STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY

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

Appellate Case No. 2015-000210

THE STATE, ... APPELLANT,

v.

ARTHUR M. FIELD, ... RESPONDENT.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUE ON APPEAL

DID THE TRIAL COURT ERR IN FAILING TO GRANT THE STATE'S MOTION FOR RECONSIDERATION, WHERE RESPONDENT IMPROPERLY RECEIVED CREDIT FOR PRE-TRIAL TIME WHEN HE WAS MERELY ON GPS MONITORING BUT NOT ON HOUSE ARREST, AND THE STATUTE CLEARLY PROVIDES THAT CREDIT CAN ONLY BE GIVEN FOR "MONITORED HOUSE ARREST"?

STATEMENT OF THE CASE

This is a State's appeal arising from the denial of the State's motion to reconsider sentence.

On June 13, 2012, the State Grand Jury of South Carolina (the "State Grand Jury") returned a true billed indictment (the "Indictment") charging Respondent Arthur M. Field and his co-defendant Scott Pfeiffer with fourteen counts including securities fraud, forgery and conspiracy. **(R. pp. 1 – 91)**. Judge J. Cordell Maddox, Jr. was assigned continuing jurisdiction in the case.

Ultimately, Respondent pled guilty before the trial court on May 6, 2013 to all fourteen counts, under a plea agreement where the Court had discretion to sentence Respondent from zero to twenty-three years in prison. **(R. p. 157, p. 184)**. Sentencing was deferred pursuant to the agreement until after disposition of codefendant F. Scott Pfeiffer's case. Pfeiffer pled guilty on September 18, 2013. On October 8, 2013, Respondent was sentenced to a lead active sentence of twenty-six (26) months, with credit given for 33 days served pre-trial in county jail, and 15 months on house arrest pursuant to an amendment to SC Code § 24-13-40 allowing such credit. Respondent was ordered to pay restitution of $2,877,711.73 to the victims of the CIF case. **(R. pp. 265 – 266, p. 271, p. 292)**.

The State filed and served a timely Motion for Reconsideration of Sentence on October 16, 2013. **(R. pp. 288 – 289)**. Meanwhile, Pfeiffer filed motions for reconsideration on September 20, 2013 and October 17, 2013. A hearing was held on the State's and Pfeiffer's motions on July 9, 2014. **(R. pp. 293 – 326)**. Judge Maddox

subsequently issued orders on January 23, 2015, in which he denied the State's motion to reconsider which is the subject of the instant appeal. **(R. pp. 327 – 328)**.

A timely Notice of Appeal was filed with this Court. This State's appeal follows.

STATEMENT OF FACTS

As noted before, Respondent was indicted by the South Carolina State Grand Jury for two counts of conspiracy, eleven counts of securities fraud, and one count of forgery. The indictment generally alleged that Respondent and his codefendant defrauded South Carolina investors by concealing and misstating material information in connection with the offer and sale of notes by the now defunct Capital Investment Funding, LLC ("CIF"). **(R. pp. 1 – 91)**. Ultimately, CIF lost tens of millions of dollars of the money of some 688 victims. **(R. p. 203, p. 243).**

When Respondent was first indicted, his bond was set on June 21, 2012 by Judge G. Thomas Cooper, Jr. at a $2,000,000 surety. **(R. p. 112, pp. 151 – 154).** Ultimately, Respondent moved to reconsider the bond, and on July 19, 2012 Judge DeAndrea Benjamin lowered the bond to a $500,000 surety, along with home confinement including GPS tracking. **(R. p. 135, pp. 151 – 154).** Respondent made a subsequent motion to reconsider bond, which was heard before Judge Benjamin on December 13, 2012. At the hearing, Respondent's counsel expressly asked that he be taken off of the house arrest and the GPS monitoring. **(R. pp. 142 – 143).** The trial court ruled as follows:

> Well, what I'll do is at this point, I'll take, I'll take the house arrest off so he can go, but I'll leave the, I'm going to leave the bracelet on and give [Respondent's counsel] leave to come back in ninety days. Or, or if something else changes before then, within ninety days regarding the bracelets. But we'll, we'll take the house arrest off and the restrictions regarding the house arrest.

