

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County  
J. Ernest Kinard, Jr., Circuit Court Judge  
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**RECEIVED**

AUG - 6 2013

**S.C. Supreme Court**

DARRELL BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000266

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether petitioner should be given credit for time served prior to his guilty plea on sentences that the plea judge ran concurrently?

## STATEMENT

On May 18, 2004, petitioner pled guilty before the Honorable G. Thomas Cooper, Jr., to two counts of attempted strong arm robbery. App. 49. Petitioner was represented by Douglas E. Leadbitter. App. 49. Judge Cooper sentenced petitioner to consecutive terms of fifteen years' imprisonment on one count and five years' imprisonment on the other count. App. 49. On October 27, 2011, Petitioner was released on parole. App. 50. On February 23, 2012, petitioner filed a PCR application. App. 1. On December 5, 2012, a hearing was held on petitioner's PCR application before the Honorable J. Ernest Kinard, Jr. App. 25. Douglas Leadbitter represented petitioner. App. 25. Robert Corney represented the State. App. 25. On January 7, 2013, Judge Kinard denied petitioner's PCR application. App. 48. This petition follows.

## ARGUMENT

Petitioner should be given credit for time served prior to his guilty plea on sentences that the plea judge ran concurrently.

PCR court erred in finding that petitioner should not receive credit for time served on both sentences. App. 51. The PCR court found that petitioner's credit should only be applied to one sentence because the sentences were run consecutively. App. 51. This was in error. Petitioner was entitled to credit on both sentences for time served.

“A prisoner upon release on parole continues to serve his sentence outside the prison walls.” Sanders v. McDougall, 244 S.C. 160, 163, 135 S.E.2d 836, 837 (S.C. 1964). Nonjudicial extensions of a prisoner's confinement violates due process. See State v. McGrier, 378 S.C. 320, 329, 663 S.E.2d 15, 20 (2008). The Department of Corrections extended petitioner's confinement by refusing to apply petitioner's time-served credit to both of his sentences.

In McGrier, this Court dealt with a due process challenge to a prisoner's incarceration following a violation of the terms of the Community Supervision Program (“CSP”). Id. The prisoner argued that he could not be jailed for violating the CSP for an amount of time that exceeded his original sentence. This Court agreed and ruled that such an incarceration violated due process. Id. Just as in McGrier, petitioner's incarceration for a term longer than he otherwise would have served because of a decision by the Department of Corrections violates due process.

The sentencing sheets show that Judge Cooper intended for petitioner to receive time-served credit against both of his sentences. App. 57 – 62. Despite the consecutive nature of the sentences, Judge Cooper checked the box that defendant was to be given credit for time served on both sentencing sheets. App. 57 – 62. The Department of Corrections lacked the authority to subvert

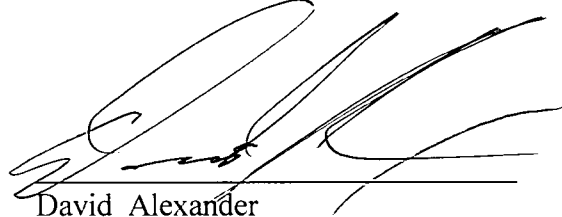
Judge Cooper's intent as was clearly manifested on the sentencing sheets. See McGrier at 329, 663 S.E.2d at 20.

Petitioner testified that Judge Cooper said he was to receive time-served credit on both of his sentences. App. 34, l. 25 – 35, l. 4. The State failed to present any evidence that Judge Cooper did not intend for petitioner to receive credit on both sentences. The PCR court simply surmised, "That's what we do all the time." App. 36, l. 17. The PCR judge said, "I can't explain it to you because you read it one way but that's what we do." App. 37, l. 24 – 38, l. 1. Respectfully, the PCR court failed to engage in any specific analysis as to petitioner's case. Therefore, the decision of the PCR court should be reversed. The effect of the reversal would result in the termination of petitioner's sentence.

CONCLUSION

For the foregoing reasons, the Court should grant the petition, give petitioner credit for time served, and terminate his sentence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of August, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY  
J. ERNEST KINARD, JR., CIRCUIT COURT JUDGE

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PETITION TO BE RELIEVED AS COUNSEL

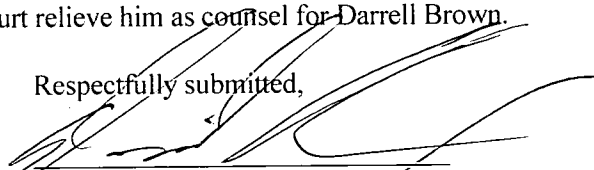
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Counsel for Darrell Brown states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on December 5, 2012. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Darrell Brown.

Respectfully submitted,



David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 6th day of August, 2013

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IN THE SUPREME COURT

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DARRELL BROWN,

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CERTIFICATE OF SERVICE

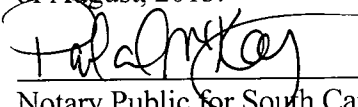
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Robert D. Corney, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also served upon Mr. Darrell Brown at 3404 Palmetto Ave. Columbia, South Carolina 29203, this 6th day of August, 2013.

  
David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day  
of August, 2013.

  
\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.