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**Aug 06 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Horry County  
The Honorable Benjamin H. Culbertson, Circuit Court Judge

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Appellate Case No. 2018-001186

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THE STATE

Respondent,

v.

MATT STEVENS,

Appellant.

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**FINAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his broad discretion in sentencing Appellant to twelve years' imprisonment and declining to grant Appellant credit for the time he served on house arrest when the trial judge sentenced Appellant within the appropriate statutory range and when he held the authority to decline Appellant credit for the time spent on house arrest? And if Appellant's argument regarding the ambiguity of his sentence is preserved, was the sentence unambiguous when the trial judge explicitly declared Appellant's sentence with an oral pronouncement and the sentencing sheet?

## STATEMENT OF THE CASE

In August 2016, a Horry County Grand Jury indicted Appellant for one count of first degree burglary. On July 10, 2017, Appellant plead guilty to the lesser included offense of second degree burglary violent before the Honorable Grace Gilchrist Knie. Appellant was represented by Daniel A. Hunnicutt, Esquire. The State was represented by Assistant Solicitor O'Bryan Martin of the Fifteenth Circuit Solicitor's Office. Judge Knie deferred sentencing to a later date. On April 12, 2018, Appellant returned to Horry County Court of General Sessions to be sentenced before the Honorable Benjamin H. Culbertson. Judge Culbertson sentenced Appellant to twelve years' imprisonment. Judge Culbertson specified Appellant would receive credit for any time served during pretrial detention but not for time Appellant spent under house arrest. Appellant filed a motion to alter or amend judgement on April 18, 2018. Judge Culbertson denied Appellant's motion in a written order on June 13, 2018. Thereafter, Appellant filed a notice of appeal and an initial brief.

## STATEMENT OF FACTS

On April 16, 2016 officers with the Horry County Police Department arrived at a residence in the Green Sea area of Horry County in reference to a burglary. (R. 13). The backdoor of the residence was pried open and the residence ransacked. (R. 13). The victim, Linda Bryant, reported two safes, \$2300 in cash, several pieces of jewelry, a flat screen TV, and a Colt .22 revolver stolen. (R. 13). While investigating a separate crime, a Horry County detective interviewed a suspect who confessed to the Green Sea burglary and implicated Appellant. (R. 13-14). Appellant plead guilty to second degree burglary violent on July 10, 2017, but sentencing was deferred for at least 90 days. (R. 16).

After his plea, Appellant began performing controlled buys of drugs for the Horry County Drug Enforcement Unit. (R. 20, 23). Initially, Appellant was helpful to law enforcement and performed several controlled buys (R. 23-24). However, at some point Appellant ceased his cooperation with law enforcement, and Appellant returned to General Sessions Court for sentencing on April 12, 2018. (R. 23-24). The solicitor recommended a sentence in the range of six to fifteen years' imprisonment based on Appellant's culpability as the organizer of the burglary and the reduction in charge from first degree burglary to second degree burglary violent. (R. 21-24). Appellant requested credit for twenty three months of house arrest. (R. 27). The trial judge sentenced Appellant to twelve years' imprisonment and granted Appellant credit for any time spent in pretrial detention. (R. 30, 32). However, the trial judge declined to grant Appellant credit for time served on house arrest. (R. 30, 32). Following the imposition of his sentence, Appellant filed a motion to alter or amend judgement. (R. 3). The trial judge denied Appellant's motion. (R. 1-2).

## STANDARD OF REVIEW

“A trial judge is allowed broad discretion in sentencing within statutory limits.” Brooks v. State, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997). “Whether a sentencing transcript or sentencing sheet is ambiguous is a question of law.” Bordeaux v. State, 410 S.C. 495, 499, 410 S.E.2d 143, 145 (2014). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

## ARGUMENT

**The trial judge did not abuse his broad discretion in sentencing Appellant to twelve years' imprisonment and declining to grant Appellant credit for the time he served on house arrest, because the trial judge sentenced Appellant within the appropriate statutory range provided and held the authority to decline to give Appellant credit for house arrest. Appellant's argument that his sentence was ambiguous is not preserved for appeal, and the sentence was unambiguous as declared by the trial court in his oral pronouncement and the sentencing sheet.**

Appellant contends the trial judge abused his discretion by declining to give Appellant credit for the twenty three months Appellant spent on house arrest. Specifically, Appellant complains the trial judge did not make factual findings on the record or otherwise explain his reasoning for sentencing Appellant to twelve years' imprisonment, nor did he explain his rationale for denying Appellant's request for twenty three months of credit for the time Appellant spent on house arrest. Appellant also seems to argue the trial judge's sentence was ambiguous and the ambiguity should be resolved by giving Appellant credit for the twenty three months of house arrest. (Initial Brief of Appellant 8).

