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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON VERNARD JOHNSON,

APPELLANT

APPELLATE CASE NO. 2022-001424

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in revoking Appellant's community supervision for a period of one year, where Appellant had already served his full fifteen-year concurrent sentences when credit for pre-trial detention was applied to both offenses, since Appellant had satisfied the terms of his original sentence such that he was no longer subject to community supervision?

STATEMENT OF THE CASE

On September 12, 2005, a Dorchester County Grand Jury indicted Appellant for trafficking in cocaine, 28 – 100 grams. R. *(indictment). On September 11, 2008, Appellant appeared before the Honorable Kristi Harrington and pleaded guilty as indicted. Appellant was sentenced to fifteen years' incarceration and a $50,000 fine. He was given credit for fifteen days of time served (since August 27, 2008). R. *(sentence sheet).

On November 13, 2006, a Charleston County Grand Jury indicted Appellant for first-degree criminal sexual conduct. R. *(indictment). On May 7, 2014, Appellant appeared before the Honorable R. Markley Dennis and pleaded guilty as indicted. Appellant was sentenced to fifteen years' incarceration. He was given credit for time served since August 27, 2008. The sentence was to be concurrent. R. *(sentence sheet).

On April 20, 2022, Appellant appeared in the General Sessions Court of Dorchester County, before the Honorable Thomas Hughston, Jr. Appellant was represented by Jason Turnblad. Agent Spann appeared on behalf of the Department of Probation, Parole, and Pardon (SCDPPPS). Tr. I, 1. The court continued the hearing until a later date. Tr. I, 24, ll. 19-22.

On July 13, 2022, Appellant reappeared for the revocation hearing before the Honorable Roger M. Young, Sr. Tr. II, 1. Agent Spann once again appeared for the State and Jason Turnblad for Appellant. The court took the matter under advisement. Tr. II, 30, l. 23 – 31, l. 8. On August 10, 2022, the court issued a revocation order. R. *(order revoking community supervision dated August 10, 2022). The order stated the court revoked and returned Appellant to the Department of Corrections "for a period of 418 days, the balance of [Appellant's] time under the Community Supervision program." R. *(order revoking community supervision dated August 10, 2022).

On September 29, 2022, Appellant reappeared in front of the Honorable Roger M. Young, Jr., with his counsel for a motion to reconsider. Kevin Riley of the First Circuit Solicitor's Office and Octavia Wright, counsel for SCDPPPS, were present. Tr. III, 1. The court reduced the revocation to three hundred and sixty-five days and stated it would give Appellant credit for "any time that he served." Tr. III, 5, ll. 21-25; R. *(amended community supervision revocation order dated September 29, 2022).

This appeal follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus,* 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. *Id.*

"Both the decision of whether an alleged violation was willful and the decision of whether to revoke community supervision are discretionary. The trial court will not be reversed unless the appellant has shown an abuse of that discretion." *State v. Garrard,* 390 S.C. 146, 151, 700 S.E.2d 269, 272 (Ct. App. 2010) (citing *State v. Allen,* 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006). "Where there is any evidence to support the court's factual findings, there is no abuse of discretion." *Id.*

ARGUMENT

The court erred in revoking Appellant's community supervision for a period of one year, where Appellant had already served his full fifteen-year sentences when credit for pre-trial detention was applied to both offenses, since Appellant had satisfied the terms of his original sentence such that he was no longer subject to community supervision.

Relevant facts

The Department of Corrections calculated Appellant's sentence start date as May 19, 2006, for trafficking cocaine and August 27, 2008, for first-degree criminal sexual conduct. According to Agent Spann, "It shows that trafficking in cocaine his incarceration start date was May 19th of 2006. And for his CSC first, his incarceration start date was August 27th of 2008." Tr. I, 4, ll. 19-23. Agent Spann further stated that the time for Appellant's trafficking in cocaine charge was tolled in 2019 for unspecified reasons. "And they tolled his trafficking cocaine on February 13, 2019, so 4/30 of 2021." Tr. I, 4, ll. 20-25.

According to SCDPPPS, Appellant served eighty-five percent of his sentence and he was released from the Department of Corrections on April 30, 2021, and he began community supervision at that time. Tr. I, 3, ll. 13-15; Tr. II, 7, ll. 5-6. (As seen, Appellant would ultimately be revoked one year on September 29, 2022.) R. *(September 29, 2022, amended order).

