STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Williamsburg County
Hon. R. Ferrell Cothran, Jr., Circuit Court Judge
Appellate Case Tracking No. 2013-000293

The State, Respondent,

v.

Lou Ann Robinson, Appellant.

FINAL BRIEF OF RESPONDENT

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Solicitor, Third Judicial Circuit

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court did not err in finding Appellant was not entitled to early parole eligibility under section 16-25-90 of the South Carolina Code because she failed to prove she was the victim of a history of domestic violence by a preponderance of the evidence.

STATEMENT OF THE CASE

The Williamsburg County Grand Jury indicted Appellant on charges of murder and possession of a weapon during the commission of a violent crime. Appellant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr., from December 14-17, 2009. The jury found Appellant guilty of the lesser included charge of voluntary manslaughter and guilty of possession of a weapon during the commission of a violent crime.

On December 17, 2011, Judge Cothran sentenced Appellant to twelve years imprisonment on the voluntary manslaughter charge and five years imprisonment on the possession of a weapon charge, with the sentences to run concurrently. At sentencing, the court also heard testimony regarding the application of section 16-25-90 and whether Appellant should be eligible for parole after serving one-fourth of her prison term. Judge Cothran concluded that the applicability of the statute was an issue for the parole board at a later time. Appellant subsequently appealed her conviction and sentences. This Court affirmed Appellant's conviction, but found Judge Cothran erred in not ruling on Appellant's parole eligibility under section 16-25-90. State v. Robinson, No. 2012-UP-574 (S.C.Ct App. Filed October 24, 2012). The Court remanded the case back to the circuit court for "a determination of whether Robinson presented a preponderance of the evidence showing she suffered criminal domestic violence inflicted by the victim." Id.

On remand, the circuit court made credibility determinations regarding Appellant's witnesses and ultimately concluded the testimony presented by Appellant was insufficient to justify a finding of a history of domestic abuse by a preponderance of the evidence This appeal follows.

STATEMENT OF FACTS

On December 23, 2006 emergency dispatchers received a call about a motor vehicle accident where a truck crashed into a ditch. Scott King, a part-time EMT Intermediate, was working that evening. (Tr. Vol. 1, p. 65; R. 22). King testified that when he approached the scene of the accident, a male was lying on the ground next to the wreckage. (Tr. Vol. 1, p 67; R. 24). The man on the ground was complaining he was hurt. (Tr. Vol. 1, p. 67; R. 24) King testified the man injured in the crash was Willie Dunmore, the victim in this case. (Tr. Vol. 1, p. 84; R. 41). After checking Mr. Dunmore for typical injuries associated with a motor vehicle crash, King discovered Mr. Dunmore had a cut right above his heart. (Tr. Vol. 1, p. 68; R. 25). Paramedics examined the truck to try and determine what could have caused the cut on the man's torso. (Tr. Vol. 1, p. 69; R. 26). King pointed at the wound and asked Mr. Dunmore what happened to him, to which the victim replied "my girlfriend." (Tr. Vol. 1, p. 82; R. 39). King determined the wound was serious and sought additional assistance. (Tr. Vol. 1, p. 82; R. 39). Paramedics took Mr. Dunmore to the Kingstree Hospital, where he subsequently passed away due to his wounds. (Tr. Vol. 1, p. 83; R. 40).

Erin Presnell, a forensic pathologist, testified about the examination performed on Mr. Dunmore's body. (Tr. Vol. 2, p. 64; R. 280). Dr. Presnell testified Mr. Dunmore had one major injury, which was a stab wound to the left portion of his chest that went 4.9 inches down the length of the body. (Tr. Vol. 2, p. 65; R. 281). Mr. Dunmore also had a few other cuts. (Tr. Vol. 2, p. 66, R. 282). There was a cut on the back of his ring finger on his left hand and another curt along the side of his left thumb. (Tr. Vol. 2, p. 66; R. 282). Dr. Presnell testified cuts on the back of the finger and side of the thumb could be

consistent with defensive wounds. (Tr. Vol. 2, p. 67; R. 283). Dr. Presnell explained the angle of the stab wound indicates the stab was delivered downward on Mr. Dunmore's body. (Tr Vol. 2, p. 78; R. 294). Dr. Presnell concluded the cause of death was injury to the heart secondary to a stab wound, and the manner of death was homicide. (Tr. Vol. 2, p. 79; R. 295).

