THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Pickens County Court of General Sessions
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2021-000184

State of South Carolina,.....Respondent

v.

Charles Brandon Rampey,.....Appellant

FINAL BRIEF OF APPELLANT

WILLIAM G. YARBOROUGH, III
LAUREN CAROLE HOBBIS

WGY Law
308 West Stone Avenue
Greenville, South Carolina 29609

ATTORNEYS FOR APPELLANT

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II. WHETHER IT WAS AN ERROR OF LAW TO DENY APPLICATION OF FULL CREDIT AGAINST APPELLANT'S SENTENCE FOR TIME SERVED PRIOR TO SENTENCING AND MONITORED HOUSE ARREST FOR A FIRST OFFENSE.

STATEMENT OF THE CASE

The Appellant Charles Rampey was charged with criminal sexual conduct with a minor in the second degree in February 2014 and later charged with CSC with a minor in the third degree in July 2014. (R. pp. 71-74). Appellant was issued a bond on August 1, 2014. The Pickens County Grand Jury later indicted Appellant on an additional charge for CSC with a minor in the third degree on July 19, 2016. (R. pp. 75-76). Assistant Solicitor Shannon Odom prosecuted the case. The late Thomas Boggs, Esquire ("Plea Counsel") represented Appellant.

On August 31st through September 1st, 2016, Appellant was tried by jury before the Honorable Robin B. Stillwell on the charges for CSC with a minor in the second degree (2015-GS-39-1160) and third degree (2016-GS-39-1538). Following an *Allen*[1] charge, the jury acquitted Appellant of CSC with a minor in the second degree but found him guilty of CSC with a minor in the third degree. Judge Stillwell sentenced Appellant to thirteen (13) years imprisonment with credit for time served.[2] (R. p. 65, line 21—p. 67, line 8).

On January 23, 2017, Appellant entered an *Alford*[3] plea before the Honorable Perry H. Gravely to the remaining CSC with a minor in the third-degree charge (2014-GS-39-2842). (R. pp. 35-57). During the hearing, Solicitor Odom informed Judge Gravely that Appellant had spent 29[4] days in jail before being released on bond with the special conditions of GPS monitoring and house

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[1] *Allen v. United States*, 164 U.S. 492 (1896).

[2] On September 9, 2016, Appellant appealed his conviction for CSC with a minor in the third degree (2016-GS-39-01538). On August 19, 2020, this Court reversed his conviction and remanded for a new trial on the grounds that the *Allen* charge was unconstitutionally coercive. *State v. Rampey*, No. 2020-UP-245 (Ct. App. filed Aug. 19, 2020) (per curiam). The State's petition for writ of certiorari to the South Carolina Supreme Court was granted on October 12, 2021 and remains pending. (App. Case No. 2020-001595).

[3] *North Carolina v. Alford*, 400 U.S. 25 (1970).

[4] There is a discrepancy between various documents in the record as to the exact amount of jail days.

arrest for a total of 762 days. (R. p. 43, lines 2-9). Solicitor Odom made no recommendation as to the sentence and raised no issue with the sentence running concurrent to the sentence Judge Stillwell had imposed following Appellant's trial. (R. p. 41, lines 7-19). Plea Counsel's understanding of the arrangement mirrored that of the State: "What the recommendation is...a current sentence calculated just the way that his present sentence is. But there is no recommendation by the State of any second sentence or time." (R. p. 41, lines 21-25). Judge Gravely likewise acknowledged the notes that the sentence was to run concurrent made to the sentencing sheet. (R. p. 42, lines 1-2; p. 69). When accepting Appellant's plea, the Judge also commented "I believe that you have discussed all of the days in jail. I will give him credit for all that." (R. p. 46, lines 19-21). Solicitor Odom later objected to applying the house arrest/ankle monitor time as credit toward the sentence and acknowledged that the decision was within the Judge's discretion. (R. 48, lines 10-25). Plea Counsel disagreed, believing that it was for the South Carolina Department of Corrections to decide whether to include the ankle monitor time in calculating the credit for time served. (R. p. 49, lines 2-14; p. 53, lines 20-25). Plea Counsel requested that the sentence be made "fully concurrent to his previous indictment [2016-GS-39-01538]" but for less than thirteen (13) years. (R. p. 53, line 20—p. 54, line 5). Judge Gravely ultimately imposed a thirteen (13) year sentence:

> What I am going to do is [to] sentence him the same, to run concurrent with 16-GS-39-01538. I will give him credit for time served as calculated by [SCDC]. But I'm not going to backdate that. It's actually going to start today, so it will add more time to it. I'm not willing to backdate. They can calculate the time, based on today.

