

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from York County

JUL 08 2013

The Honorable John C. Hayes, III, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2012-213515

Odis Dwayne Simonds

Respondent,

vs.

State of South Carolina,

Petitioner.

**RETURN TO PETITION
FOR WRIT OF CERTIORARI**

TOMMY A. THOMAS, ESQUIRE

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ATTORNEY FOR RESPONDENT

INDEX

Issues Presented	2
Statement of the Case.....	3
Argument	7
Conclusion	11

ISSUES PRESENTED

- I. The PCR Court had the authority to hear Respondent's time-credit because the plain language of S.C. Code § 17-27-20 allows a PCR Court to decide cases where the sentence exceeds the maximum authorized by law (Petitioner's Question I).

- II. The PCR Court did not err in granting Mr. Simonds' time-credit claim because the claim was proper for the PCR Court to decide in that this claim differed fundamentally from the time credits at issue in Al-Shabbaz v. State (Petitioner's Question II).

STATEMENT OF THE CASE

Procedural History

On January 26, 2002 Mr. Simonds was charged with nine counts of Criminal Sexual Conduct and four counts of Lewd Act Upon a Child. These charges were dismissed with the right to restore on September 15, 2003 after a State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) hearing, which determined he was not competent to stand trial. As a result of State action, Mr. Simonds was subsequently committed to a secure facility in Columbia, South Carolina called Just Care for five (5) years and one (1) month.

On March 13, 2009, a letter of competency was sent to the Solicitor's office. The original charges were reinstated and Mr. Simonds eventually entered a plea in front of the Honorable Thomas Russo on March 15th, 2010. Mr. Simonds was represented at the plea by Harry A. Dest, Esquire and pled guilty but mentally ill to three (3) counts of CSC with a Minor, first degree (2003-GS-46-2812, -2816, -2824), and one (1) count of Lewd Act Upon a Child (2003-GS-46-2820). He also pled guilty but mentally ill pursuant to N.C. v. Alford to two (2) counts of CSC with a Minor, first degree (2003-GS-46-2817, -2819), and one (1) count of Lewd Act Upon a Child (2003-GS-46-2823). Mr. Simonds was sentenced to thirty (30) years suspended upon service of fifteen (15) years for each of the five (5) CSC charges, and fifteen (15) years suspended upon service of 964 days to five (5) years' probation for both of the lewd act charges. All sentences were run concurrent with the exception of the five (5) year probationary sentence on 2003-GS-46-2820, which was run consecutive to all other sentences.

The 964 days Mr. Simonds was given credit for included the days from the date of his arrest up until the day charges were dismissed with right to restore, as well as the date charges were reinstated until his plea on March 15, 2010. Mr. Simonds was denied credit for the additional 1,986 days, over five years for which he was in State custody as a result of State Action. Mr. Simonds did not appeal his conviction, but he filed a timely application for post-conviction relief on March 14, 2011. The State made its Return on August 16, 2011.

An evidentiary hearing was convened on August 13, 2012 at the Moss Justice Center in York, SC. The record was reopened on August 14, 2012 for additional argument from the State. Mr. Simonds was present at the hearing and represented by Tommy Thomas, Esquire. J. Rutledge Johnson of the South Carolina Attorney General's Office represented the State. By Order filed on October 15, 2012, the Honorable John C. Hayes, III granted post-conviction relief in the form of credit for the additional 1,986 days Mr. Simonds spent in Just Care. Mr. J. Rutledge Johnson filed a motion on behalf of the State to Alter or Amend Judgment pursuant to SCRPC 59(e). On November 5, 2012, Judge Hayes issued an amended Order on October 21, 2012.

The State filed a timely Notice of Appeal on December 4, 2012 and submitted a petition for Writ of Certiorari. However, the State failed¹ to assert any substantive challenge to Judge Hayes' order as it asserted only procedural issues challenging the PCR Court's jurisdiction to hear the claim. This return follows.

¹ The Petition for Writ of Certiorari does not address whether the time Mr. Simonds spent at Just Care should properly be considered pre-trial detention credit. Instead the State merely asserts procedural attacks to the PCR.

Factual History

Mr. Simonds was involuntarily committed and required to stay at a secure facility in Columbia, South Carolina called Just Care for five (5) years and one (1) month. He was committed pursuant to State action following a State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) hearing. The State dismissed charges pending against Mr. Simonds but reserved the right to restore upon a showing of competency.

