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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2017-000481

The State,Respondent

v.

Ontavious Plumer,.....Appellant.

RETURN TO STATE’S PETITION FOR REHEARING

On March 16, 2021, the State petitioned this Court for rehearing regarding the section of this Court’s opinion vacating the five-year sentence for possession a firearm during the commission of a violent crime, even though the State acknowledges the trial judge imposed this sentence contrary to S.C. Code § 16-23-490(A). On April 7, 2021, this Court requested Ontavious Plumer respond to the State’s petition for rehearing. This return follows. This Court should deny the State’s petition for four reasons.

First, this Court correctly identified cases in which our appellate courts correct obvious sentencing errors of this very nature, to wit: *State v. Johnston*, 333 S.C. 459, 510 S.E.2d 423 (1999); *State v. Bonner*, 400 S.C. 561, 567, 735 S.E.2d 525, 528 (Ct. App. 2012); *State v. Vick*, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009). Thus, the State is not correct when it accuses this Court of not following binding precedent of our Supreme Court.

Second, the State’s criticism of this Court for using the term “criminal equity,” *e.g.* Petition for Rehearing, at 3, is a red herring. As discussed above, this Court’s opinion vacating the sentence for the weapons charge resulted from correct application of our state’s precedent.

Third, the State argues, “[P]ursuant to equitable principles, Plumer would not be entitled to equitable relief because he did nothing which ought to have been done to obtain the sentencing relief he has sought on appeal before he first tried to obtain it from this Court.” Petition for Rehearing, at 5. Notably, Mr. Plumer did not do anything to place himself in this predicament as he was relying on his trial counsel to object to any illegal sentence. Judicial economy—as recognized by *Johnston*, *Bonner*, and *Vick*—militates in favor of correcting this error at this stage. Nothing is served by pushing resolution of this issue into post-conviction relief, as the State advocates. *See, e.g.*, Petition for Rehearing, at 7, fn. 5 (“while equity abhors a wrong without a remedy, the remedy of post-conviction relief will remain available to Plumer to obtain the sentencing relief”).

Fourth, the State is not prejudiced by this Court vacating a sentence that it concedes is contrary to law. Brief of Respondant, at 39 (“Pursuant to South Carolina law, Appellant should not have been sentenced to five years for possession of a firearm during the commission of a violent crime since he received a life without parole sentence for attempted murder.”).

(conclusion on next page)

CONCLUSION

For the foregoing reasons, this Court should deny the State's petition for rehearing.

Respectfully submitted,

By E. Charles Grose, Jr.

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Certificate of Service

I certify that I have served a copy of this pleading on the State of South Carolina, pursuant to South Carolina Supreme Court Order No. 2021-03-04-01, Section (c)(13), by emailing at copy to counsel, at their AIS email address, as reflected below:

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April 8, 2021
Greenwood, South Carolina

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April 8, 2021

The Honorable Jenny Abbott Kitchings
Court, S.C. Court of Appeals
P.O. Box 11629
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SC Court of Appeals

Re: *State of South Carolina v. Ontavious Plumer*
Appellate Case Number 2017-000481

Dear Ms. Kitchings:

Enclosed please find Mr. Plumer's Return to the State's Petition for Re-hearing, along with a certificate of service.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,

s/E. Charles Grose, Jr.
E. Charles Grose, Jr.

cc: Mr. Ontavious Plumer
Mark R. Farthing, Esquire