STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable Perry H. Gravely, Circuit Court Judge

The State of South Carolina,

Respondent,

vs.

Charles Brandon Rampey,

Appellant.

Appellate Case No. 2021-000184

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUES ON APPEAL

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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.

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

The plea court was not required to give Appellant credit for time served for the time spent on house arrest, and plea counsel asked for the calculation for time served to be left up to the Department of Corrections rather than determined by the plea court. Plea counsel did not ask for credit for time served while Appellant was incarcerated for a separate conviction, and Appellant was not entitled for credit for time served while serving a sentence for a separate conviction. The plea court did not have jurisdiction to change the sentence at the subsequent hearing over three years later. [Appellant's Issues I & II]

STATEMENT OF THE CASE

The underlying conviction is for criminal sexual conduct with a minor in the third degree, to which Appellant pled pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) before the Honorable Perry H. Gravely on January 23, 2017. Judge Gravely sentenced Appellant to thirteen years' imprisonment and declined to "backdate" his sentence. R. p. 56. At counsel's request, Judge Gravely made no determination if Appellant should receive credit for house arrest and he ordered the Department of Corrections to calculate the credit for time served.

Following plea counsel's death, opposing counsel filed a motion in General Sessions ostensibly seeking "clarification" with the goal of having the Department of Corrections give credit for time served while Appellant was on house arrest with ankle monitoring for 762 days. A hearing on Appellant's motion was heard on January 21, 2021. By written order dated February 5, 2021, Judge Gravely determined he lacked jurisdiction to take action on Appellant's request pursuant to Tant v. South Carolina Department of Corrections, 408 S.C. 334, 759 S.E.2d 398 (2014) (finding trial judge did not have jurisdiction over the case to clarify the sentence).

Appellant discusses another conviction in his brief: Appellant was also tried and convicted for criminal sexual conduct with a minor in the third degree with a different victim on August 31 – September 1, 2016, and sentenced to thirteen years' imprisonment by the Honorable Robin B. Stillwell. The trial conviction was reversed by this Court. State v. Rampey, No. 2020-UP-245 (Ct. App. filed Aug. 19, 2020). Subsequently, the Supreme Court granted the State's petition for writ of certiorari on October 12, 2021. Briefing was completed and the Supreme Court heard oral argument on the matter on May 19, 2022. That case had not yet been decided.

ARGUMENT

The plea court was not required to give Appellant credit for time served for the time spent on house arrest, and plea counsel asked for the calculation for time served to be left up to the Department of Corrections. Plea counsel did not ask for credit for time served while Appellant was incarcerated for a separate conviction, and Appellant was not entitled for credit for time served while serving a sentence for a separate conviction. The plea court did not have jurisdiction to change the sentence at the subsequent hearing over three years later. [Appellant's Issues I & II]

Appellant claims the plea court erred when it declined to order credit for time served for the period of time Appellant spent on house arrest. Appellant's plea counsel asked the plea court to leave the calculation for time served up to the Department of Corrections. By the time substitute counsel asked the plea court to provide credit for time served on house arrest some three years later, the plea court lacked jurisdiction to alter the sentence.

Appellant pled pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) on January 23, 2017, admitting the State was likely to prove him guilty. R. pp. 44-45. Appellant's counsel advised the plea court that the recommendation was a concurrent sentence "calculated just the way that his present sentence is." R. p. 41, lines 21-24. The plea court explained to Appellant, "And you realize that that is not a promise, that that is just a recommendation. I'm still not bound by that." R. p. 42, lines 9-12. Appellant indicated he understood. R. p. 42, lines 9-13.

The prosecutor advised:

> I've got the sentencing sheet on the other charges and it is checked that he is to be given credit for time served, to be calculated by the State Department of Corrections.
>
> When he was arrested, he did twenty-nine days in the local facility, then he was out on an ankle monitor for seven hundred sixty-two days, and then at SCDC for one hundred forty-five days. I believe defense counsel will be asking for him to receive credit for

> the seven hundred sixty-two days that he was out on ankle monitoring.

R. p. 42, line 22 – p. 43, line 9. Appellant's counsel replied, "Well, that is not what I am asking for." R. p. 43, lines 10-11. Upon accepting the plea, the plea court indicated it would give Appellant credit for all the days in jail. R. p. 46, lines 19-21.

The prosecutor indicated she was fine with a concurrent sentence but explained:

> **But the real issue is just the ankle monitor. I can't agree that he get time for that when really – that is something that the State would oppose. He was on house arrest. It is in Your Honor's discretion whether or not to order that.**
>
> Judge Stilwell, during sentencing at the trial on the former charge just checked that he is to be given credit as SCDC saw fit to calculate it.
>
> So I think that you could decline to give him credit for that, and that is what we would ask.