Just Care had a double barbed-wire fence and was controlled by armed officers. No person was free to come and go without the consent and control of the facility. Mr. Simonds was housed in a locked ward, and he voluntarily submitted to therapeutic treatment during this period of time. For all intents and purposes he was in custody and incarcerated, further evidenced by the fact that the South Carolina Department of Corrections (SCDC) had inmates who had already been sentenced on three floors of the facility.² One of the only notable differences between the correctional facility Mr. Simonds is in today and Just Care was that he had better canteen privileges within the SCDC. Confinement in Just Care was tantamount to pretrial detention as Mr. Simonds was told when to get up, when to eat, and when to sleep. There were armed guards at the facility who carried guns, and Just Care controlled every aspect of his life. (App. p. 31 lines 1-2, 10-12).

Mr. Simonds' confinement was based on State action by Order of the Probate Judge pursuant to the State's Petition for Judicial commitment. The State told the Court that Mr. Simonds' commitment was "not simply to protect the community or himself from the threat of harm, as was found by the probate judge, but in fact to punish him, to

² Although the record does not indicate such, these fellow detainees were likely receiving credit for time served while confined at Just Care.

punish him for these actions against the children.” (App. p. 58 lines 4-7). Mr. Simonds was initially denied credit for the five years and 161 days during which he was involuntarily committed to Just Care, upon which he submitted a request for a PCR hearing.

ARGUMENT

I. The PCR Court had the authority to hear Respondent's time-credit because the plain language of S.C. Code § 17-27-20 allows a PCR Court to decide cases where the sentence exceeds the maximum authorized by law (Petitioner's Issue I).

Instead of addressing the Merits of the PCR court's ruling, the State has chosen to attack Respondent's procedural posture. The State has attempted to frame Mr. Simonds' claim for relief as a claim that Judge Russo erred by not giving him credit for time served while in Just Care, and the State contends that this claim was a direct appeal issue which was not proper for the PCR court to decide under Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993). However, the State's argument discounts the clear and unambiguous language of § 17-27-20, S.C. Code of Laws (1976 as amended).

Section 17-27-20(a) provides that "any person who has been convicted of, or sentenced for, a crime and who claims: (1) [t]hat the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State" or "(3) [t]hat the sentence exceeds the maximum authorized by law" may institute a proceeding for Post Conviction Relief. S.C. Code of Laws, (1976 as amended).

Judge Hayes properly interpreted § 17-27-20 as giving a PCR Court the authority to decide whether the denial of pretrial detention credit was proper. (App. p. 123 line 25, p. 124 lines 1-4, p. 140-41). The primary purpose of statutory interpretation is to determine the intent of the legislature. See State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). Courts must interpret penal statutes which are clear and unambiguous according to their literal meaning. See State v. Mills, 360 S.C. 621, 624, 602 S.E.2d 750, 752 (2004). Mr. Simonds' original sentence "exceed[ed] the maximum sentence authorized by law" by 1,986 days, therefore the PCR court properly considered

his claim pursuant to § 17-27-20(a)(3). Therefore, the clear and unambiguous language of § 17-27-20(a)(3) would allow Mr. Simonds' claim to be heard by the PCR Court.

Moreover, the PCR could properly hear petitioner's claim pursuant to § 17-27-20(a)(1). (App. p. 124 lines 1-4). It is unconstitutional to deny Mr. Simonds credit for more than five years that he served prior to trial when state law³ would grant him credit for that time. See S.C. Const. art. I, § 3, U.S. Const. amend. V, XIV. Therefore, Simonds' sentence "was in violation of the Constitution of the United States or the Constitution or laws of this State."

In Sum, Simonds' claim fit squarely within at least two of the subsections of § 17-27-20(a). Therefore, as Judge Hayes decided, this claim was properly considered as a PCR claim. (App. p. 141).

II. The PCR Court did not err in granting Mr. Simonds' time-credit claim because the claim was proper for the PCR Court to decide in that this claim differed fundamentally from the time credits at issue in Al-Shabazz v. State (Petitioner's Question II).

