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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Walton J. McLeod, IV, Circuit Court Judge

JEFFREY LAMONT SANDERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000550

PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX i

ISSUE PRESENTED1

STATEMENT2

ARGUMENT

The PCR judge erred in denying petitioner’s request for a belated
direct appeal due to trial counsel’s failure to file a notice of appeal
in the case because this precluded appellate review on the issue of
the plea judge’s denial of time served credit in the case.....3

CONCLUSION6

STATEMENT OF ISSUE ON DIRECT APPEAL6

ISSUE PRESENTED

The PCR judge erred in denying petitioner's request for a belated direct appeal due to trial counsel's failure to file a notice of appeal in the case because this precluded appellate review on the issue of the plea judge's denial of time served credit in the case.

STATEMENT OF FACTS

Petitioner Jeffrey Sanders pled guilty to possession with intent to distribute heroin (second offense), unlawful carrying of a pistol, and two counts of failure to stop for a blue light during the May 2022 term of the Berkeley County General Sessions Court before Judge Roger M. Young, who handed down an aggregate eight-year prison sentence at the close of the proceeding. App. 1-11. Assistant Solicitor Kawohikukapulani Schaumburg Morris prosecuted the case, and Attorney Jason C. Bybee represented petitioner at the guilty plea proceeding. Petitioner did not enjoy the benefit of a direct appeal in the case.

On March 6, 2023, petitioner filed a PCR application with the Berkeley County Office of the Clerk of Court. App. 13-19. Petitioner alleged that trial counsel erred in failing to file a notice of appeal in order to present the issue of the plea judge's denial of time served credit as requested. The respondent filed a Return on October 4, 2023. App. 20-25. A PCR hearing was held on March 11, 2024, at the Berkeley County Courthouse before Judge Walton McLeod. App. 27-44. Petitioner was present at the hearing and represented by Denise Swope, Esquire, and Assistant Attorney General Danielle Dixon appeared on behalf of the state.

On February 13, 2025, Judge McLeod issued an Order of Dismissal denying petitioner's request for a belated direct appeal in the case. App. 46-49. Petitioner appealed. This petition follows.

ARGUMENT

The PCR judge erred in denying petitioner's request for a belated direct appeal due to trial counsel's failure to file a notice of appeal in the case because this precluded appellate review on the issue of the plea judge's denial of time served credit in the case.

Petitioner was charged with failure to stop during a February 7, 2020, highway incident in Charleston County, South Carolina. In addition, petitioner was charged with failure to stop during a July 17, 2020 highway incident in Berkeley County after which time a search of the vehicle he drove resulted in the discovery of drugs (and a gun) therein. App. 6, 1.14 - p. 7, 1.18.

During the guilty plea hearing held in the case, the issue of time served credit arose when defense counsel requested time served credit of 492 days for petitioner while he was out on house arrest. App. 9, lines 9-10. The solicitor's response follows:

And the state is aware that the defense plans on asking for credit for the GPS monitor, and the State does not agree with giving the defendant credit for being on the GPS monitor. I had moved to revoke his bond twice for violations. He had a curfew from 6:45 a.m. to—I'm sorry—he was allowed to work between the hours of 6:45 a.m. to 6:45 p.m. He was consistently out past that time. He was—and this was only during the time period Monday through Friday. He was consistently violating his house arrest on the weekends, as well, and so I just wanted the Court to be aware that the state is not consenting to giving credit for GPS monitoring. App. 8, lines 1-11.

During the PCR hearing held in the case, petitioner testified that the plea judge denied his request for time served credit (amounting to approximately a year and 127 days) at the sentencing hearing that followed the plea proceeding, and that he did not know that he had a right to appeal, which in effect would have secured appellate review of the denial of time served credit issue. App. 31, 1.19-p. 32, 1.25.

Trial counsel testified at the PCR hearing and admitted that he had no memory of whether he advised petitioner of his right to appeal the case. App. 35, lines 8-14. Counsel added that petitioner contacted him asking for a direct appeal in the case, but that the request occurred after the time to file the notice of appeal had expired. App. 35, 1.22-p.36, 1.10. Counsel added that he filed “it,”(presumably a motion for reconsideration), but was convinced that there was no meritorious ground for relief and withdrew “it.” App. 36, lines 5-24.

At the close of the PCR hearing, PCR counsel requested the grant of time served credit for the 492 days (approximately) petitioner spent on house arrest from January 28, 2021 to May 9, 2022. App. 40, lines 6-16.

The PCR judge ruled that petitioner did not demonstrate extraordinary circumstances that entitled him to a belated direct appeal, and trial counsel was not ineffective in failing to appeal the case. App. 46-49. In support of the denial of petitioner’s complaint, PCR counsel cited to Turner v. State, 380 S.C. 223, 670 S.E.2d 373 (2008), as follows:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to direct appeal from a guilty plea.

To the contrary, the denial of time served credit issue is indeed a meritorious appellate issue which would qualify as an extraordinary circumstance constituting a reason for an appeal in petitioner’s case.

The time served statute rules governing such credit is found under S.C. Code Ann. § 24-13-40.

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, or another is if one's bond was revoked during that time. In the case at bar, petitioner was not convicted of committing subsequent crimes while out on bond, and his bond was not revoked despite allegations regarding the potential for bond revocation. Therefore, neither section 3 nor section 4 disqualified petitioner from receiving time served credit.

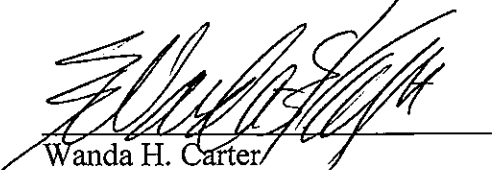
The requirements of procedural due process apply to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property; and therefore, the statutory right to sentence related credits would be a protected "liberty" interest under the Fourteenth Amendment entitling 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 in his case.

Moreover, trial counsel had a duty to make certain that petitioner was fully aware of his right to appeal and to ascertain whether petitioner desired an appeal, and then to file an appeal if

an appeal was desired. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); Frasier v. State, 306 S.C.158, 410 S.E.2d 572 (1991). Here, trial counsel did not perform his duty with respect to petitioner's appellate rights. A defendant is entitled to an appeal where there has been no intelligent or voluntary waiver of the right to an appeal made by the defendant. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1975). Petitioner desired an appeal of his case and did not voluntarily waive his right to an appeal. Therefore, trial counsel erred in failing to take the appropriate steps to ensure petitioner's right to have his case reviewed on direct appeal. If after an indigent client requesting an appeal the client wishes to appeal, then trial counsel must serve and file a notice of appeal. In Re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E. 483 (1991). The PCR judge erred in denying petitioner's request for a belated appeal in the case.

CONCLUSION

Based on the foregoing argument, counsel for petitioner asks this court to grant this petition and allow full briefing on the issue raised above.


Wanda H. Carter

Interim Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of September, 2025.

STATEMENT OF ISSUE ON DIRECT APPEAL

The plea judge erred in denying time served credit to appellant during his time spent on house arrest,