After speaking with the victim's mother, law enforcement officers thought it necessary to make contact with Appellant. (Tr. Vol. 1, p. 200; R. 157). Police knocked on the door, rang the doorbell, and blew the horn of their vehicle, however Appellant did not come to the door. (Tr Vol. 1, p. 201; R.158). Police noted there were two cars parked in the carport. (Tr Vol. 1, p. 201; R. 158). Police obtained the phone number for Appellant's residence from a neighbor and called the number in an attempt to contact Appellant. (Tr. Vol. 1, p. 203; R. 160). A female answered the phone, and after being asked whether Appellant was present, told the police Appellant did not live there. (Tr. Vol. 1, p. 203; R. 160). Law enforcement then requested the party on the phone come to the door to speak with them. (Tr. Vol. 1, p. 203; R. 160). The woman on the phone subsequently came to the door, where law enforcement identified her as Appellant. (Tr. Vol. 1, p. 204; R. 161).

Appellant testified she was in a relationship with Willie Dunmore, and they had been cohabitating since 2005. (Tr. Vol. 2, p. 179; R. 395). Appellant maintained she and Dunmore had numerous arguments and Dunmore would abuse her. (Tr. Vol. 2, p. 180; R. 396). Appellant stated Willie Dunmore was at his worst when he was drinking. (Tr. Vol. 2, p. 180; R 396) Appellant asserted Dunmore was controlling, recorded her phone calls, and restricted her movements. (Tr. Vol. 2, p. 181; R. 397) Appellant also stated she

called the police for help during one of Dunmore's alleged instances of abuse. (Tr. Vol 2, p. 195; R. 411).

Appellant stated on the evening of his death, Dunmore arrived home from a barbecue and slapped her to the floor (Tr. Vol. 2, p. 205; R 421). Appellant then contended Dunmore drew a knife and said: "I'm going to cut you up." (Tr. Vol. 2, p. 207; R. 423). Appellant stated Dunmore then cut her with the knife he was holding. (Tr. Vol. 2, p. 208; R. 424) Dunmore allegedly shoved Appellant to the floor and retrieved a gun. (Tr. Vol 2, pp. 208-209; R. 424-425). Appellant then swung the knife in her hand at Dunmore. (Tr. Vol. 2, p. 211; R. 427). Appellant testified she did not even realize she had stabbed Dunmore. (Tr. Vol. 2, p. 211; R. 427). Appellant stated Dunmore then simply stopped assaulting her, put the gun down, and walked out the door. (Tr. Vol. 2, p. 212; R. 248). Appellant watched Dunmore get into his car and drive away. (Tr. Vol. 2, p. 213; R. 249). According to Appellant, after Dunmore drove away he called and told her he was "going to get [her]." (Tr. Vol. 2, p. 214; R. 430). Appellant threw Dunmore's gun and the knife she stabbed him with into the woods (Tr. Vol. 2, p. 215; R. 431). Appellant did not call the police because she believed they would not get there by the time Dunmore returned. (Tr. Vol. 2, p. 216; R. 432). Appellant conceded she originally lied and told police Dunmore was the one who threw the shotgun into the yard. (Tr. Vol. 2, p. 221; R. 437).

Cross-examination revealed a litany of inconsistencies in Appellant's testimony. The Solicitor pointed not a single 9-1-1 tape existed where Appellant called for help. (Tr. Vol. 2, p. 227; R. 443). Appellant maintained she called 9-1-1 during one of Dunmore's previous instances of alleged abuse. (Tr. Vol. 2, p. 227; R. 443). Appellant then changed

her story to say she did not call 9-1-1, but a neighbor must have called. (Tr. Vol. 2, p. 228; R. 444). Appellant repeated her accusation Dunmore recorded her conversations and stated the tape recorder with the recorded conversations were at home. (Tr. Vol. 2, pp. 230-231; R 446-447). After the Solicitor questioned the existence of the tapes, Appellant agreed to bring the tapes in the following day so they could be played in Court. (Tr. Vol. 2, p 231; R. 447). Appellant never brought in the recordings she allegedly had in her possession and no further mention was made of them. Additionally, Appellant maintained Dunmore called her after he left and stated "I'm going to get you" before abruptly hanging up the phone; however, her testimony became inconsistent when the Solicitor presented evidence the only phone call between Appellant and Dunmore around the time of the incident lasted two minutes. (Tr. Vol 2, pp. 266-267; R. 482-483).