R. p. 48, lines 10-25.

Appellant's counsel countered:

> **Your Honor, I think that is up to the Department of Corrections.** That is what it says on the sheet, that it is up to them to do the calculation, not for the Solicitor to do the calculation.
>
> So long as it reads – and I will give you the indictment number from the old case, but that part of the part of the sentence is to give him credit pursuant to Section – **to be calculated and applied by the Department of Corrections and that is all that we are asking.**

R. p. 49, lines 2-14. Appellant's counsel again insisted that the credit for time served should be determined by the Department of Corrections: "Judge Stilwell gave him the concurrent to be calculated by the Department of Corrections. That is who should do it, and that is all we are asking the Court to do, is to make it fully concurrent to his previous indictment, as I read out, is." R. p. 53, line 22 – p. 54, line 3.

The plea court sentenced Appellant to thirteen years imprisonment to run concurrent to his trial conviction. He advised he would provide credit for time served as calculated by the Department of Corrections, but that he was unwilling to "backdate" the sentence. R. p. 56.

Appellant complains the plea court failed to exercise its discretion by failing to order that Appellant receive credit for time served while he was under house arrest. The prosecutor advised the plea court that the plea court had discretion to order credit for his house arrest. However, Appellant's counsel, likely anticipating the plea court would deny the credit, asked the plea court to leave it up to Corrections to calculate the time served. Therefore, to the extent the plea court failed to exercise discretion, it was an error created by Appellant's counsel and is not reviewable on appeal. A party cannot complain of court error created by his own conduct. State v. Stroman, 281 S.C. 508, 316 S.E.2d 395 (1984). The Court of Appeals does not sit to relieve self-inflicted wounds. Rish v. Rish by and Through Barry, 296 S.C. 14, 17, 370 S.E.2d 102, 104 (Ct. App. 1988) (Bell, J., concurring).

Further, the record reflects the plea court exercised its discretion when declining to make any further award of credit for time served. The plea court ruled he was unwilling to back date the start date for the sentence because the incident occurred while Appellant was out on bond for his other charge with another victim for which he was ultimately convicted. R. p. 52, lines 2-18; see R. p. 47, lines 1-7. This ruling was made in accordance with the discretion provided the sentencing court under S.C. Code section 24-13-40 (providing time served "**may** be given for any time spent under monitored house arrest.").

Subsequently, the prosecutor at the January 21, 2021 hearing made clear the prosecution did not agree Appellant would receive credit for house arrest. She agreed that originally the plea court

indicated it would not provide credit for the house arrest **but then the plea court agreed with Appellant's plea counsel** to leave it to the Department of Corrections to calculate the credit for time served. R. p. 28, lines 12-22.[1]

On the sentencing sheet, the plea court wrote that Appellant would not receive credit for house arrest, but then crossed that sentence out and initialed it. R. p. 27. However, contrary to Appellant's argument, the plea court never intended to order that Appellant receive credit for time served for house arrest. The order in that regard is not ambiguous because the plea court did not award credit for house arrest. Tant v. South Carolina Department of Corrections, 408 S.C. 331, 342-43, 759 S.E.2d 398, 402 (2014). The plea court did not err in denying credit for house arrest and did not err in declining to make a subsequent award of credits at the January 2021 hearing.

Further, Appellant claims he is entitled as a matter of right to credit for house arrest (in issue II). However, award of credit for house arrest is not mandatory per statute and at counsel's request, the plea court forwent a determination of whether or not the credit should be granted.

Appellant also claims he is entitled to his pre-plea incarceration while he was in the Department of Corrections serving his sentence for the trial conviction prior to his plea. The pertinent section of the South Carolina Code mandates that time served "must be calculated from the date of the imposition of the sentence." S.C. Code Ann. § 24–13–40 (2013). And "in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing." Id. Credit should not be given (1) when the prisoner is an escapee and (2) when

[1] The State disagrees that the prosecutor stated it was the Department of Corrections decision to make. The prosecutor merely stated that the plea court took the position at the plea that he would leave it to the Department of Corrections to determine if Appellant should receive credit for time served, which is what Appellant's counsel asked for at the plea. See R. pp. 32-33.

the prisoner is already serving time for one offense and awaiting trial on a second. Id.; Allen v. State, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000).

Appellant argues his success in this Court in overturning the trial conviction requires he receive credit for time served. However, at present time, Rampey is serving his sentence for the trial conviction while the Supreme Court decides whether or not to affirm this Court's opinion for his trial conviction and he is subject to retrial even if this Court's reversal of the trial conviction is upheld. Moreover, Appellant's counsel at the plea hearing did not ask for credit for time served while Appellant was incarcerated with the Department of Corrections for the trial conviction. An issue must be raised to and ruled upon by the circuit court in order to be considered on appeal. State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 213 (Ct. App. 2002).

Finally, the calculation of credit for time served while incarcerated on another charge is a Department of Corrections issue and needs to be determined through administrative process and not in General Sessions. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The plea court correctly determined it no longer had jurisdiction over the case when the issue was argued at the January 21, 2021 hearing. Tant v. South Carolina Department of Corrections, 408 S.C. 331, 342-43, 759 S.E.2d 398, 402 (2014) (finding once a term ends, absent a timely post-trial motion under Rule 29, SCRCrimP, the trial court lacks jurisdiction to make any further pronouncements on a defendant's sentence).

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

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