

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph KING ANDERSON, III ADMINISTRATIVE LAW JUDGE
CASE No. 22-ALJ-04-0207-AP

RICHARD V. CLOWNEY, #276073, APPELLANT,

V.

SCDC, RESPONDENT.

CASE No. 2022-001813

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FINAL BRIEF

MAY 24 2023

SC Court of Appeals

#276073 RICHARD CLOWNEY

LVC I Richard Clowney

2-17-B P.O. Box 580

MAY 19, 2023

UNA, S.C. 29378

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65, 495 S.E. 2d 433.

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STATE V. BOGGS (S.C. App. 2010) 388
S.C. 314, 696 S.E. 2d 597.

S.C. CODE OF LAW SECTION 24-13-40.
COMPUTATION OF TIME SERVED BY PRISONERS

(b) THE COMMENCEMENT OF THE SERVICE
OF THE SENTENCE FOLLOWS THE REVOCATION
OF PROBATION, OR (R.p. 8) (R.pp. 12-16) (R.pp. 74-78)

(c) THE COURT SHALL HAVE DESIGNATED
A SPECIFIC TIME FOR THE COMMENCEMENT
OF THE SERVICE OF THE SENTENCE, THE COM-
PUTATION OF THE TIME SERVED MUST
BE CALCULATED FROM THE DATE OF THE COM-
MENCEMENT OF THE SERVICE OF THE SEN-
TENCE. (R.pp. 2-7) (R.pp. 12-16) (R.pp. 74-78

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. (R. pp. 2-8) (R. pp. 12-16) (R. pp. 74-78)

STATEMENT OF ISSUES ON APPEAL

DID THE ALC ERR FOR AFFIRMING SCDC DECISION TO DENY 422 DAYS OF TIME SERVED CREDIT WHILE IN CLEAR VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD? (R. pp. 12-16) (R. pp. 74-78)

STATEMENT OF THE CASE

ON JUNE 8, 2022 I FILED A STEP 1 GRIEVANCE REQUESTING 422 DAYS OF TIME SERVED CREDIT BE APPLIED TO THE 3 YR PROBATION REVOCATION ORDER JANUARY 14, 2022, AND 3 CONCURRENT WEAPONS OFFENSES OF 3 YRS EACH ORDER JUNE 1, 2022. ON JUNE 13, 2022 THE STEP 1 GRIEVANCE WAS DENIED. (R. pp. 72-73)

ON JUNE 16, 2022 I FILED A STEP 2 GRIEVANCE REQUESTING 422 DAYS

OF TIME SERVED CREDIT TO BE APPLIED TO MY SENTENCE, THE STEP 2 GRIEVANCE WAS DENIED ON JULY 7, 2022. (R.P. 71)

ON JULY 20, 2022 I FILED A NOTICE OF APPEAL WITH THE ADMINISTRATIVE LAW COURT REQUESTING 422 DAYS OF TIME SERVED CREDIT.

ON DECEMBER 14, 2022 THE ADMINISTRATIVE LAW COURT ORDERED THAT SCDC DECISION BE AFFIRMED. (R.PP. 17-22)

ON DECEMBER 30, 2022 MY NOTICE OF APPEAL WAS ASSIGNED AN APPELLATE CASE NUMBER WITH THE S.C. COURT OF APPEALS.

STANDARD OF REVIEW

S.C. CODE OF LAWS 24-13-40 (b) THE COMMENCEMENT OF THE SERVICE OF THE SENTENCE FOLLOWS THE REVOCATION OF PROBATION, HAYES V. STATE (S.C. App. 2015) 413 S.C. 553, 777 S.E. 2d 6, "MANDATORY LANGUAGE IN STATUTE UNDER WHICH A PRISONER IS ENTITLED TO RECEIVE CREDIT FOR TIME SERVED."

STATE V. BOGGS (S.C. App. 2010) 388
S.C. 314, 696 S.E. 2d 398, "A JUDGE CAN-
NOT DENY DEFENDANT CREDIT FOR TIME
SERVED PRIOR TO TRIAL." 422 DAYS OF
TIME SERVED CREDIT APPLICABLE TO
REVOICATION OF PROBATION.

S.C. CODE OF LAW SECTION 24-13-40(C)
THE COURT SHALL HAVE DESIGNATED A
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BRAXTON V. SCDC (S.C. App. 2020) 846
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BE RESOLVED IN FAVOR OF THE ACCUSED".
422 DAYS OF TIME SERVED CREDIT
APPLICABLE TO CONCURRENT SENTENCES.

S.C. CODE OF LAW SECTION 24-13-40
PROVIDES THE FOLLOWING, THE COM-
PUTATION OF THE TIME SERVED MUST
BE CALCULATED FROM THE DATE OF
THE COMMENCEMENT OF THE SERVICE
OF THE SENTENCE. 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. 422 DAYS OF TIME SERVED CREDIT IS APPLICABLE TO REVOCATION OF PROBATION AND CONCURRENT SENTENCES.