Appellant called Dr. Lois Veronen to testify as an expert in the field of battered women syndrome (Tr. Vol. 2, p 275, R. 491). She also testified about deficiencies in Appellant's memory. (Tr. Vol. 2, p. 295; R. 511). Appellant suffered a stroke subsequent to her arrest but prior to trial. (Tr Vol 2, p. 176; R. 392). Appellant admitted this stroke impacted her speech, writing, and memory. (Tr. Vol 2, p. 176; R. 392). Dr. Veronen testified ninety-nine percent of the population was better at holding onto memory than Appellant. (Tr. Vol. 2, p. 295; R. 511). Dr. Veronen averred "She was definitely in the bottom one, three, four and six percent in terms of memory tests." (Tr. Vol. 2, p. 295; R. 511). Dr. Veronen also stated "So we found significant documented impairment in terms of her memory, in terms of language fluency, in terms of ability to name and identify common objects." (Tr. Vol. 2, pp. 295-296; R. 511-512). Appellant's memory problems were apparent in her testimony when she was unable to recall whether she and Dunmore

had spent a Christmas together, and if so, what year it was. (Tr. Vol. 2, p. 233; R. 449). During her struggle recalling whether they had spent Christmas together, Appellant acknowledged "My mind is bad" and "I can't remember things very good". (Tr. Vol. 2, pp. 234-235; R. 450-451)

Dr. Veronen further testified it was her opinion Appellant was a battered woman in December of 2006. (Tr. Vol. 2, p. 296; R. 512). Dr. Veronen's diagnosis was based on Appellant's responses to questions and her reactions to visualization experiences. (Tr. Vol 2, p. 301; R 517). Dr. Veronen admitted that Appellant was in a prior abusive relationship with the father of Appellant's son. (Tr. Vol. 2, p. 302; R. 518). Dr. Veronen conceded Appellant's responses that Dr. Veronen deemed to be consistent with those of a battered woman could have related to Appellant's prior relationship. (Tr. Vol. 2, p. 302; R. 518). In her testimony, Dr. Veronen admitted a common time for violence in relationships is when one party decides to leave a relationship and the other party does not want them to leave. (Tr Vol. 2, pp 207-308; R. 423-524).[1]

Appellant's friend Josephine Mouzon claimed she witnessed Dunmore abuse Appellant in the past. (Tr. Vol. 2, p. 154; R. 370). Mouzon became friends with Appellant in 2004. (Tr. Vol. 2, p. 146; R 362). Mouzon came to know Appellant through Dunmore's cousin, Lester Harrison, who she was dating at the time. (Tr. Vol. 2, p. 146; R. 362). Mouzon testified she was no longer in a relationship with Harrison. (Tr. Vol. 2, p. 147; R. 363).[2] Mouzon, Harrison, Dunmore, and Appellant all spent time together on a regular basis. (Tr. Vol. 2, p. 362, R. 578). Mouzon stated Appellant and Dunmore were

[1] Testimony indicated the victim began spending more time with his estranged wife and children and that she offered to allow him to move back in with them Further, the victim's brother indicated the victim told him that he intended to leave Appellant and end their relationship (Tr Vol 1, pp 110-111, 128-131, R 67-68, 85-88)

[2] Harrison later testified he and Mouzon were still a couple (Tr Vol 2, p 361, R 577)

always arguing. (Tr. Vol. 2, p. 151; R 367). Appellant did not have a driver's license, so Mouzon would drive Appellant around when Appellant needed to run errands. (Tr. Vol. 2, p. 152; R. 368).

Mouzon asserted she saw Dunmore strike Appellant in November of 2006. (TR. Vol. 2, p. 154; R. 370). Mouzon contended Appellant was talking to Harrison outside Mouzon's home when Mouzon and Appellant arrived from running errands. (Tr. Vol. 2, p. 155; R 371). Mouzon stated Dunmore, unhappy Appellant left to run errands, hit Appellant "up side the head" when Appellant exited Mouzon's vehicle. (Tr. Vol. 2, p. 155; R. 371). Mouzon also averred she witnessed Dunmore shove Appellant on a different occasion. (Tr. Vol. 2, p. 159; R. 375). Harrison, however, later testified that during the time he spent with Dunmore and Appellant he never witnessed any sort of violence by Dunmore towards Appellant (Tr. Vol. 2, p. 371; R. 587).