Appellant's argument fails for two reasons. First, the trial judge did not abuse his broad discretion in sentencing Appellant to twelve years' imprisonment or by declining to give Appellant credit for house arrest. The trial judge appropriately sentenced Appellant within the applicable statutory range of second degree burglary violent, and he was not required to articulate his reasoning for Appellant's sentence or his reasoning in declining to give Appellant credit for house arrest. Second, to the extent Appellant argues his sentence was ambiguous, that argument is not preserved for appeal because Appellant did not make that argument at his sentencing hearing or in his post-trial motion. However, even if preserved, the trial judge's sentence was unambiguous. The trial judge ruled orally and in writing that Appellant would receive credit for any time spent in detention prior to trial. (R. 30, 32). The trial judge also made

an unambiguous oral pronouncement that Appellant was not to receive credit for time spent on house arrest. (R. 30).

South Carolina Code Section 24-13-40 provides in relevant part: “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.” (emphasis added) S.C. Code § 24-13-40. The South Carolina Department of Corrections is “confined to an unambiguous sentencing sheet in determining an inmate’s sentence, but may consider the sentencing transcript if the sheet is ambiguous.” Tant v. S.C. Dep’t of Corr., 408 S.C. 334, 346, 759 S.E.2d 398, 404 (2014). “An unambiguous sentencing pronouncement will control over an ambiguous sentence, whether oral or written, so long as giving effect to that pronouncement does not result in an illegal sentence or a deprivation of a defendant’s constitutional rights.” Bordeaux 410 S.C. at 500, 410 S.E.2d at 145. “[W]hen the record clearly reflects an appropriate basis for a disparate sentence, the sentencing judge may impose a different sentence on a co-defendant in a criminal trial.” State v. Follin, 352 S.C. 235, 257, 573 S.E.2d 812, 824 (Ct. App. 2004). “[T]his court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive.” State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976).

#### **The Trial Judge Acted Within his Discretion**

Here, the trial judge acted within his discretion in sentencing Appellant to twelve years’ imprisonment and in refusing to grant Appellant credit for the time he spent on house arrest. The twelve year sentence handed down by the trial judge was within the fifteen year limit specified by S.C. Code § 16-11-312. See S.C. Code § 16-11-312(C)(2) (“Burglary in the second degree

pursuant to subsection (B) is a felony punishable by imprisonment for not more than fifteen years). Furthermore, the trial judge's decision to refuse Appellant credit for house arrest is within the trial judge's authority under the plain language of S.C. Code § 24-13-40. See S.C. Code § 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").

### **Sentence was Unambiguous**

To the extent Appellant argues his sentence was ambiguous, this issue is not preserved for appeal because Appellant did not object to the trial judge's sentence on that basis or otherwise seek clarification of the sentence from the trial judge. See State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A] party may not argue one ground at trial and an alternate ground on appeal."). At his sentencing hearing, Appellant asked the trial judge for twenty three months credit for the time he served on house arrest. (R. 27). The trial judge explicitly denied Appellant's request. (R. 30). In Appellant's post-trial motion he asked the trial judge to give him credit for the time he spent on house arrest or, in the alternative, a written order stating the reasons why the trial judge denied Appellant credit for time served. (R. 3). Appellant never asked the trial judge to clarify his sentence or expressed any uncertainty regarding his sentence. In fact, as Appellant's post-trial motion indicates, he was fully aware that he was not granted credit for time served on house arrest and he therefore asked the trial judge to reconsider that decision or to state why house arrest had been denied. (R. 3). Therefore, Appellant's argument that his sentence was ambiguous has not been preserved for appeal.

Even if Appellant's argument were preserved, Appellant's sentence was unambiguous. The trial judge explicitly denied Appellant's motion to receive credit for time served on house

arrest with an oral pronouncement at sentencing. (R. 30). The trial judge's written order that Appellant receive credit for time served pursuant to S.C. Code § 24-13-40 does not render the sentence ambiguous. The trial judge does not have discretion to deny Appellant credit for time served in prison unless the exceptions to S.C. Code § 24-13-40 are satisfied. See State v. Boggs, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (holding a trial judge cannot deny a defendant credit for time served in prison prior to trial by refusing to check a box on the sentencing sheet unless one of the two exceptions enumerated in Section 24-13-40 exists). Here, neither of the exceptions in § 24-13-40 apply to Appellant. Accordingly, the trial judge did not have the authority to deny Appellant credit for his pretrial detention and the written check mark on the sentencing sheet does not render Appellant's sentence ambiguous. However, even if the written sentence were ambiguous, the trial judge's unambiguous oral pronouncement controls over any ambiguous written pronouncement. Appellant's sentence should be affirmed.

**CONCLUSION**

For all the foregoing reasons, it is respectfully submitted that the sentence of the lower court be affirmed.


Respectfully submitted,

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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