(R. p. 56, lines 2-10). Counsel responded that "his house arrest was as a result of [t]his particular charge." (R. p. 56, lines 11-12). Judge Gravely also denied Plea Counsel's request to apply the sentence or ankle monitor credit as starting from the arrest date for the charge convicted at trial (2016-GS-39-01538): "This happened while he was out on bond, so I feel like I am stretching it to

do this. I'm not backdating it. I will allow it to be concurrent, credit for time served to be calculated by [SCDC]." (R. p. 56, lines 13-18).

The sentencing sheet is marked for the sentence to run concurrent to 2016-GS-39-01538 with "concurrent 16-GS-39-01538" also handwritten above the parties' signature lines. (R. p. 69). Judge Gravely marked the sentencing sheet for credit for time served pursuant to S.C. Code Ann. § 24-13-40 (Supp. 2019). The sentencing sheet also shows a note stating: "No credit for ankle monitor time" that Judge Gravely then crossed out and initialed. (R. p. 69).

Appellant moved to clarify his sentence in regard to the 762 days of house arrest after inquiring with SCDC and being informed that only 28 jail days were given as credit for time served. Due to ambiguity in both the sentencing sheets and transcript, SCDC was unable to determine the correct amount of credit to which Appellant was entitled. Undersigned Counsel submitted a proposed order with the motion which clarified both the crossed-out note and that Appellant was to be given credit for this time. (R. p. 31, lines 6-14).

On January 22, 2021, Judge Gravely held a Webex hearing on Appellant's sentence clarification motion. At the hearing, Counsel addressed the ambiguities present in the sentencing sheet and the plea colloquy in regard to whether Appellant was to have been given 762 days as credit for time served on house arrest:

> [A]t some point you had written that he was not to receive [762 days credit]. And I don't have any way of knowing this because Mr. Boggs is deceased...But you struck out no credit for jail [*sic*] time and then you initialed it...So I think then at some point you're putting it back in [SCDC's] responsibility to decide what time he gets or what time he doesn't get. And [SCDC] has told us that as long as [] you meant to strike that out where it says no credit for...ankle monitor time, as long as you meant to strike that out, they're going to give him credit for that time. Which is significantly going to affect his sentence.

(R. p. 27, lines 5-20). Counsel also renewed the request for an order clarifying both the implication of the crossed-out note and that Appellant was to be given this credit: "[SCDC] 100 percent needs

an order saying that because they don't know why the no credit for ankle monitor was struck out. That's the problem...I mean, I've seen your initials for a long time, I know what your initials look like, [SCDC] does not." (R. p. 31, lines 6-14, lines 22-25).

Solicitor Odom opposed Appellant receiving any credit for house arrest time at the hearing, arguing no clarification was necessary according to the plea colloquy as she recalled it:

> There was a very fiery argument on both sides of Mr. Boggs and myself about the house arrest. Your Honor had initially said that you did not want him to get credit for it...and you said, We'll just let SCDC decide what credit he's entitled to per the statute...[T]he sentencing sheet is clear. They're going to calculate it as they see fit...it's up to your discretion, at the time you said: just whatever they say he would be entitled to.

(R. p. 28, line 12 — p. 29, line 6). Solicitor Odom also maintained throughout the hearing that the decision was SCDC's to make. (R. p. 32, lines 14-17; p. 29, lines 1-6).

Judge Gravely's statements acknowledged the ambiguity his crossed-out note created and did not deny that Appellant should be given house arrest credit. (R. p. 31, lines 5-14; see also p. 31, lines 22-25; p. 32, lines 2-3, lines 9-12, lines 21-24; p. 33, lines 9-11). However, Judge Gravely concluded that it was then on SCDC to decide both whether Appellant was entitled to the ankle monitor credit and determine how many days would be counted. (R. p. 29, lines 7-1; p. 31, lines 19-21; p. 32, lines 2-3, lines 12-13; p. 33, lines 4-5).