On April 20, 2022, Appellant appeared in the General Sessions Court in Dorchester County, before the Honorable Thomas Hughston, Jr. Tr. I, 1. Appellant's counsel told the court, "Mr. Johnson tells me he did a good bit of time in the county and then that was—he didn't get full credit for all that. He tells me he did about a month shy of the full 15 years when you took in the credit all the county time that he had that they messed up on his paperwork." Tr. I, 4, ll. 9-15. The court stated, "Well, I can't do anything about that." Tr. I, 4, ll. 16-17.

The parties and the court then discussed Appellant's alleged community supervision violations, which included an admission Appellant used marijuana and Appellant's telephone being used to access and store pornography. Appellant explained the violations were not knowing or willful. The court continued the hearing until a later date to obtain further information about the alleged violations. Tr. I, 5, l. 1 – 24, l. 22.

On July 13, 2022, Appellant appeared for the continued revocation hearing before the Honorable Roger M. Young, Sr. Tr. II, 1. Agent Spann testified Appellant signed SCDPPPS's sex offender conditions of release on May 20, 2021. Counsel said Appellant told him he did not sign them until June 21, 2021. Tr. II, 4, l. 17 – 7, l. 13. Chris Cato, a digital forensic analyst for SCDPPPS testified regarding data recovered from Appellant's telephone. Appellant explained these were communications and images between and of Appellant and his common-law wife. Appellant also explained his wife was the person accessing pornography from his telephone. Tr. II, 20, l. 14 – 30, l. 17. The court took the matter under advisement. Tr. II, 30, l. 23 – 31, l. 8.

On August 10, 2022, the court issued a revocation order. The order stated the court found that "possession of explicit material on his iPhone violated [Appellant's] Community Supervision," since the computer use conditions for sex offenders states offenders "will be fully responsible for all material and information found on their device," and since the telephone "contained sexually explicit material from two different women." R. *(order revoking community supervision dated August 10, 2022). The order further stated the court revoked and returned Appellant to the Department of Corrections "for a period of 418 days, the balance of [Appellant's] time under the Community Supervision program." R. *(order revoking community supervision dated August 10, 2022).

On September 29, 2022, Appellant reappeared in front of the Honorable Roger M. Young, Jr., for a motion to reconsider. Appellant argued that he did not have 418 days left to serve on his sentence and counsel asked the court to reduce the revocation to a thirty day revocation or "whatever period of time to be calculated by the Department of Corrections that he may have remaining." Tr. III, 3, l. 15 – 4, l. 4. Appellant's counsel noted he had "pulled some records from the clerk's office" and confirmed that Appellant had served over two years in pretrial detention in Charleston, from June 10, 2006, to September 18, 2008. Tr. III, 4, ll. 10-25.

Counsel for SCDPPPS responded that she did not object to Appellant's revocation being reduced to three hundred and sixty-five days. Tr. III, 5, ll. 11-12. The court reduced the revocation to three hundred and sixty-five days and stated it would give Appellant credit for "any time that he served." Tr. III, 5, ll. 21-25; R. *(amended community supervision revocation order dated September 29, 2022).

Discussion

Appellant received concurrent sentences. He has been continually incarcerated since at least May 19, 2006, per Agent Spann. May 19, 2006, to April 30, 2021 (his first release date from the Department of Corrections) totals 14 years, 11 months and 12 days (or 5,461 days). When Appellant's community supervision was revoked by the circuit court in 2022, he had roughly a month of time remaining to serve on his concurrent, fifteen-year sentences. To date, Appellant has served more than fifteen years, which was his original sentence on each charge.

Appellant's convictions for trafficking cocaine and first-degree criminal sexual conduct were both "no parole" offenses. *See* S.C. Code Ann. § 24-13-100 ("For purposes of definition under South Carolina law, a 'no parole offense' means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a

maximum term of imprisonment for twenty years or more."). Appellant was required to complete a community supervision program (CSP) since he was convicted of "no parole" offenses. "Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, any sentence for a 'no parole offense' as defined in Section 24-13-100 must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole, and Pardon Services." S.C. Code Ann. § 24-21-560(A).

