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**May 30 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JONATHAN LEE GRAY,

APPELLANT

APPELLATE CASE NO. 2024-001751

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INITIAL BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

The plea judge erred in denying time served credit to appellant on the ground that he was re-arrested for allegedly committing new criminal offenses while out on bond because no convictions resulted from these alleged new charges that were ultimately dismissed.

## **STATEMENT OF THE CASE**

Appellant Jonathan Lee Gray pled guilty to possession of methamphetamine (third offense) and shoplifting (third offense) during the September 2024 term of the Greenville County General Sessions Court before Judge Alex Kinlaw, Junior, who sentenced him to an aggregate three-year prison term. Attorney Michael G. Martinez represented appellant at the guilty plea proceeding, and Assistant Solicitor Kristen A. Farmer prosecuted the case.

Appellant appealed his convictions and sentences. This brief follows.

## **STANDARD OF REVIEW**

In criminal cases, the appellate court sits to review error of law only. State v. Nesbitt, 411 S.C. 194, 768 S.E.2d 67 (2015), quoting State v. Jacob, 393 S.C. 584, 713 S.E.2d 621 (2011).

## ARGUMENT

The plea judge erred in denying time served credit to appellant on the ground that he was re-arrested for allegedly committing new criminal offenses while out on bond because no convictions resulted from these alleged new charges that were ultimately dismissed.

The solicitor described the events that led to the present charges filed against appellant in the case. On July 18, 2023, appellant was a passenger in a vehicle that was stopped by police in Greenville County, and the search that followed yielded the discovery of methamphetamine therein. Subsequently, on August 20, 2023, appellant was stopped by police after having been reported for shoplifting at Hibbet Sports Store in Greenville County. Tr. 6, l.18-p. 7, l.7.

At the sentencing phase, it was revealed that appellant was granted bond during the year 2023. However, during the pendency of appellant's bond, he was re-arrested on May 10, 2024, and received "new charges." Ultimately, the "new charges" (drug possession and possession of a stolen vehicle) in question were dismissed. R.---. Defense counsel objected to the plea judge's refusal to grant time served credit for appellant's time spent in jail from the date of his re-arrest on May 10, 2024 for "new charges" until the date of the instant guilty plea (September 26, 2024) on his 2023 charges. The plea judge denied time served credit due to a lack of "good conduct" by appellant on the ground that the re-arrest that spawned the "new charges" that arose while on bond constituted a violation. Although time served credit can be denied under S.C. Code Ann. § 24-13-40 (3) if one commits a subsequent crime while on bond; nonetheless, in the case at bar, appellant was not convicted on the "new crimes" that stemmed from his re-arrest; and more importantly, appellant's "new charges" were ultimately dismissed. Tr. 8, l.19-p. 12, l.9.

The colloquy from the plea proceeding surrounding this issue follows:

Mr. Martinez: Your Honor, initially, I would—the State has written up there 27 days of time served. Mr. Gray has been in jail a

total of 167 days. Basically, I believe that the state is relying on a—on a statute that was passed last year, 24-13-40, which says sentencing—or I’m sorry—credit for time served prior to trial and sentencing shall not be given when the Defendant commits a subsequent offense while on bond.

The Court: Right.

Mr. Martinez: He was—these charges occurred last year. And then he was released on bond. He was re-arrested for some new charges. Those charges are being dismissed as a result of—there are some Fourth Amendment issues with respect to that arrest. But he has nonetheless been incarcerated for 140 days since that arrest. Those charges are being dismissed. So I would contend that he did not commit those offenses.

The Court: Was he on bond when those crimes were allegedly committed?

Mr. Martinez: He was on bond.

The Court: He posted bond?

Mr. Martinez: Yes.

The Court: All right. And part of his bond was—terms of his bond was to be on good conduct; right?

Mr. Martinez: Yes, Your Honor.

The Court: Isn’t that part of his bond?

Mr. Martinez: Yes, Your Honor.

The Court: So the violation—not necessarily that the cases were dismissed, the fact is that he violated the good conduct provision of his bond.

Mr. Martinez: But the statute does not state that they are to be deprived of credit for time served as a result of a violation of the bond.

The Court: But the statute is a little unclear.

Tr. 8, 1.19-p. 10, 1.4.

The Court: Anything that you want to tell me regarding the—the—

Ms. Farmer: Just for clarification, Your Honor, there were 21 days of jail credit that were in between these two incidents. And according to the statute Mr. Martinez referenced, it is our position that he has 21 days of jail credit. And that he is not entitled to the 132 days.

Tr. 11, lines 6-13.

Ultimately, the Court denied defense counsel's time served request from the date of appellant's re-arrest and the instant guilty plea proceeding and sentencing.<sup>1</sup>

The computation of time served credit statute reads as follows:

[F]rom 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, and may be given for any time spent under monitored house arrest. 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; (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; (3) when the prisoner commits a subsequent crime while out on bond; or (4) has bond revoked on any charge prior to trial or plea.

S.C. Code Ann. § 24-13-40 allows for time served credit, but with several prohibitions; one of which would include no time served credit if one "commits a subsequent crime while out on bond." In the case at bar, appellant was not convicted of committing subsequent crimes while out on bond. Appellant was merely re-arrested and cited on "new charges," but the charges were

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<sup>1</sup> Defense Counsel: And Your Honor...I just...I understand the Court's not granting the...167 days credit

The Court: No. I'll grant him 21 days

Defense Counsel: The board says 27 days, Your Honor

The Court: I can't read that...it looks like a one to me. But you say it's a 27?

Defense Counsel: Yes, Your Honor.

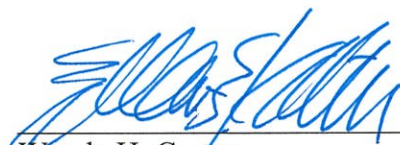
Tr. 12, lines 8-16.

dismissed and never became convictions. Therefore, section 3 of the time served statute was inapplicable in this case. This issue was revisited on January 6, 2025. R.---

The requirements of procedural due process apply to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property; and therefore, the statutory right to sentence related credits would be a protected "liberty" interest under the Fourteenth Amendment entitling an inmate to due process to ensure that such state created rights are not arbitrarily abrogated. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), citing to Board of Regents of State College v. Roth, 408 U.S. 564 (1972). The length of an inmate's incarceration implicates a constitutional liberty interest. Tant v. S.C. Dept. of Corrections, 408 S.C. 334, 759 S.E.2d 398 (2014), citing to Greenholtz v. Inmates of Neb Penal and Correctional Complex, 442 U.S. 1 (1979). The plea judge erred in denying appellant time served credit on the ground that "new crimes" were committed by appellant while he was out on bond because the alleged "new crimes" did not result in convictions, and because the "new charges" were dismissed.

### **CONCLUSION**

Based on the foregoing argument, counsel for appellant would request that appellant's case be remanded for a new sentencing hearing.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of May, 2025.