

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

On Certiorari to the Court of Appeals of South Carolina
Unpublished Opinion No. 13-UP-189 (S.C. Ct. App. filed May 8, 2013)
Appellate Case No. 2012-210767

Thomas J. Torrence Petitioner / Appellant

v.

South Carolina Department of Corrections Respondent / Appellee

PETITION FOR WRIT OF CERTIORARI

THOMAS J. TORRENCE
#94651
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

PETITIONER, pro se

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SC Court of Appeals

CERTIFICATE OF PETITION FOR REHEARING

Pursuant to Rule 226(d)(1), SCACR, the Petitioner herein certifies that a petition for rehearing was made to the South Carolina Court of Appeals, dated May 21, 2013. The Court of Appeals finally ruled on the petition for rehearing on October 22, 2013.

STATEMENT OF THE CASE

Petitioner filed an agency grievance with the South Carolina Department of Corrections (“DOC”) in November 2000, claiming he was owed jail credit for the period April 6, 1987 - May 25, 1992, on the offense for which he was first arrested, Appendix (“App.”) § I, 13-15, and is currently serving time, App. § I, 6; 18-24. The DOC calculated and awarded Petitioner two hundred four (204) days of presentence jail credit for the period from arrest (April 6, 1987) to sentence on a separate, but subsequent offense in Charleston (October 30, 1987), App. § I, 2; and Supplemental Appendix (“Supp. App.”) § I, 3. Petitioner appealed the final agency decision to the South Carolina Administrative Law Court (“ALC”). The ALC affirmed the DOC’s final agency decision.¹ Petitioner appealed that decision to the South Carolina Court of Appeals. The Court of Appeals affirmed the ALC decision on May 8, 2013.² In an Order filed October 22, 2013, the Court of Appeals denied the petition for rehearing, App. § III.

STATEMENT OF FACTS

Petitioner was arrested in Lexington County on April 6, 1987 for multiple charges surrounding a double homicide, ROA (App. § I). He was taken before the Lexington and West Columbia Magistrates that day and denied bonds, App. § I, 13-15. On April 7, 1987, Petitioner was arrested for an unrelated murder in Charleston County. Petitioner pled guilty to Accessory After the Fact and received ten (10) years in Charleston County on October 30, 1987. The DOC placed Petitioner in maximum security and held the Lexington County detainers against him, App. § I, 6.

¹ Appendix § I: March 2, 2012 Order, *Thomas J. Torrence v. South Carolina Department of Corrections*, Case No. 10-ALJ-04-006370-AP

² Appendix § III: *Thomas J. Torrence v. South Carolina Department of Corrections*, 2013-UP-189 (S.C. Ct. App, filed May 8, 2013)

Petitioner filed a motion for a speedy trial in the Lexington County Court of General Sessions, App. § I, 9-12. One of Petitioner's issues in the speedy trial motion was loss of *right* to concurrent sentences, *Id.* The detainers affected Petitioner's housing, classification and privileges until his May 18-25, 1992 trial, App. § I, 6. The trial judge, the Honorable Ralph King Anderson, Jr., did not address the issue of jail time at the sentencing and the DOC started Petitioner's "sentence start date" as May 25, 1992. Petitioner raised this issue in his 1995 PCR. That PCR was not heard until November 2000, at which time it was no longer an issue cognizable on PCR. Petitioner filed an agency grievance in November 2000, which was not answered by DOC for ten (10) years. Petitioner has been incarcerated since April 6, 1987, since his arrest on the charge for which he is currently serving a sentence, but which does not begin until May 25, 1992, with the exception of the 204-day period (May 25 - October 30, 1987).

PETITION

A prisoner arrested for a crime and not released on bail is entitled to all pre-trial jail credit until sentenced for that offense, under S.C. Code § 24-13-40 (2007), where that prisoner is subsequently arrested and sentenced for another crime prior to trial and sentencing for the first offense arrested upon.

The United States Supreme Court has held it is constitutionally mandated a prisoner be credited with jail time awaiting trial, *Ohio v. Johnson*, 476 U.S. 493, 499 (1984), especially where the pre-sentence confinement is related to the offense for which he is sentenced, *Tate v. Short*, 401 U.S. 392 (1971).

The South Carolina Legislature understood this substantial federal constitutional right in enacting §24-13-40 (1989). That statute clearly provides in pertinent part:

In every case in computing the time served by a prisoner, **full credit against the sentence shall be given for time served prior to trial and sentencing.** Provided, however, that credit for time served prior to trial and sentencing shall not be given... (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.

S.C. Code Ann. § 24-13-40 (1989) (emphasis supplied).

In addition to United States Supreme Court precedent and our unambiguous state statute controlling credit for pre-sentence confinement, this Court has applied § 24-13-40 in the timing of arrest and arrest warrants in a series of scenarios. *Crooks v. State*, 326 S.C. 171, 485 S.E.2d 364 (1997); *Allen v. State*, 339 S.C. 393, 529 S.E.2d 541 (2000); and *Blakeney v. State*, 339 S.C. 86, 529 S.E.2d 9 (2000). The Court of Appeals erroneously applied *State v. Higgins*, 357 S.C. 382, 384, 593 S.E.2d 180, 181 (Ct. App. 2004) here where *Higgins*, although applying *Allen*, was applied to a context of “house arrest,” and, as is the nexus of this case, “so long as he is not serving time for a prior conviction.” The “serving time for a prior conviction” exclusion cannot be applied, as here, where the prisoner was arrested on the current sentence *first and has always remained in custody* and the delay was not attributable to the prisoner, see App. § I, 9-12.