Consequently, Judge Gravely's order clarifies the implication of the crossed-out note in regard to whether Appellant was to be given this credit under Section 24-13-40, but then directs SCDC to "determine what credit the Defendant is entitled to receive based on the Defendant's records." (R. p. 2).

On January 29, 2021, Appellant moved to reconsider due to SCDC's inability to comply with the order. (R. pp. 3-4). Specifically, Christina Bigelow, SCDC Deputy General Counsel, had informed Appellant's Counsel that SCDC has no authority or discretion to determine what credit

he is entitled to under Section 24-13-40. (R. p. 9). Ms. Bigelow instructed that in order for SCDC to apply the credit for time served on an ankle monitor or house arrest to his current sentence, Judge Gravely would need to issue an order that "specifically award[s] him the time and tell us exactly how much time to give him." (R. p. 9). Judge Gravely denied the Motion to Reconsider on the basis that "it is up to the Department of Corrections to make a determination of the sentence imposed by the Court." (R. p. 1).

STANDARD OF REVIEW

In criminal cases, the appellate court reviews only errors of law and is bound by the factual findings of the lower court unless the findings are clearly erroneous. *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge. *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). An abuse of discretion occurs where the conclusions of the lower court are either controlled by an error of law or lack evidentiary support. *State v. Winkler*, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010).

ARGUMENT

I. THE COURT ERRED BY FAILING TO EXERCISE ITS DISCRETION UNDER SECTION 24-13-40 IN CONCLUDING SCDC WAS RATHER TO DETERMINE WHETHER APPELLANT WAS ENTITLED TO CREDIT FOR TIME SERVED ON HOUSE ARREST.

It was an error of law for the Court to conclude SCDC was rather the proper authority to determine whether Appellant was entitled to credit for time served on house arrest and how it would be applied. Contrary to the Judge's findings, only the *sentencing court* has the discretion to award credit against a sentence of incarceration for pretrial time served on house arrest as a condition of bond. *See e.g., Smith*, 276 S.C. at 498, 280 S.E.2d at 202 (holding the *authority to change a sentence rests solely and exclusively in the hands of the sentencing judge* within the exercise of his discretion) (italics added). *See also Tant v. South Carolina Dep't. of Corrections*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 n. 2 (2014) ("The Department has no independent sentencing authority.") (discussing the extent SCDC is permitted to "correct" a defendant's sentence). Further, by passing the decision to SCDC in this case, the Court erroneously conflated the determination of whether the defendant was entitled to house arrest credit with the mere computation or calculation of the number days that would be credited.

The requirement that a prisoner receive credit for time served is mandatory. *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010). *See also State v. McCord*, 349 S.C. 477, 487, 562 S.E.2d 689, 694 (Ct. App. 2002). Section 24-13-40 dictates the computation of credit for time served, which states in pertinent 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.

§ 24-13-40. Apart from the court's discretion, there are only two instances in which a defendant is not entitled to credit for time served and neither are applicable to the instant case nor affect the

proper computation of credit for time served that Appellant had requested. *Id.* ("[C]redit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned...was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense...").

The statute also does not allow the passing of a sentencing court's vested exercise of discretion to count credit for time on monitored house arrest to the SCDC, as the sentencing court did here. The South Carolina Supreme Court has found reversible error in cases where, like the present case, a court does not exercise its vested discretion to decide a certain issue. *See State v. Allen*, 370 S.C. 88, 94 634 S.E.2d 653, 656 (2006) (citations omitted). Similarly, a court's ruling is deemed arbitrary and capricious, and thus reversible error, when it falls outside of the range of permissible decisions applicable to the issue presented. *Id.*

Our Supreme Court has elaborated on the scope and effect of Section 24-13-40, explaining "time served," as it is used in the statute, refers to the time in which defendant was in "pre-trial confinement *and* charged with the offense for which he is sentenced, so long as he is not serving time for a *prior conviction"* within the meaning of the statute. *Blakeney v. State,* 339 S.C. 86, 88, 529 S.E.2d 9, 10-11 (2000) (italics in original). *See also Williams v. State*, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991) (acknowledging penal statutes are to be construed "strictly against the State and in favor of the defendant.") (citation omitted).