Mouzon testified she stopped being around Appellant because Dunmore would get angry. (Tr. Vol. 2, p. 152, R. 368). On cross-examination, Mouzon revealed she and Appellant communicated on the day after Thanksgiving and on December 23rd, the day Dunmore was killed. (Tr. Vol. 2, p. 165; R. 381). Mouzon also continued to drive Appellant around town when Appellant needed to go somewhere. (Tr. Vol. 2, p. 166; R. 382).

Marry Ross examined appellant at the jail on December 28, 2006. (Tr. Vol. 2, p. 329; R. 545). Ross used to be employed as a nurse. (Tr. Vol. 2, p. 329; R. 545). At the time of trial, Ross was a legal assistant for Appellant's trial counsel. (Tr. Vol. 2, p. 332; R 548) Ross testified she observed bruising and a laceration on Appellant. (Tr. Vol. 2, p. 330, R. 546). Ross did not know when or how the injuries on Appellant occurred. (Tr.

Vol. 2, p. 331; R. 547) Ross stated that she could not tell how old Appellant's bruises were because "Bruises appear differently in different people" (Tr. Vol. 2, p. 332; R. 548).

ARGUMENT

I. The circuit court did not err in finding Appellant was not entitled to early parole eligibility under section 16-25-90 of the South Carolina Code because she failed to prove she was the victim of a history of domestic violence by a preponderance of the evidence.

The circuit court did not err in finding section 16-25-90 was inapplicable under the facts of this case. Respondent failed to present "credible evidence of a history of criminal domestic violence" suffered at the hands of her boyfriend, Willie Dunmore. The trial court made specific findings the evidence presented lacked credibility. Additionally, the court found Appellant failed to establish evidentiary support for a finding of a history of domestic abuse. Further, had the trial court applied section 16-25-90 as Appellant sought, the application of the statute would have run contrary to the legislative intent.

In criminal cases, the appellate court reviews errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). In reviewing the trial court, the appellate court is bound by the factual findings of the trial court unless an abuse of discretion is shown. State v. Laney, 367 S C 639, 643–44, 627 S.E.2d 726, 729 (2006). Additionally, "[t]he trial judge is in a superior position to judge credibility and great deference must be given the judge's determination." State v Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997); see also, Drayton v. Evatt, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993) ("We give great deference to a judge's findings where matters of credibility are involved since we lack the opportunity to directly observe the witnesses."). A trial court abuses its power of discretion when it commits an error of law or when there has been a factual conclusion without any evidentiary support State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006).

The statute at issue is section 16-25-90 of the South Carolina Code, providing:

> [A]n inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one fourth of his prison term when the inmate at the time he pled guilty to . . . an offense against the household member, . . . presented credible 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 (Supp. 2010).

Section 16-25-20 of the South Carolina Code (Supp.2010) states: "It is unlawful to: (1) cause physical harm or injury to a person's own household member, (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril." "Household member" includes "(1) a spouse; (2) a former spouse; (3) persons who have a child in common, or (4) a male and female who are cohabiting or formerly have cohabited." S C. Code Ann. § 16-25-10 (Supp. 2010).

There is very little case law in South Carolina interpreting this statute In State v. Grooms, this Court found: "Use of the term 'credible evidence' indicates the legislature intended the defendant's evidence to be, in fact, trustworthy, not simply plausible." State v. Grooms, 343 S.C. 248, 253, 540 S.E.2d 99, 101 (2000) Finally, the Court found the burden of proof is on the defendant to prove the history of criminal domestic violence by a preponderance of the evidence. Id. at 253-253; 540 S.E.2d at 102.

Another case where the statute was addressed was State v. Blackwell-Selim, in which this Court found· "The circuit court must make specific findings in ruling on parole eligibility or ineligibility under § 16-25-90." State v. Blackwell-Selim, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011).

