STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2018-001042
Lower Court Case No. 2013-GS-47-00008

THE STATE, ... PETITIONER,

v.

ARTHUR M. FIELD,..... RESPONDENT.

PETITIONER'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS AND TO SUPPLEMENT RECORD

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Petitioner, the State, would respectfully respond in opposition to Respondent Arthur Field's motion to dismiss appeal and to supplement the record.

A. The appeal is not moot.

Respondent Field is incorrect that the appeal is moot. In this case, the State timely filed a motion for reconsideration following the imposition of sentence, thus preserving jurisdiction. The trial court sentenced Field to a ten (10) years, provided that upon the service of twenty-six (26) months, the balance would be suspended with five years' probation. He was given credit for 33 days served pre-trial in county jail, and 15 months on house arrest pursuant to an amendment to S.C. Code Ann. § 24-13-40 (Supp. 2015) allowing such credit.

The State's argument is that Field was given credit for time on unmonitored house arrest which simply does not qualify for credit under the statute. Since Field was improperly given this approximately fifteen (15) months credit by the trial court, he was processed quickly through SCDC and virtually went straight to probation. On September 7, 2018, during the pendency of this appeal, Judge Maddox found Field in violation of his probation (based in part of a finding of contempt by Judge Miller), terminated it, and ordered him to serve nine (9) months.

However, this appeal is not moot. Undoubtedly Field's probation is done and he has satisfied any suspended portion of his sentence. However, the fact remains that he did not satisfy the active twenty-six month portion of his sentence due to the improper house arrest credit. As such, if this Court were to agree with the State, Field would need to serve the appropriate amount to satisfy that active portion in order for his sentence to be "completed". As such, since his sentence is not complete were the

State to prevail, the case is not moot and dismissal is not warranted on issues of "judicial economy, law, and equity". See generally State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010) (reversing circuit court's erroneous discharge of respondent's remaining sentence because of incorrect conclusion he had completed his CSP).

B. The State did not waive its right to appeal.

Field next asserts the appeal should be dismissed based on his contention that the State waived its right to appeal in the plea agreement. He relies on United States v. Guevera, 941 F.2d 1299 (4th Cir. 1991), which held that a plea agreement precluding the defense from appealing would be construed to prohibit the government from appealing it strikes us as far too one-sided to construe the plea agreement to permit an appeal by the government for a fancied mistake by the district court, as here, but not to permit an appeal on similar grounds by the defendant." See generally State v. Pfeiffer, 427 S.C. 10, 828 S.E.2d 764 (2019) (finding Guevera inapplicable assuming it applied here).

Guevera should not be followed and in particular not in this case. It has frequently been criticized as not consistent with accepted principles of contract law, which this Court has held apply to plea agreements. State v. Thomason, 355 S.C. 278, 286, 584 S.E.2d 143, 147 (Ct.App.2003) ("Our supreme court has recognized a plea agreement rests on contractual principles."). For example, in United States v. Hare, 269 F.3d 859, 861-62 (7th Cir. 2001), the court persuasively noted:

> But the choice of remedy in Guevara is irrelevant once we reject, as we do, the idea that each of defendant's promises in a plea agreement must be supported by some particular (and "similar") promise by the prosecutor, as opposed to being supported by the overall consideration given for the plea.

See also United States v. Boucher, 905 F.3d 479, 480-81 (6th Cir. 2018) ("The Fourth Circuit offered no support for this unusual interpretation [in Guevera]. And several members of the court expressed doubt about it. We side with the other circuits, who follow customary interpretive principles about agreements, accepting waivers when waivers are made and denying waivers when waivers are not made."). These statements are consistent with South Carolina contract law. See generally State v. Wills, 409 S.C. 183, 762 S.E.2d 3 (2012) (defendant could waive protections of Rule 410, SCRE in proffer agreement).

Here, the plea agreement only expressly spoke of Field's waiver, not the State's, and while there was a general statement of finality, it concluded that such finality was "for Field to serve any sentence given by the Court in the manner **provided for by state law**" (emphasis added). Here, because of the incorrect credit, Field did not serve his sentence as provided for by state law, and Appellant merely seeks this Court to correct the error.

C. This Court has subject matter jurisdiction.

Subject matter jurisdiction is defined as "the power to hear and determine cases of the general class to which the proceedings in question belong.' " Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). This Court clearly has subject matter jurisdiction to resolve the issue of law, arising from a criminal sentence in general sessions, of whether unmonitored house arrest counts for sentence credit pursuant to a statute that clearly requires monitored house arrest. See S.C. Code Ann. § 14-3-330 (Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases).

D. <u>The State takes no position as to supplementing the record with the 2017 and 2018 Orders.</u>

The State would leave to this Court's discretion any decision to supplement the record or take judicial notice of subsequent orders in this action. The State would respectfully submit that any such decision should not only include the November 27, 2017 Order from the restitution proceedings, as well as the 2018 Orders from the probation revocation proceedings.

Accordingly, the State would respectfully assert this Court should deny the motion to dismiss the appeal, and would leave to the Court's discretion any decision to supplement the record.

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October 15 2019.

ALAN WILSON
ATTORNEY GENERAL

October 15, 2019

The Honorable Daniel E. Shearouse
Clerk, Supreme Court
Supreme Court Building
1231 Gervais Street
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RE: State v. ARTHUR M. FIELD,
Case No. 2018-001042
Lower Court Case No. 2013-GS-47-00008

Dear Mr. Shearouse:

Enclosed for filing in the above matter are the following:

(1) Original plus six (6) copies of the *Petitioner's Response in Opposition to Respondent's Motion to Dismiss Appeal and to Supplement Record.*
   i. The original remains unbound.
(2) Original plus six (6) copies of the *Motion to File Response Out of Time,*
(3) Proof of Service to Respondent's attorney of record of both pleadings.

Sincerely,

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