STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the Ninth Circuit
The Honorable Roger M. Young, Circuit Court Judge

Appellate Case No.: 2022-001424

THE STATE, RESPONDENT

v.

BRANDON VERNARD JOHNSON, APPELLANT

FINAL BRIEF OF RESPONDENT

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ATTORNEY FOR RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

1. Whether the revocation judge erred when he declined to give the Appellant credit for time that the Appellant served regarding his full fifteen-year sentences if credit for pre-trial detention was applied to both offenses while properly subjecting the Appellant to community supervision?

STATEMENT OF THE CASE

Respondent agrees with the statement of the case by the Appellant.

ARGUMENT

1. **The Court did not err in revoking Appellant's community supervision since the Appellant had not completely served his sentence for criminal sexual conduct 1st Degree because the sentencing court noted that his fifteen-year sentence was to begin on August 27, 2008, meaning that his sentence would not expire until August, 2023.**

As a threshold matter, Respondent asserts that the time frame that Appellant's fifteen-year sentence began for the purposes of his release on community supervision was solely based upon the Court clarifying that the Appellant would be given credit beginning on August 27, 2008 and not on any previous sentence. (R.p.4, ll. 21-23). He had not yet satisfied the terms of this sentence, which subjected him to being placed on community supervision because it is a no-parole offense.[1]

As noted in the record, the Appellant had been sentenced for a previous crime of trafficking cocaine, 28 g or more but less than 100 g, on September 11, 2008 for an offense that occurred on July 27, 2005. This sentence specifically ordered him to receive credit for time served pursuant to S.C. Code §24-13-40 and for fifteen days. The Appellant did not appeal this sentence.

On June 9, 2006, he committed the offense of Criminal Sexual Conduct – 1st degree and was sentenced for this crime on May 7, 2014 with the court's instruction to give him credit towards his sentence since August 27, 2008. The Appellant did not appeal this sentence. The court's authority to impose a sentence start date is found in §24-13-40(c), which states: "..the court *shall have designated a specific time for the commencement of the service of the sentence*, the

[1] S.C. Code §24-13-100.

computation of the time served must be calculated from the date of the commencement of the service of the sentence." (Emphasis added.)

Respondent submits that simple math can provide a clear indication of the end of Appellant's sentence: Fifteen years from the date of the start of his sentence on August 27, 2008, would be August 26, 2023. On or about that date, Appellant will have served 100 percent of his sentence through a combination of incarcerative time and community supervision and will be released by the Department of Corrections.[2]

After the Appellant's community supervision was initially revoked on August 10, 2022, the court ordered that he be returned to the Department of Corrections for a period of 418 days which was the balance of time that he had left to serve on the criminal sexual conduct offense at that time. As noted in the record, the Department moved that the time be reduced to the statutory mandate of one year or 365 days at a September 29, 2022 hearing before the Honorable Roger Young in Charleston County. Section 24-21-560(C)(5) states: "..if the court determines that a prisoner has willfully 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." The court issued a new order reflecting this mandate without objection from the Appellant's attorney at that time.

The Appellant appears to rely upon a statement by Agent Spann during the April 20, 2022, hearing that Appellant's incarceration start date was May 19, 2006, for the trafficking conviction. (R,p. 4, ll. 19-23). Using that date, he argues that his sentence should have had only one month left. Appellant's brief, p. 7. Respondent submits that this may have been an error on the behalf of Agent Spann, and this Court should rule that the clear sentence sheet should control. However,

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[2] Appellant is still incarcerated at the time of the filing of this brief.

even if he was correct regarding the incarceration of Appellant regarding the trafficking conviction, he correctly stated the start date of Appellant's criminal sexual conduct sentence as August 27, 2008. Consequently, even if this Court were to bind Respondent to what Agent Spann placed on the record on April 20, 2022 regarding Appellant's trafficking sentence, the start date of Appellant's CSC – 1st degree plea would still reflect what appears on the sentence sheet.

Appellant then appears to incorrectly apply pre-trial detention time to both offenses when the measuring stick of when each sentence starts is clearly noted on the sentence sheets. Essentially, he hopes to have a start date of May 19, 2006 for both sentences. Thus, he argues, the court would have erred by revoking one year when he had less than a month left on his sentence. Appellant's brief, p. 7. The Appellant was not entitled to any additional credit for time served because he was serving a sentence for a previous sentence when he was convicted of the CSC in 2014. See *State v. Boggs*, 388 S.C. 314, 696 S.E.2d 597 (2010).

This, of course, is absurd. To presume that Appellant has been incarcerated continuously for both offenses since May 19, 2006, ignores a very significant fact: the offense date of the CSC was June 9, 2006 – twenty-one days *after* he was incarcerated. (R.p.71- p.72). Furthermore, the sentence sheets are clear and unambiguous as to when his sentence was to start. See e.g., *Tant v. South Carolina Dept. of Corrections*, 408 S. 334, 759 S.E.2d 398 (2014).

Respondent submits the Defendant was to be given credit for time pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections *since August 27, 2008*. Because §24-13-40 creates an exception for times when "the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense…" it became incumbent upon the sentencing judge to specifically state when he wanted Appellant's sentence to start. Thus, hand-writing sentence start dates on the sentence sheets is a regular practice. *See Davis v. Ozmint*,

2010 WL 1294117, where the Court recognized that the judge handwrote the date of when a sentence commenced. Additionally, in *Hayes v. State*, 413. S.C. 553, 777 S.E.2d 6 (2015), the Court clarified its interpretation of the 24-13-40 exception of a second offense as a *different* offense, which is clearly present here. This clarifying language was further upheld in *State v. Brown*, 426 S.C. 63, 67, 824 S.E.2d 476, 479 (Ct. App. 2019).

Respondent agrees with Appellant's interpretation of *State v. McGrier*, 378 S.C. 331, 663 S.E.2d 15 (2008) in that a defendant serving a no-parole sentence cannot serve CSP beyond the remaining fifteen percent after serving eight-five percent in prison. The crux, therefore, of the argument is when the sentence began which dictates how much of the fifteen percent was left of Appellant's sentence when he appeared before the revocation court. Respondent submits that the sentence sheets are unambiguous, establishing a sentence end date that would provide enough time for a one-year revocation. Consequently, the court did not err.

Thus, the decision of the Court to revoke the Appellant's community supervision for one year should be upheld as noted since it was not an erroneous decision, but one that is significantly supported by 24-13-40 and the case law cited herein.

CONCLUSION

Based on the foregoing arguments, the Department respectfully requests Appellant's arguments be dismissed and the final decision of the General Sessions Court be affirmed.

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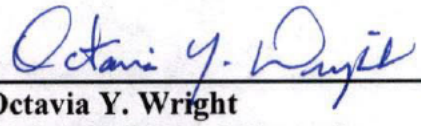
Respectfully submitted,



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August 28, 2023