(R. p. 147, 14-21). The Bond Order signed by Judge Benjamin similarly held that "[t]he Motion to Amend Bond as to House Arrest is granted; as to GPS tracking it is denied". **(R. pp. 151 – 154)**.

As noted before, Respondent pled guilty in May 2013 and sentencing was deferred pending resolution of the codefendant's case. Judge Maddox specifically noted that all bond conditions would remain the same pending Respondent's sentencing. **(R. pp. 182 – 183).**

Following the codefendant's plea and sentencing, Respondent was sentenced on October 8, 2013. Respondent's counsel misspoke in arguing that Judge Benjamin had declined to take him off of home confinement, and that Respondent had been on home confinement since he got out on bond. **(R. p. 253, lines 3 - 13)**. Later, Respondent argued that he should receive fifteen months for time he claimed he served on house arrest from bond in July of 2012 to sentencing in October of 2013. **(R. pp. 257 – 258)**. Respondent also argued to the judge that while under the statute one could get credit for pre-trial time on house arrest, one could not get good time for it. **(R. p. 258, lines 12-14)**. Ultimately, the trial court sentenced Respondent to a lead active sentence of twenty-six (26) months, with credit given for 33 days served pre-trial in county jail, and 15 months on house arrest. **(R. pp. 265 – 266)**.

SCDC processed Respondent through and out in five days based on its calculation of the credit given, and the State then filed a timely Motion for Reconsideration of Sentence, giving a procedural history, discussing the good time issue, and stating: "pursuant to the plea agreement any sentence is in the discretion of the Court, so the

State has simply filed this motion to reconsider to preserve jurisdiction in case the sentencing result is inconsistent with this Court's intent." **(R. pp. 288 – 289)**.

A hearing on Respondent and Pfeiffer's motion for reconsideration was held on July 9, 2014. The State's first point was that it appeared SCDC had given good time credit for the house arrest time, which had led to a result which seemed inconsistent with the judge's intent at the plea, and that it had simply filed the motion to reconsider to preserve jurisdiction in case the court wished to correct it. **(R. pp. 299 – 300).** Respondent argued that the judge could not resentence on reconsideration simply because the judge did not like how good time was calculated, and that the State had agreed to stay silent on sentencing. **(R. pp. 302 – 303).** The judge stated he "appreciated" and was "glad" the State filing the motion to preserve jurisdiction. **(R. p. 307, lines 8 - 9, p. 312, lines 24 - 25)**.

Second, the State argued that there was a factual error in the calculation of the time on house arrest Respondent actually served, as he only served 4.83 months because Judge Benjamin removed the house arrest in December of 2012. He did not serve the fifteen months that for which the judge had given him credit. **(R. pp. 303 – 307)**. Respondent argued that the State could not make this argument because it had agreed to stay silent on sentencing, and that he should receive credit because he was still on monitoring and cooperating with the State at the time. **(R. pp. 309 – 312, p. 317)**. The State was clear that it was not arguing whether or not Respondent should get any credit for house arrest time – but only that any credit he was given be limited to the accurate amount of what he actually served. **(R. p. 307, lines 13 – 23, p. 316 lines 1 – 10)**.

The trial court stated agreed the State was correct about the court's intent, stating "quite frankly, the twenty-six months in prison is what I thought he was going to do minus some period of time". **(R. p. 319, lines 2 – 4)**. The parties disagreed on whether monitoring alone was sufficient for house arrest, with the State pointing out the statute said "monitored house arrest". **(R. p. 321)**.

The court ultimately thought the statute was ambiguous, stating that while he "frankly agree[d] with you-all [the State], and if it was appealed, [the court] would lose", he was going to leave the sentence the way it was. The court ultimately signed an order denying the State's motion, stating that while it did not dispute the State's contentions as to the proper amount of credit, it was electing instead to lower the codefendant's sentence. **R. pp. 327 – 328)**.

It is from this decision the State appeals.

ARGUMENT

THE TRIAL COURT ERRED IN FAILING TO GRANT THE STATE'S MOTION FOR RECONSIDERATION, WHERE RESPONDENT IMPROPERLY RECEIVED CREDIT FOR PRE-TRIAL TIME WHILE HE WAS MERELY BEING MONITORED BUT NOT ON HOUSE ARREST, AND THE STATUTE CLEARLY PROVIDES THAT CREDIT CAN ONLY BE GIVEN FOR "MONITORED HOUSE ARREST".