In State v. Hawes, 399 S.C. 211, 730 S.E.2d 904 (2012), this Court dealt with the applicability of § 16-25-90 The Court took note of the ruling in Blackwell-Selim and observed that the Court was not permitted to reverse the circuit court's factual findings when there was evidence to support them. Hawes, 399 S.C. at 218, 730 S.E.2d at 907-908. The Court went on to affirm the ruling of the circuit court; finding that there was no abuse of discretion, as the record contained ample evidence to support the circuit court's factual findings. Id. at 220, 730 S.E.2d at 908

Abuse of Discretion

Appellant asserts the circuit court erred in finding the evidence of abuse presented by Appellant was not credible and not sufficient to meet her burden under section 16-25-90. Appellant specifically argues the combined testimony of Mouzon, Appellant, and Dr. Veronen establish a history of domestic violence. There is ample evidence to support the circuit court's findings regarding the credibility of the witnesses as well as the court's ultimate conclusion Appellant failed to prove her entitlement to application of section 16-25-90 by a preponderance of the evidence.

The circuit court concludes its Order by finding:

> However, there was not enough credible evidence presented, as stated in this Factual Finding, that shows Ms. Robinson suffered from a history of domestic violence at the hands of Mr. Dunmore. The Court hereby finds, that the testimony of each individual when considered independently or as a whole insufficient to find a history of domestic violence by the preponderance of the evidence. The finding of a lack of history of domestic violence by this Court does not condone any instance of domestic violence. However, the standard set in Hawes to trigger section 16-25-90 is not met based on the testimony presented at trial

(Circuit court order p 6, R. 655).

The trial judge did not abuse his discretion in concluding that the combined testimony of Appellant, Mouzon, and Dr. Veronen did not satisfy the statutory requirements for early parole eligibility. The trial judge's factual conclusion that Appellant was not entitled to early parole eligibility pursuant to section 16-25-90 was supported by the evidence in the case.

The circuit court found Appellant presented testimony regarding domestic violence; however, the court found the evidence lacks credibility. In the Order, the circuit court noted some of the inconsistencies in Appellant's testimony. The circuit court noted Appellant testified she called 9-1-1 on Mr. Dunmore; however, she quickly recanted her story when impeached by the State with the fact that there were no 9-1-1 records of her having called. The court also took note of the lie Appellant initially told law enforcement regarding who threw the shotgun into the woods. The court also placed emphasis on the fact Appellant contended she had copies of recorded phone conversations with Dunmore, but later failed to deliver them.

The Court also specifically identified Appellant's memory problem as a major factor in absence of credibility as a witness. Dr. Veronen testified ninety-nine percent of the population was better at retaining memory than Appellant. Appellant's memory deficiencies were highlighted at trial by her own admission regarding memory issues, and also by Appellant's inability to recall details of her relationship with Dunmore. All the above contributed to the circuit court's conclusion Appellant's testimony lacked the credibility necessary to prove a history of domestic violence by a preponderance of the evidence as required by section 16-25-90.

Appellant's testimony was wrought with inconsistencies; Appellant lied to law enforcement; and Appellant, according to Dr. Veronen, was in a prior difficult relationship and had trouble separating the two. Appellant argues that the trial judge's findings regarding Appellant's lack of credibility contains a glaring omission in the reasoning because the trial judge failed to recognize the impact of Appellant's stroke. The fact Appellant's memory deficits are the result of a stroke does not change the fact Appellant has deficiencies in her memory to such a degree she is not a reliable witness. Even Dr. Veronen, who did account for her memory issues and the stroke, admitted some of Appellant's responses could be based on a prior abusive relationship

The circuit court further found Mouzon presented testimony of domestic violence; however, the court also found her testimony lacked credibility. The trial judge noted a number of inconsistencies discredited Mouzon's testimony. Mouzon's testimony was also weakened by the testimony of Lester Harrison in which he contradicted several statements she made during trial. These inconsistencies support the conclusion Mouzon's testimony lacked the credibility necessary to prove a history of domestic violence by a preponderance of the evidence as required by section 16-25-90.

Further, her evidence of two minor instances, even if given credibility by the circuit court, was properly found not to be sufficient to establish a history of domestic abuse under the statute. The two instances, while if true are not condoned, were not of such an egregious nature to justify or mitigate the stabbing of the victim by Appellant. The trial court did not abuse his discretion in finding this evidence failed to meet the burden of demonstrating a history of abuse by a preponderance of the evidence.

