Court should adhere to the legislature's intent.

Because Respondent has completed his sentence before the end of this appeal, the state cannot receive the requested relief. Respondent cannot serve two years' imprisonment on home detention and then be resentenced to serve another two years' imprisonment in the Department of

Corrections. This renders the case moot. See State v. Pickelsimer, 388 S.C. 264, 270-71, 695 S.E.2d 845, 849 (2010); Matter of Angela Suzanne C., 286 S.C. 186, 188-89, 332 S.E.2d 542, 543-44 (1985) (finding that appeal was moot because defendant had already served her sentence and noting the state’s argument that there was “no meaningful relief” which the court could grant); Hayes v. State, 413 S.C. 553, 558, 777 S.E.2d 6, 9 (Ct. App. 2015) (explaining that an individual’s completion of a sentence renders an appeal on the propriety of that sentence moot); McClam v. State, 386 S.C. 49, 55, 686 S.E.2d 203, 206 (Ct. App. 2009) (holding an appeal moot where the state appealed an order releasing an individual where individual completed the SVP program and was released from confinement); In Interest of Kaundra C., 318 S.C. 484, 486, 458 S.E.2d 443, 444 (Ct. App. 1995) (holding a juvenile’s appeal of her sentence was moot because she had already served the determinate sentence).

The mootness rule is not without its exceptions – in the civil context. “[T]here are three exceptions to the mootness doctrine.” Sloan, 380 S.C. at 535, 670 S.E.2d at 667. “First, if the issue raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction.” Id. “Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.” Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). “Third, ‘if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though an appellate court cannot give effective relief in the present case.’” Sloan, 380 S.C. at 535, 670 S.E.2d at 667 (quoting Curtis, 345 S.C. at 568, 549 S.E.2d at 596).

In its return to the motion to dismiss the appeal as moot, the state argued the exception to the mootness doctrine of “capable of repetition but evading review” applied. This Court should

not apply the exception in this case because the state cannot show that this question will always evade review. A trial judge could sentence a defendant to a longer period of home detention than received by Respondent. Under that scenario, a defendant may not have served all of his period of imprisonment before the adjudication of his appeal. See e.g., McClam, 386 S.C. at 56, 686 S.E.2d at 206 (recognizing the possibility that an appeal involving the placement of an inmate in the SVP program would not be adjudicated prior to the inmate's discharge, but finding no evidence presented that McClam's release was a common occurrence that would evade appellate review). Therefore, the exception simply does not apply to Respondent's case.

**CONCLUSION**

Respondent respectfully requests this Court dismiss the appeal as moot.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR RESPONDENT

This 29<sup>th</sup> day of January, 2019.

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RESPONDENT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Supplemental Memorandum in the above referenced case has been served upon William M. Blicht, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29<sup>th</sup> day of January, 2019.

Susan B. Hackett  
Susan B. Hackett  
Appellate Defender  
ATTORNEY FOR RESPONDENT

SUBSCRIBED AND SWORN TO before me  
this 29<sup>th</sup> day of January, 2019.

Courtney Powers (L.S)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.