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THE STATE OF SOUTH CAROLINA **Feb 03 2021**
In The Court of Appeals

SC Court of Appeals

Appeal from Horry County
Horry County Court of General Sessions
Hon. Judge Benjamin H. Culbertson, Circuit Court Judge, Presiding

Appellate Case No. 2018-001186

The State.....Respondent,

Versus

Matt Stevens.....Appellant.

INITIAL BRIEF OF APPELLANT

Respectfully Submitted,
s/Scarlet B. Moore

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STATEMENT OF ISSUE ON APPEAL

1. Did the trial court err in failing to give the Appellant credit for twenty-three (23) months of house arrest at the Appellant's sentencing hearing?

STATEMENT OF THE CASE

The Appellant plead guilty on July 10, 2017, to a violation of S.C. Code Ann. §16-11-0312, Burglary in the 2nd Degree, Violent, which carries a possible sentence of 0-15 years. (Sentencing Sheet.) His sentencing was deferred for approximately nine (9) months pending the resolution of his co-defendants' cases, due to the fact that throughout the pendency of the Appellant's criminal prosecution he had offered to work with officers of the Horry County Drug Enforcement Unit (DEU) in some ongoing investigations, according to the Solicitor at sentencing. (Sentencing Sheet; Tr. Trans. p. 3, lines 10-17.) Although the specific facts are in dispute, the Solicitor does acknowledge that the Appellant was initially very cooperative with agents of Horry County Drug Enforcement Unit, making several controlled buys for them leading to an arrest, following his guilty plea. (Tr. Trans. p. 6, lines 17-21.) However, the Solicitor alleged that the Appellant ceased cooperating with agents at some point following his guilty plea. The Solicitor recommended a sentencing range of six (6) to fifteen (15) years for the Appellant, despite the cooperation and assistance from the Appellant: as defense counsel pointed out at sentencing, the solicitor asking the court to impose a sentence up to the maximum did not properly compensate for the cooperation by a criminal defendant. In mitigation, the Appellant's defense counsel noted for the court that contrary to the assertions of the Solicitor, the Appellant had, in fact, cooperated fully with the DEU and had given them as much information as he possibly could to assist with at least two (2) arrests – which individuals were a fairly high level cocaine dealer and heroin dealer. (Tr. Trans. p. 8, lines 1-5.) However, according to defense counsel, the Appellant was not able to further assist due to the fact that his cover was “blown” in the small community of Loris. (Tr. Trans. p. 8, lines 10-14.) Additionally, defense counsel informed the court that the Appellant had offered much information to assist law enforcement in

other cases. (Tr. Trans. p. 8, lines 15-19.) A co-defendant had received a sentence of five (5) years prior to the sentencing of the Appellant, with no cooperation with the State. (Tr. Trans. p. 9, lines 14-16.) According to defense counsel, the Appellant put his life and his family's safety on the line for the State. (Tr. Trans. p. 10, lines 16-19.) Defense counsel asked the court to reject the sentence recommendation of the State, and to impose a suspended sentence and place the Appellant on probation. (Tr. Trans. p. 11, 15-19.) However, defense counsel urged the court that if the court were inclined to impose a sentence of incarceration that the Appellant be given credit for his twenty-three (23) months spent on house arrest. (Tr. Trans. p. 11, lines 20-22.) The Solicitor recited the Appellant's previous criminal history, which was limited in scope: a 2004 assault and battery of a high and aggravated nature in which he was sentenced to five (5) years suspended to three (3) years probation; a misdemeanor larceny in 2010; and an assault with infliction of a serious injury in 2012. (Tr. Trans. p. 12, lines 24-25; p. 13, lines 1-6.) Without any explanation or elaboration on the sentence determination, the court imposed a sentence of twelve (12) years of incarceration for the Appellant, in which the Appellant was to receive credit for any pretrial detention, but not for the home detention. (Tr. Trans. p. 13, lines 12-17.) The Appellant filed a timely notice of appeal of this matter.

ARGUMENT

The sentencing court erred in failing to give the Appellant credit for twenty-three (23) months that he spent on house arrest.

The trial court abused its discretion and erred as a matter of law in failing to give the Appellant credit for the twenty-three (23) months that the Appellant served on house arrest. In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.* In reviewing the trial court, this 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). This standard is satisfied when there is evidence in the record to support the conclusion of the trial court. *Id.* *State v. Blackwell-Selim*, 684 S.E.2d 208, 385 S.C. 394 (S.C. App. 2009). In criminal cases, the appellate court sits to review errors of law only. *State v. Jacobs*, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011). A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law. *Id.* *State v. Dawson*, 402 S.C. 160, 740 S.E.2d 501 (S.C. 2013).

In the case at bar, the trial court did not make any specific factual findings regarding the sentencing of the Appellant. Thus, this Appellate Court will be challenged to ascertain the rationale and reasoning of the trial court's sentencing as he made no factual findings in which the court can review for abuse of discretion. The trial court in a wholly summary fashion announced a twelve (12)-year sentence of incarceration for the Appellant with no explanation on the record, and denied credit to the Appellant of his twenty-three (23) months spent on house arrest. Pursuant to S.C. Code Ann. § 24-13-40, "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and

sentencing, and may be given for any time spent under monitored house arrest." However, inconsistently, the court specifically "checked" the box on the sentencing sheet stating that the Appellant is to be given credit for time served pursuant to S.C. Code Ann. § 24-13-40 to be calculated and applied by the State Department of Corrections, with no exceptions nor qualifications. (Sentencing Sheet.) In other words, the sentencing judge did not specify on the sentencing sheet pursuant to his oral ruling that the Appellant would *not* get credit for his time spent on house arrest. S.C. Code Ann. § 24-13-40 does not have subparts for reference: the sentencing sheet refers to the statutory provision in total, thus yielding the logical conclusion that the Appellant should receive full credit for his time spent on house arrest contrary to the court's oral ruling at the sentencing hearing. Regardless, the record of this case supports the conclusion that the trial court abused its discretion in not giving the Appellant his house arrest credit. As defense counsel pointed out at sentencing, the Appellant offered assistance to law enforcement that yielded arrests of a cocaine and heroin dealer. And, a co-defendant of the Appellant only received a five (5)-year sentence. The criminal history of the Appellant was at least five (5) years old at the time of the entry of the plea. All of these factors are favorable to the Appellant, and the trial court abused its discretion and erred as a matter of law in failing to provide house arrest credit to the Appellant. Therefore, this matter should be reversed and remanded to the trial court for the Appellant to receive his credit of twenty-three (23) months for house arrest.

CONCLUSION

The Appellant prays that this Honorable Court will order that the Appellant shall receive credit for twenty-three (23) months of house arrest, and for any further relief that the Court deems necessary and appropriate.

Respectfully Submitted,

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