The circuit court also found that Dr. Veronen's testimony did not satisfy the preponderance of the evidence standard in order to prove a history of domestic violence at the hands of Dunmore As mentioned above, Dr. Veronen testified, in her opinion, Appellant was a battered woman. The court found the analysis of Dr. Veronen flawed because she relied, at least in part, on her interviews with Appellant. As noted earlier, Appellant suffers serious memory deficits, so it is unlikely that the version of events she relayed to Dr. Veronen is an accurate portrayal of what happened in this case. The court also took issue with the lack of clarity as to whether Appellant's prior abuse occurred at the hands of Dunmore or Appellant's previous relationship. Dr. Veronen testified her responses consistent with being a battered woman could have related to the prior relationship.

The court noted Dr Veronen's testimony regarding Appellant's history of domestic violence prior to her relationship with Dunmore does not entitle Appellant to trigger section 16-25-90. The court concluded Dr. Veronen's analysis left inconclusive whether Appellant suffered a history of domestic violence at the hands of Dunmore. As stated by the court, the fact that Appellant has suffered domestic violence at some point in her life does not entitle her to the statutory protections of section 16-25-90.

Taking all the foregoing into consideration, it is evident that the trial judge did not abuse his discretion in determining Appellant was not eligible for early parole pursuant to section 16-25-90. The testimony of Appellant and Mouzon was flawed in that lacked credibility, as it was filled with inconsistencies. The testimony of Dr. Veronen, while credible, failed to establish that Appellant suffered domestic violence at the hands of the victim, Dunmore.

Legislative Intent

The State also submits that application of section 16-25-90 to Appellant's case would run counter to the statute's legislative intent. "The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S C. 1, 437 S.E.2d 6 (1993)).

> All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself.

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted)

The trial judge noted the intent of the legislature in stating "The intent of section 16-25-90 was to provide early parole for a person who suffered from a history of criminal domestic violence 'at the hands of a household member.'" (Order; R. 650-655). As far as any presence of a "history" of domestic violence in the case, the court noted the short length of time between the alleged domestic violence and the killing (29 days), as well as the lack of severity of the alleged domestic violence, are not sufficient to justify a finding of a "history" of domestic violence. (Order, R. 650-655) The court went on to determine:

> In this case, it is clear from the testimony that Ms Robinson is a victim of a history of criminal domestic violence. However, there was not enough credible evidence presented, as stated in this Factual Finding, that shows Ms. Robinson suffered from a history of domestic violence.

(Order; R. 650-655). The trial court's holding properly considered the legislative intent behind the statute. No definition of "history" is provided in the legislation or by our

Courts. The Court in Hawes ruled that the trial court did not abuse it's discretion in defining history, however the Court declined to provide insight into what they felt was the appropriate definition of history. [3] Hawes, 399 S.C. at 217, 730 S.E.2d at 907.

The clear legislative intent of section 16-25-90 is to provide mitigation of the sentence of someone who committed an offense against their household member after repeatedly suffering domestic violence at the hands of the victim. The statute is not intended to mitigate the sentence of an individual who, as the evidence in this case demonstrated, showed no history of violence in connection with their offense. The Act establishing the section provides evidence of the legislative intent: "To add Section 16-25-90 so as to provide the time which must be served by an inmate who has presented evidence of criminal domestic violence **in connection with their offense**." 1995 Act No. 7 (emphasis added). The legislative intent of mitigating a sentence of someone who has suffered as the clear victim of domestic violence is frustrated by applying the same statute to someone who makes a very minimal showing of any abuse and no showing their offense was connected to a history of criminal domestic violence.

As the trial Court noted, while Appellant stated she was a victim of criminal domestic violence at some point in the past, Appellant made no showing that Appellant suffered a history of criminal domestic violence at the hands of Dunmore. Appellant's showing at trial, therefore, is insufficient under section 16-25-90. The legislative intent would be frustrated, and the statute would be abused, by granting early parole eligibility to Appellant.

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[3] In Hawes, the Court of Appeals noted that at some point in the future, they or the Supreme Court may be required to specifically define a "history" to resolve the conflict before the Court Hawes, 399 S C at 217 The State is currently waiting for a final ruling on the Hawes case from the South Carolina Supreme Court

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, Order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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