The State also asserts that the PCR Court erred in granting Mr. Simonds' time-credit claim because the issue was proper for the South Carolina Department of Corrections (SCDC) and the Administrative Law Judge Division (ALDJ) to decide under Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742. Al-Shabazz is distinguishable from the case at bar though because the credit issue in Al-Shabazz involved the loss of "good time credits" under § 24-13-210, S.C. Code of Laws (1976 as amended). 338 S.C. at 361, 527 S.E.2d at 746. The credits at issue in Al-Shabazz were thus credits earned *following* the petitioner's initial conviction and sentencing, whereas the credits at issue in the case

³ Once again, the state has failed to appeal Judge Hayes' substantive finding that pre-trial detention in Just Care is pretrial detention for the purposes of S.C. Code § 24-13-40.

at bar concern credit for time served *prior* to conviction and sentencing under § 24-13-40, S.C. Code of Laws (1976 as amended). Id.

The credit issue in Al-Shabazz was properly determined to be an administrative issue because the SCDC was in charge of determining whether the petitioner had faithfully observed all of the rules of the institution, as well as whether to punish the petitioner for misbehavior. § 24-13-210, S.C. Code of Laws. The SCDC is an Agency of the South Carolina State Government, and administrative law is defined as “[t]he law governing the organization and operation of administrative agencies...and the relations of administrative agencies with the legislature...and the public.” Black’s Law Dictionary, 18 (3rd pocket ed. 2009). As such, the good time credits at issue in Al-Shabazz were properly characterized as an administrative issue because they were handled by the SCDC. Conversely, the case at bar involves a credit issue concerning a question of law which should be decided by a PCR judge, rather than the SCDC or the ALJD, as to whether denying Mr. Simonds credit for additional time served *prior* to conviction and sentencing violated his rights under state and federal law. As such, Mr. Simonds’ credit claim is fundamentally different from the administrative issue in Al-Shabbaz, and his claim is not a matter which the SCDC or the Administrative Law Judge Division must decide as the State asserts. The State cites Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974) in support of its claim that Mr. Simonds should seek review of his claim under the Administrative Procedures Act rather than through a PCR hearing. However, the credit claim at issue in Wolff concerned “good time credits,” just as in Al-Shabbaz, rather than credits for time served prior to conviction and sentencing as in the case at bar. 418 U.S. at 554, 94 S.Ct. at 2973.

Al-Shabbaz also says that a “PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence* as authorized by Section 17-27-20(a).” 338 S.C. at 367, 527 S.E.2d at 749. A collateral attack is “[a]n attack on a judgment in a proceeding other than a direct appeal.” Black’s Law Dictionary, 111 (3rd pocket ed. 2009). Mr. Simonds credit claim was a collateral attack because it was an attack on Judge Russo’s judgment in a proceeding other than a direct appeal, a post-conviction relief hearing. As such, according to Al-Shabbaz, 338 S.C. at 367, 527 S.E.2d at 749, Mr. Simonds’ claim was properly heard by the PCR Court.

CONCLUSION

For the above stated reasons, the petition should be denied. If this Court sees fit to grant this petition for writ of certiorari, respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

Tommy A. Thomas, Esquire
Bar #

BY:


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7588 Woodrow Street
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July 3rd, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2012-213515

Odis Dwayne Simonds

Respondent,

vs.

State of South Carolina,

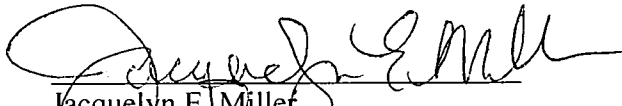
Petitioner.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**J. Rutledge Johnson
Assistant Attorney General
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Columbia, SC 29211**

This 3rd day of July, 2013.



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July 3, 2013

JUL 08 2013

S.C. SUPREME COURT

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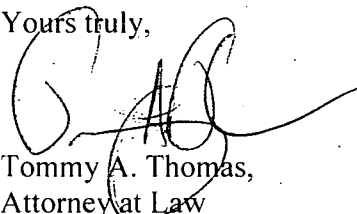
RE: Odis Dwayne Simonds v. State
Appellate Case No.: 2012-213515

Dear Sir or Madam:

Enclosed please find and Original and 6 copies of the Return to Petition for Writ of Certiorari for filing in the above matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and should you have any questions, please feel free to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: J. Rutlege Johnson, Esq.
Odis Dwayne Simonds #339865