S.C. Code Ann. § 24-21-560(C)(5) provides in relevant part that, "If the court determines that a prisoner has wilfully violated a term or condition of the community supervision program, the court may . . . revoke the prisoner's community supervision and impose a sentence of up to one year for violation of the community supervision program." S.C. Code Ann. § 24-21-560(D) provides in relevant part that, "The maximum aggregate amount of time a prisoner may be required to serve when sentenced for successive revocations may not exceed an amount of time equal to the length of incarceration imposed limited by the amount of time remaining on the original 'no parole offense'. The prisoner must not be incarcerated for a period longer than the original sentence."

"[A]ssuming an inmate has served at least eighty-five percent of the unsuspended portion of his original sentence, an inmate whose CSP is revoked is limited to serving an amount of time equal to the remaining fifteen percent balance of this sentence." *State v. McGrier*, 378 S.C. 331, 332, 663 S.E.2d 15, 21 (2008). "24-21-560(D) limits the total amount of time an inmate could be incarcerated after a CSP revocation to the length of the remaining balance of the sentence for the 'no parole offense.'" *State v. Blakney*, 410 S.C. 244, 249, 763 S.E.2d 622, 625 (Ct. App. 2014) (quoting *McGrier*, 378 S.C. at 331, 663 S.E.2d at 21 (cleaned up). *See also State v. Picklesimer*,

388 S.C. 264, 266, 695 S.E.2d 845, 847 (2010) (In finding the total time an inmate can be incarcerated after a CSP revocation is the length of the balance of the sentence, *McGrier* "clearly established the outside limit of incarceration as the aggregate original sentence[.]"). "[U]nder no circumstances shall a defendant be incarcerated, or forced to participate in mandatory CSP or residual probation, stemming from the same conviction, outside of the time given by the trial judge in the original sentence, which encompasses both the suspended and unsuspended portions of the sentence." *Picklesimer*, 388 S.C. at 270, 695 S.E.2d at 848-49.

The court erroneously revoked Appellant a full year, since Appellant did not have a full year remaining to serve. "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 . . . Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial 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 in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense." S.C. Code Ann. § 24-13-40. "'[T]ime served' in § 24-13-40 means the time during which a defendant is 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)." *Blakeney v. State*, 339 S.C. 86, 88, 529 S.E.2d 9, 10 (2000) (citing *Crooks v. State*, 326 S.C. 171, 485 S.E.2d 374 (1997)).

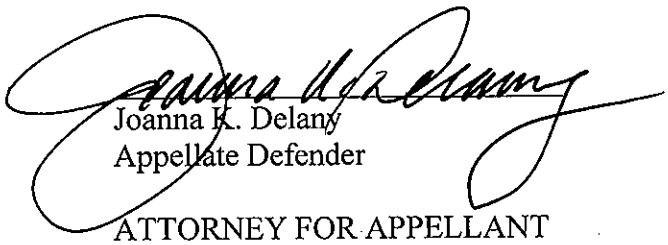
The issue in this case was whether Appellant was entitled to credit for time served prior to sentencing on either charge—for the time during which he was charged with both offenses and was held in pretrial detention, from 2006 to 2008. He was not an escapee and he was not serving a sentence for a prior offense. Per SCDPPPS, the Department of Corrections calculated

Appellant's sentence start date as May 19, 2006, for trafficking cocaine and August 27, 2008, for first-degree criminal sexual conduct. Tr. I, 4, ll. 19-23. Appellant's counsel noted he had "pulled some records from the clerk's office" and confirmed that Appellant had served over two years in pretrial detention in Charleston (where the criminal sexual conduct charge originated), from June 10, 2006, to September 18, 2008. Tr. III, 4, ll. 10-25. Therefore, because Appellant was held in pre-trial detention in Charleston on the criminal sexual conduct charge since 2006, and he was entitled to credit from 2006 forward on that charge as well.

Credit for time served dating back to 2006 (either May 19, 2006, or June 10, 2006) should have been applied to both offenses. The remaining balances of Appellant's sentences were approximately one month. Therefore, the court erred in revoking him for a full year. *McGrier*, 378 S.C. at 332, 663 S.E.2d at 21.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse the decision of the circuit court.



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This 19th day of June, 2023.