While the factual recitation to get here is a bit involved, the legal analysis is not. Here, Respondent was given credit for pre-trial time where he was on GPS monitoring but not on house arrest, and he was not entitled to such time under the clear language of the statute.

The issue concerns application of the 2013 amendment to S.C. Code § 24-13-40, which addressed computation and credit for time served by prisoners. In State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (2004), the court interpreted the statute which addresses credit in sentencing for time served, S.C. Code § 24-13-40, and held that "time served" did not include pretrial home confinement because that was a condition of *release* from custody, not time *in* custody. However, in June of 2013, this statute was amended to provide that credit "*may* be given for any time spent under monitored house arrest". 2013 South Carolina Laws Act 34 (H.B. 3193) (emphasis added).

At the reconsideration hearing, Respondent argued that he was still entitled to credit under the statute after December 13, 2012, because while he was not under house arrest, he still was subject to GPS monitoring. However, the cardinal rule of statutory construction is that the intent of the legislature must be given effect if it can be reasonably discovered in the language used, and that language must be considered in its plain and ordinary meaning. See generally State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (Ct.

App. 2004) (citing various cases and finding the plain and ordinary meaning of "time served by a prisoner" precluded a finding that house arrest qualified). See also Hayes v. State, 413 S.C. 553, 717 S.E.2d 6 (Ct. App. 2015) (reversing PCR court for not giving credit for time served to probationer who received split sentence and then had his probation revoked, as plain language of statute does not make a distinction for split sentences).

Here the statutory language is clear and unambiguous – it says "monitored house arrest". "Monitored" is but an adjective for "house arrest". Monitoring is alone not enough and neither is unmonitored house arrest. The statute does NOT say "monitoring and/or house arrest", or even just "house arrest". As such, since both monitoring and house arrest must be present, and Respondent did not have house arrest after December 13, 2012 despite the fact that he was monitored, then by the plain and unambiguous language of the statute he was not legally entitled to credit beyond that date.[1]

Unquestionably, the State may file a motion for reconsideration of sentencing, and the appellate courts have upheld such motions where they corrected factual or legal errors at sentencing. See generally State v. Hicks, 377 S.C. 322, 659 S.E.2d 499 (2008) (upholding decision to change sentence on State's motion for reconsideration where State presented additional information from victim not present at sentencing and corrected alleged factual misstatements made by the defense during the hearing).

[1] It should be noted that the original bill had only the words "house arrest", and it was subsequently only referred out of the House Committee on Judiciary when the bill was amended to make the word "monitored" a necessary modifier of "house arrest".
See http://www.scstatehouse.gov/sess120_2013-2014/bills/3193.htm

The appellate courts also have corrected situations where sentences were calculated based on an erroneous view of fact or law. See, e.g. Crooks v. State, 326 S.C. 171, 485 S.E.2d 374 (1997) (PCR court was incorrect in awarding credit for time served prior to warrant for offense being served); State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981) (remanding because trial court erred as a matter of law in believing it had no jurisdiction to modify sentence despite timely motion); Hayes v. State, 413 S.C. 553, 717 S.E.2d 6 (Ct. App. 2015) (reversing PCR court for not giving credit for time served to probationer who received split sentence and then had his probation revoked).

Accordingly, Respondent received credit for fifteen months on house arrest, when in fact he should have only received time when he was on "monitored" house arrest -- from July 21, 2012 until December 13, 2012, or 145 days. The trial court erred in not so ruling on the State's motion for reconsideration.

CONCLUSION

For the foregoing reasons, it is respectfully submitted the order of the trial court denying the State's motion for reconsideration should be reversed.

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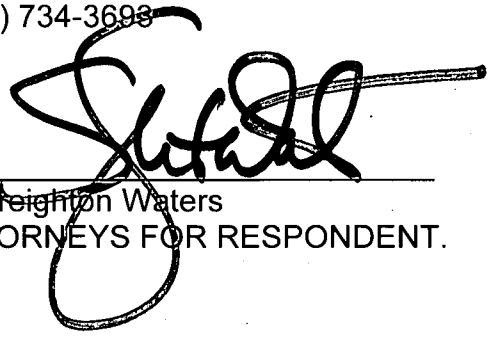

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February 24, 2017.