Thus, the Court of Appeals decision in this matter³ is in conflict with prior decisions of this Court.

It is uncontested by Respondents that Petitioner was arrested for the offense for which he is currently incarcerated on April 6, 1987, was not released on bail, and was not tried until May 18-25, 1992, due to the Solicitor's position regarding multiple defendants tried for the death penalty at the same trial, App. § 19-12.

Respondents misapplied § 24-13-40 in giving Petitioner credit from April 6, 1987 until October 30, 1987, when he was sentenced on the offense he was arrested for *subsequent* to the April 6, 1987 arrest. The correct application of § 24-13-40 is to award Petitioner credit for time he served prior to sentencing (April 6, 1987 - May 25, 1992) where Petitioner was clearly in custody and his current sentence is *not* the second or subsequent sentence.

The Court of Appeals relied on its own precedent that “[I]n an appeal of the final agency decision of an administrative agency, the standard of appellate review is whether the [Administrative Law Court’s] findings are supported by substantial evidence,” citing *Sanders v. S.C. Dep’t. of Corr.*, 379 S.C. 411, 417, 655 S.E.2d 231, 234 (Ct. App. 2008).

Petitioner submits that, pursuant to S.C. Code § 1-23-610(B) (Supp. 2008), this review also extends that review in situations in which the agency decision was “controlled by some error of law.” *Olson v. DHEC*, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct. App. 2008). In this instance, that error of law was the Court’s application of § 24-13-40 (2007).

Petitioner suggests the correct application of § 24-13-40 and case precedent compels the granting of the writ of certiorari to fully place the context of this statutory conundrum before this Court.

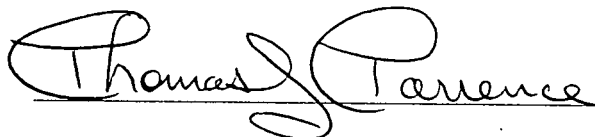
³ *Thomas J. Torrence v. South Carolina Department of Corrections*, 2013-UP-189 (S.C. Ct. App, filed May 8, 2013)

CONCLUSION

For the foregoing reasons the writ of certiorari should be granted.

Respectfully submitted,

November 6, 2013

A handwritten signature in cursive script that reads "Thomas J. Torrence". The signature is written in black ink and is positioned above a horizontal line.

THOMAS J. TORRENCE

#094651

Lieber Correctional Institution SA-43

Post Office Box 205

Ridgeville, South Carolina 29472-0205

PETITIONER, pro se

Thomas J. Torrence
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P.O. Box 205
Ridgeville, SC 29472-0205

November 6, 2013

The Honorable V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Petition for Writ of Certiorari
Thomas J. Torrence v. South Carolina Department of Corrections, 2013-UP-189 (S.C.
Ct. App, filed May 8, 2013)

Dear Ms. Allen:

Please find enclosed, pursuant to SCACR, a copy of the Petition for Writ of Certiorari.

I hope this complies with the Court rules. Thank you for your patience and assistance in this entire matter.

With kindest regards, I remain,

Sincerely,



Thomas J. Torrence

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SC Court of Appeals

Thomas J. Torrence
#094651
Lieber Correctional Institution SA-43
P.O. Box 205
Ridgeville, SC 29472-0205

November 6, 2013

The Honorable Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: Petition for Writ of Certiorari
Thomas J. Torrence v. South Carolina Department of Corrections, 2013-UP-189 (S.C.
Ct. App, filed May 8, 2013)

Dear Mr. Shearouse:

Please find enclosed for filing, pursuant to appellate court rules, the following documents:

- 1) Petition for Writ of Certiorari - original (unbound) and six (6) copies
- 2) Appendix - two (2) copies (one unbound) (also complies with personal identification rules); and
- 3) Certificate of Service

Rule 242(c), South Carolina Appellate Court Rules requires a \$100 filing fee in this instance. The South Carolina Court of Appeals previously granted permission to proceed *in forma pauperis* in this matter. I have enclosed a copy of that Order and Appellant's Motion in that regard. I am formally requesting that you accept this letter and the Court of Appeal's action to continue my *in forma pauperis* status in this Court, in lieu of a separate motion. If this request is not acceptable, please inform me and I will make a separate Motion to this Court.

If this filing is not in correct form, please notify me of the corrections required. Your assistance in this matter is sincerely appreciated.

With kindest regards, I am,

Sincerely,



Thomas J. Torrence

Cc: Honorable V. Claire Allen ✓
Christopher Florian, Esq.

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Ralph King Anderson, III, Administrative Law Judge

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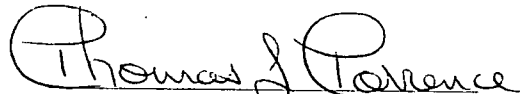
South Carolina Department of Corrections Respondent / Appellee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a true and correct copy of the Petition for Writ of Certiorari on all parties required by Court Rules, by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 6th day of November, 2013, addressed as follows:

Christopher Florian, Esq.
Deputy General Counsel
S.C. Department of Corrections
P.O. Box 21787
Columbia, SC 29221-1787

Honorable V. Claire Allen
Deputy Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211



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