FACTS

ON NOVEMBER 13, 2018, I WAS SENTENCED TO 8 YRS SUSPENDED TO 2 YRS HIP AND 18 MONTHS PROBATION. (R.p.11)

ON JUNE 11, 2019, I WAS SENTENCED TO 6 MONTHS FOR FAILURE TO COMPLY WITH HIP AND REINSTATED ON HIP UPON COMPLETION OF 6 MONTH INCARCERATION. (R.p.10)

ON NOVEMBER 15, 2019, I WAS SENTENCED TO 500 DAYS AND TERMINATE THE REMAINDER OF THE SENTENCE FOR FAILURE TO COMPLY WITH HIP. (R.p.9)

UPON THE COMPLETION OF THE HIP PORTION OF THE SENTENCE ON JULY 1, 2020, I BEGAN THE PROBATION PORTION OF THE SENTENCE.

ON JANUARY 14, 2022, I WAS SENTENCED TO 3YR PROBATION REVOCATION WITH A SENTENCE START DATE DECEMBER 20, 2021. (R.p. 8)

ON JUNE 1, 2022, I WAS SENTENCED TO 2 3YR CONCURRENT SENTENCES AND 1 1YR CONCURRENT SENTENCE FOR WEAPONS FIREARMS VIOLATIONS. SENTENCE START DATE DECEMBER 20, 2021. (R.pp. 2-7)

PROVIDED BY JAIL TIME REPORTS FOR SCDC TRANSFER SHEETS CONTAINED IN THE RECORD.

ON EVERY JAIL TIME REPORT SHEET IT GIVES SCDC THEIR REQUIREMENT TO S.C. CODE OF LAW 24-13-40 IN COMPUTING TIME SERVED BY A PRISONER, ALONG WITH THE DATES THE PRISONER HAS SERVED. (R.p. 12-16)

THE JAIL TIME REPORTS CLEARLY SHOW THE DATES OF 422 DAYS OF TIME SERVED CREDIT THAT WAS REQUIRED BY S.C. CODE OF LAW 24-13-40 SHALL HAVE BEEN GIVEN FOR TIME SERVED PRIOR TO TRIAL AND SENTENCING. (R.pp. 12-16) (R.pp. 74-78)

ARGUMENT

SCDC MEANING AND INTERPRETATION OF S.C. CODE OF LAW 24-13-40 IS TOTALLY DIFFERENT FROM LEGISLATORS PLAIN ORDINARY AND MANDATORY LANGUAGE IN STATUTE 24-13-40.

STATE V. BOGGS (S.C. App. 2010) 388 S.C. 314, 696 S.E. 2d 597. (R. pp. 23-31) (R. pp. 12-16) (R. pp. 74-78)

THE ALC ERRED FOR AFFIRMING SCDC DECISION, WHILE IN VIEW OF THE RELIABLE AND PROBATIVE JAIL TIME REPORTS ON THE WHOLE RECORD. AND IGNORING THE MANDATORY LANGUAGE AND REQUIREMENTS OF S.C. CODE OF LAW 24-13-40.

HAYES V. STATE (S.C. App. 2015) 413 S.C. 553, 777 S.E. 2d 6, BRAXTON V. SCDC (S.C. App. 2020) 846 S.E. 2d 383. (R. pp. 17-22) (R. pp. 12-16) (R. pp. 74-78)

THEREFORE THE ALC DECISION IS:

- (A) IN VIOLATION OF CONSTITUTIONAL OR STATUTORY PROVISIONS; (R. pp. 17-22) (R. pp. 23-31) (R. pp. 71-73)
- (B) IN EXCESS OF THE STATUTORY AUTHORITY OF THE AGENCY; (R. pp. 17-22) (R. pp. 23-31)
- (C) MADE UPON UNLAWFUL PROCEDURE; (R. pp. 17-22)
- (D) AFFECTED BY OTHER ERROR OF LAW; (R. pp. 17-22)

(E) CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD; OR (R. pp. 17-22) (R. pp. 12-16)

(F) ARBITRARY OR CAPRICIOUS OR CHARACTERIZED BY ABUSE OF DISCRETION OR CLEARLY UNWARRANTED EXERCISE OF DISCRETION. (R. pp. 17-22)

BRAXTON V. SCDC (S.C. App. 2020) 846 S.E. 2d 383.

HAYES V. STATE (S.C. App. 2015) 413 S.C. 553, 777 S.E. 2d 6,

STATE V. BOGGS (S.C. App. 2010) 388 S.C. 314, 696 S.E. 2d 597.

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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.
(R. pp. 12-16) (R. pp. 74-78)

CONCLUSION.

FOR THE REASONS AND FACTS STATED,
THIS COURT SHOULD REVERSE THE
JUDGEMENT OF THE ADMINISTRATIVE
LAW COURT.

Respectfully Submitted,

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MAY 19, 2023

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CERTIFICATE OF COUNSEL

THE UNDERSIGNED CERTIFIED THAT
THIS FINAL BRIEF COMPLIES WITH
RULE 211 (b), SCACR.

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