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Dec 04 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMUEL SCOTT HORTON,

APPELLANT.

APPELLATE CASE NO. 2024-001760

PETITION TO WITHDRAW ANDERS BRIEF AND SUBSTITUTE MERIT BRIEF TO
REFLECT RULE 203, SCACR, EXPLANATION SUBMITTED AND GRANTED

Pursuant to Rule 240, SCACR, the undersigned counsel requests leave to withdraw the Anders Brief filed in the case and submit a substitute Merit Brief of Appellant to reflect the Rule 203, SCACR, explanation question attached to the Notice of Appeal presented in this guilty plea case, which was accepted by this Court. Appellate review was granted by this Court on the time served credit violation raised per S.C Code Ann Section 24-13-40 at the circuit court. The following facts are submitted in support of this petition.

1. Appellant Samuel Scott Horton pled guilty to possession of cocaine, shoplifting (third property offense), resisting arrest with assault, and possession of Fentanyl, (second offense) during the September, 2024 term of the Greenville County General Sessions Court

before Judge G.D. Morgan. Appellant was represented by Michael Martinez, Esquire, and Assistant Solicitor Anna Gumpert appeared on behalf of the state. Judge G.D. Morgan sentenced appellant to an aggregate six-year prison term, suspended upon the service of probation for a period of three years. Appellant appealed. This brief followed.

2. The facts of the case follow:

Solicitor: On April 19, 2024, during a probable cause search of the defendant's bag, law enforcement located a small quantity of cocaine, which field tested positive for .47 grams of cocaine. Then on or about July 1st, 2024, the defendant admitted to shoplifting less than \$2,000 worth of merchandise from Roses. When law enforcement went to arrest the defendant, he actively resisted, after being told that he was under arrest, .42 grams of what field tested positive for Fentanyl, was located where the defendant had been sitting when law enforcement located him.

These incidents occurred in Greenville County. This defendant does have a prior record. The state's recommendation is probation with random drug and alcohol testing and substance abuse counseling.

3. The issue raised in the Anders Brief was whether appellant's pleas were given voluntarily because he was unaware of the rights waived upon pleading guilty in the case.

4. However, it has come to my attention from trial counsel Michael Martinez, who represented the above named appellant in the circuit court, that the Rule 203, SCACR, explanation submitted requesting appellate review of a time served credit matter contained merit. Indeed, this Court granted and approved trial counsel's Rule 203, SCACR, explanation which follows:

As required by Rule 203(d)(1)(B)(iv), SCACR, [trial] counsel submits the following explanation of the issue that may be raised on appeal. Mr. Horton contends the circuit court erred in denying him credit for time served prior to sentencing pursuant to Section 24-13-40(3) of the South Carolina Code which provides that "credit for time served prior to trial and sentencing shall not be given:...when the prisoner commits a subsequent

crime while out on bond.” Mr. Horton argues that the statute violates the Double Jeopardy and Due Process Clauses of both the United States and South Carolina Constitutions. By depriving Mr. Horton of credit for pretrial detention toward his sentence, the statute constitutes multiple punishments for the same offense. Furthermore, even if the statutory provision is constitutionally valid, statutory construction would dictate that the credit for pretrial detention shall not be given on the first offense, not the second offense.

5. At appellant’s sentencing hearing, trial counsel expounded on and preserved for appellate review the issue of the time served matter as follows:

MR. MARTINEZ: Thank you, Your Honor, may it please the Court. Your Honor, we're asking The Court to go along with that recommendation...I believe The State has indicated previously that their position is he gets one day of credit. I'm asking The Court to provide him 87 days of credit. And, in fact, just going to make this argument, Your Honor. The State's position is based on section 24-13-40, if I can hand the statute up to The Court. Which, basically, says that credit for time served shall not be given when a person commits a subsequent offense while on bond. Mr. Horton is, obviously, pleading guilty to an offense that occurred in April, that he was released on bond. And then the three other offenses occurred in July.

