

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
The Honorable Alison Renee Lee, Circuit Court Judge
Appellate Case Tracking Number 2016-002210

RECEIVED

JAN 23 2020

SC Court of Appeals

The State,

Appellant,

vs.

Jamie Simpson,

Respondent.

PETITION FOR REHEARING

On January 8, 2020, this Court found a circuit court did not have authority to sentence a person convicted of second degree sexual exploitation of a minor to home detention in lieu of the minimum two years' imprisonment mandated by section 16-15-405 of the South Carolina Code. However, this Court found the issue moot as it relates to Respondent because he already served his illegal home detention in lieu of a proper sentence of imprisonment. This Court misapplied the case law and overlooked the relevant facts of this case. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the issue is not moot as to Respondent, and reverse and remand for resentencing.

Initially, the cases cited by this Court to conclude the issue is moot as to Respondent are not applicable to the facts and circumstances of this case. First, Hayes v. State, 413 S.C. 553, 558, 777 S.E.2d 6, 9 (Ct. App. 2015), stands for the proposition that a case is moot when the defendant is seeking to decrease the time he should spend incarcerated, but has completed his sentence as it was instituted. As a result, the Court had no possible relief for the defendant in the

event he was successful. It could not meaningfully reduce his sentence, as he had already completed the longer sentence as imposed. The Court's second citation is to McClam v. State, 386 S.C. 49, 55, 686 S.E.2d 203, 206 (Ct. App. 2009). In McClam, a sexually violent predator was transferred to a private facility while remaining confined under the SVP program. After the State filed its appeal arguing transfer to the private facility was not permitted, McClam completed the SVP program and was released from the program in its entirety. Again, this Court had no relief to the State in the event it was successful because McClam was already released from the SVP program, so a finding that he could not be transported to a separate facility would be ineffectual. Finally, this Court cites to In the Interest of Kaundra C., 318 S.C. 484, 486, 458 S.E.2d 443,444 (Ct. App. 1995). In Kaundra C., the juvenile appealed from the family court's order of a determinate sentence without prior evaluation at the R&E center as required by statute. Prior to the appeal being heard, the juvenile served the entirety of her determinate sentence and was released. As in the two prior cases, there was absolutely no meaningful relief which could have been given Kaundra C. because she had already served her sentence and allowing her to report to R&E for a determination of the appropriate sentence would be meaningless. These cases are clearly distinguishable from the underlying appeal in this case where meaningful relief can still be given the State upon successful appeal—the requirement Respondent complete the require two year mandatory imprisonment provided by section 16-15-405.

By way of example, if this Court's logic is correct then a defendant could be sentenced to one day home detention after being convicted of murder. The State would clearly appeal, arguing that one day home detention is an illegal sentence under the murder statute. If the appeal was not concluded the next day, the individual would complete his sentence. Under this Court's holding, the issue of whether he could properly be sentenced to one day home detention for

murder would be moot and a murderer would not be able to receive a proper sentence. The sentence in this case, while obviously not as absurd, is just as illegal and should not have been allowed. Respondent should not receive the windfall of being able to obtain an illegal sentence, serve the illegal sentence, and not face resentencing for a proper statutory punishment.

Additionally, even if this Court considered whether Respondent's time on home detention could entitle him to receive credit towards his sentence, it is a determination which must be made by the sentencing judge. Pursuant to section 24-13-40 of the South Carolina Code, "full credit against the sentence . . . may be given for any time spent under monitored house arrest." It is questionable whether this provision may even apply to the term of mandatory imprisonment required in section 16-15-405, but even if it may apply it is only appropriate for the sentencing judge to make the determination after remand.

The State submits Respondent has not completed the sentence required by section 16-15-405 and relief may still be granted in this case. 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 2} Respondent “has not in fact completed his sentence of imprisonment as home detention does not constitute imprisonment.” State v. Williams, Op. No. 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).

This Court found because home detention has been served, no further relief may be granted if the State wins its appeal. “[M]oot appeals result when intervening events render a case nonjusticiable.” Sloan v. Greenville County, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003). “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). Unlike the cases cited by this Court in its opinion, effective relief may still be granted in this appeal. This Court correctly found the sentencing court abused its discretion in sentencing Respondent outside of the statutory limits by allowing home detention when the statute mandates a two year imprisonment. This Court may grant practical legal relief by remanding to the circuit court to resentence Respondent in compliance

¹ The State acknowledges this is an unpublished case with no precedential value. The State notes the case was cited by this Court in its opinion.

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. This finding was specifically noted by this Court in its opinion, which reaches a contrary conclusion.

with section 16-15-405. Any question of credit for time served, or other questions, can be addressed on resentencing, but do not render the question moot as it applies to Respondent.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the issue as it relates to Respondent is not moot, and conclude the case should be remanded for resentencing pursuant to this Court's correct determination that the circuit court abused its discretion in sentencing Respondent to home detention when the statute requires mandatory imprisonment and he was a violent offender. The State asks this Court to Reverse and Remand for resentencing.

Respectfully submitted,

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Senior Assistant Deputy Attorney General

BY: 

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ATTORNEYS FOR APPELLANT

January 23, 2020

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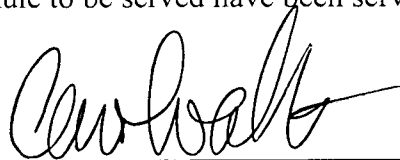
Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Petition for Rehearing by having delivered two copies of the same to:

Susan B. Hackett, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 23rd day of January, 2020.



CAROLINE COLLINS
Administrative Coordinator
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
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ALAN WILSON
ATTORNEY GENERAL

January 23, 2020

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

Re: State v. Jamie Simpson,
Appellate Case No. 2016-002210

Dear Ms. Kitchings:

Please find enclosed for filing the original and six (6) copies of the Petition for Rehearing, with proof of service, in the above-referenced case.

Sincerely,

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

Enclosures

cc: Susan B. Hackett, Esquire (2 copies enclosed)
Victim Advocacy Division (enclosure)