In this case, the Court's error of law is two-fold: (1) the Court failed to clarify and correct an ambiguous sentencing sheet; and (2) the Court failed to exercise its discretion to give Appellant credit for time served on house arrest under Section 24-13-40. *See Miles v. State*, Op. No. 2017-MO-012 (June 21, 2017) (remanding where the sentencing court did not exercise its discretion on whether to give credit for petitioner's time on monitored house arrest). *See also Tant*, 408 S.C. at

343. ("'[A]mbiguity or doubts relative to a sentence should be resolved in favor of the accused.'") (citations omitted). *See State v. Field* (Op. No. 2017-UP-455 (S.C. Ct. App. withdrawn, substituted and refiled April 4, 2018) ("Notwithstanding the circuit court judge's verbal comments, the written order controls.").

The court's refusal to exercise discretion on this issue not only misinterprets Section 24-13-40 and South Carolina precedent, but also implicates Appellant's constitutional liberty interests, in violation of due process and fundamental fairness principles. *See Tant*, 408 S.C. at 341, 759 S.E.2d at 401 ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest...[W]e cannot ignore the reality that an individual's freedom is implicated in the[] determinations" made by SCDC in recording and altering a defendant's sentence) (citations omitted)).

Further, because SCDC is not vested with the discretion or authority to make this decision, the Court's decision is arbitrary, capricious, and an impermissible ruling on Appellant's motion. Given the liberty interests at stake, the Court's arbitrary refusal to exercise discretion in this case also violates due process. *Id.* ("'Liberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from *arbitrary governmental action.*'") (citations omitted) (italics added)).

Furthermore, were this Court to find the sentencing court indeed no longer had jurisdiction over the case in order to rule on the motion to reconsider, the Defendant would still be entitled to the same result. *Id.* (holding SCDC is confined to the face of the ambiguous sentencing sheets and transcripts). The sentencing judge erred by failing to clearly specify the amount of monitored house arrest time to be calculated by SCDC. Due to the ambiguity in both the sentencing sheets and transcripts, this issue must be resolved in favor of Appellant by vacating and remanding in order

to correct the failure to give him 762 days as credit for time served on house arrest pursuant to Section 24-13-40, *Tant*, and the other authorities relied upon herein.

II. IT IS AN ERROR OF LAW TO DENY APPLICATION OF FULL CREDIT AGAINST THE SENTENCE FOR TIME SERVED PRIOR TO SENTENCING AND MONITORED HOUSE ARREST FOR A FIRST OFFENSE.

At the time of sentencing for the 2016 Indictment, Appellant had served 762 days of monitored house arrest and twenty-eight (28) days in jail. Judge Stilwell sentenced Appellant to thirteen (13) years, "concurrent with any other time that you may be serving or will serve...and credit for any time that you may have served." Appellant's conviction was reversed on appeal. Computing the time between sentencing at trial and his subsequent plea and sentencing hearing, Appellant had served 156 days at SCDC for the conviction of the 2016 Indictment in addition to the 762 days of monitored house arrest, and twenty-eight (28) days at the Pickens County jail. However, Appellant was only given 28 days as credit.

Section 24-13-40 provides that "[i]n every case in computing the time served by a prisoner, full credit against the sentence must be given to time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest." § 24-13-40. The statute prohibits credit for time served prior to trial when the prisoner is serving a sentence for one offense and awaiting trial and sentence for a second offense.

Because Appellant's conviction on indictment 2016-GS-39-01538 was reversed on appeal, he is entitled to be awarded full credit for time served for monitored house arrest (762 days) and pre-plea incarceration (156 days at SCDC and 28 days at Pickens County jail) towards his sentence for his conviction on Indictment 2014GS3902842. Appellant's reversal precludes denial of this credit for time served because he is no longer serving a sentence for a second offense, but rather a

first offense. Accordingly, Appellant is entitled to receive full credit for time spent prior to trial and sentencing, along with the monitored house arrest time.

CONCLUSION

In light of the foregoing reasons, Appellant respectfully urges this Court to vacate his sentence and remand so that his credit for time served on monitored house arrest may be properly ordered.

Respectfully Submitted,

William G. Yarborough, III

Lauren C. Hobbis

By: Lauren C. Hobbis

South Carolina Bar #103190

William G. Yarborough III, Attorney at Law, LLC
308 West Stone Avenue
Greenville, South Carolina 29609
(864) 331-1612

ATTORNEYS FOR APPELLANT