Your Honor, that statute was adopted about a year ago. It's our contention that depriving inmates, such as Mr. Horton, of credit for the time that they have served on offenses, violates the double jeopardy clauses of both the South Carolina and the United States Constitutions. As well as the process clauses of each of those Constitutions. Essentially, that is a multiple punishment for the same offense by forcing him to either spend that same amount of time that he has already served for the same offense, or subjecting him to possible service of that same amount of time through some sort of suspended sentence.

So, Your Honor, we would put those two arguments on the record as to why the—

THE COURT: Do you agree the statute does say that your argument is it's unconstitutional?

MR. MARTINEZ: Yes, Your Honor.

THE COURT: I understand. I note your argument and your argument is made for the record. All right, anything else from The Defendant?

MR. MARTINEZ: No, Your Honor.

THE COURT: All right.

R. p. 34, 1.12 – p. 36, 1.15

MR. MARTINEZ: Your Honor, if I can, I'm sorry, I neglected to put one more thing on the record about the statute. The last thing I would say is, with a plain reading of the statute, I think the credit for time served shall not be given, would refer to the first offense, not the subsequent offense. And so if anything, he would be deprived of the one day in jail, not the 86 days he has been serving in jail on the charges that he was arrested on in July. Thank you, Your Honor.

THE COURT: I note your argument, that's good argument and you may be successful on that. But I read the statute that he's entitled only to one day. And that's a matter from a Constitutional standpoint, if you want to take it up, you certainly have a opportunity to do so. And it may be something to do.

MR. MARTINEZ: Thank you, Your Honor.

R. p. 37, 1.22-p. 38, 1.13.

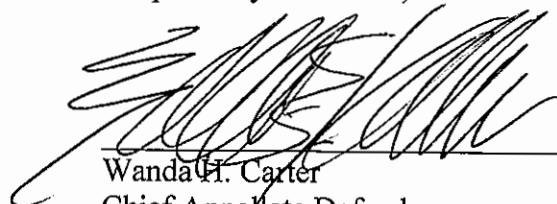
6. The computation of time served credit statute reads as follows:

[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. 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 circuit court erred in denying appellant's time served credit request in this case.

WHEREFORE, the undersigned counsel would request leave to withdraw the Anders Brief and submit a substitute Merit Brief of Appellant in the above titled case to address the time served credit question raised at the circuit court, and properly preserved for appellate review as presented via the Rule 203, SCACR, explanation as part of the Notice of Appeal filed in the case, which was accepted and granted by this Court.

Respectfully submitted,



Wanda G. Carter
Chief Appellate Defender

This 4th day of December, 2025.

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Appeal from Greenville County

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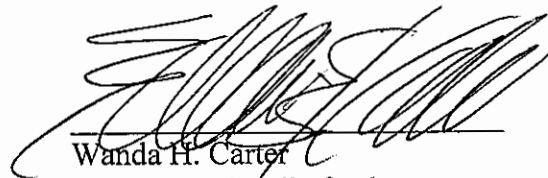
SAMUEL SCOTT HORTON,

APPELLANT.

APPELLATE CASE NO. 2024-001760

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true copy of the Petition to Withdraw Anders Brief and Substitute Merit Brief of Appellant in the above-referenced case has been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 4th day of December, 2025.



Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT

Leverett, Scott

From: Leverett, Scott
Sent: Thursday, December 4, 2025 4:03 PM
To: Mark Farthing
Cc: Caroline Collins; Carter, Wanda
Subject: 2024-001760 - State v. Samuel Scott Horton - Petition to Withdraw Anders Brief and Substitute Merit Brief of Appellant
Attachments: 2024-001760 - State v. Samuel Scott Horton - Petition to Withdraw Anders Brief and Substitute Merit Brief of Appellant.pdf

Dear Mr. Farthing,

Attached please find a Petition to Withdraw the Anders Brief and Substitute a Merit Brief of Appellant in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Wanda Carter
Appellate Defense

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