STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2024-002186

The State, ...Respondent,

v.

Sammy Rowdy Parker, ...Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General
S.C. Bar No. 8729
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit
1675 York Highway
York, South Carolina 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases:

State Cases:

Federal Constitution:

State Constitution and Statutes:

Secondary Authorities:

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether Appellant's argument that the trial court's denial—in compliance with section 24-13-40 of the South Carolina Code—of time-served credit for the entire time he spent in jail awaiting trial and sentencing violated his substantive due process rights and the separation of powers doctrine, is unpreserved for appellate review where it was not sufficiently raised to or ruled upon by the circuit court. Also whether, where: (1) the plea court sentenced Appellant within statutory limits for his crimes and (2) Appellant does not have a fundamental right to credit for presentence jail time because it is not part of the sentence imposed, the statutory denial of the desired credit did not implicate substantive due process and did not violate the doctrine of separation of powers.

STATEMENT OF THE CASE

Sammy Rowdy Parker (Appellant) was indicted at the March 23, 2023 term of the grand jury for York County for trafficking methamphetamine (2022-GS-46-06000). He was subsequently indicted at the May 23, 2024 term of the grand jury for one count of distribution of methamphetamine (2024-GS-46-01326) and a second count of trafficking methamphetamine (2024-GS-46-01328). Finally, Appellant was indicted at the December 12, 2024 term of the grand jury for failure to stop for a blue light (2024-GS-46-05002) and receiving stolen goods - third or subsequent property crime (2024-GS-46-05003). He was represented by Assistant Public Defender Mark McKinnon of the Sixteenth Circuit Public Defender's Office. Respondent (the State) was represented by Senior Solicitor Marina Hamilton of the Sixteenth Circuit Solicitor's Office. On December 18, 2024, Appellant appeared in the York County Courthouse before the Honorable Alex Kinlaw, Jr., and entered a guilty plea to the indicted charges. He was sentenced to concurrent terms of: thirteen (13) years' imprisonment for trafficking 28 grams or more of methamphetamine – second offense; thirteen (13) years' imprisonment for trafficking 10 grams or more of methamphetamine – second offense; thirteen (13) years' imprisonment for distribution of methamphetamine – third or subsequent offense; three (3) years' imprisonment for receiving stolen goods – third offense; and time served for failure to stop for a blue light. The trial court ordered three-hundred and seven (307) days of credit for time served on each of the five individual sentences. (Indictments and Sentencing Sheets).

Appellant timely filed a notice of intent to appeal his sentences along with a "Rule 203(B) Explanation" which stated trial counsel "does *not* have a good faith basis to believe the sentencing issue is properly before [this Court]" because he "did not object to the sentence or file a motion to reconsider the sentence." (Notice of Appeal and Rule 203(B) Explanation)

(emphasis added). By letter dated January 30, 2025, the Clerk's Office advised trial counsel the Court had reviewed the appeal and determined it would be allowed to proceed. (Letter dated January 30, 2025). A brief was subsequently submitted in support of Appellant's appeal by Appellate Defender Molly M. Keegan of the South Carolina Commission on Indigent Defense. This Brief of Respondent on behalf of the State now follows.

STATEMENT OF FACTS

Appellant was initially arrested for a single count of trafficking methamphetamine. According to the York County Public Index, on September 22, 2022, a magistrate set a $60,000 appearance recognizance bond and on July 27, 2023, approximately **308 days** later, Appellant posted bond and was released. Appellant was subsequently arrested for distribution of methamphetamine and a second count of trafficking methamphetamine. On February 28, 2024, a magistrate set a $25,000 appearance recognizance bond and on April 25, 2024, approximately **57 days** later, Appellant posted bond and was released. Appellant was then arrested for failure to stop for a blue light and receiving stolen goods. On September 6, 2024, a magistrate set a $10,000 appearance recognizance bond which Appellant did not post. He remained in pretrial incarceration until the date of his plea on December 18, 2024, approximately **103 days** later.

At the call of the case, Appellant was sworn in by the clerk of court. (Tr.p.3). He testified in part that he understood his constitutional rights and understood he was giving up those rights by pleading guilty. Appellant testified it was his decision to plead, not his lawyer's decision, and that he was clear-minded and understood what he was doing. (Tr.p.7-p.8). Next, the solicitor briefly recounted the facts of the underlying charges and Appellant's prior record.

Appellant testified he agreed with the facts recited by the State. Based on Appellant's testimony, the court accepted the plea as being freely and voluntarily entered. (Tr.p.8-p.11).

In regard to sentencing, the solicitor first advised the court that the parties had negotiated for a sentence of fifteen (15) years with credit for **307 days** of time served; however, following an off the record discussion she noted the negotiation was actually for thirteen (13) years rather than fifteen (15) years and that Appellant's counsel "is going to question the amount of credit for time served." (Tr.p.11, lines 7-17). Counsel claimed Appellant served **308 days** on his first arrest (2022-GS-46-06000), then **56 more days** on his second arrest (2024-GS-46-01326 & -01328), and **105 more days** on his third arrest (2024-GS-46-05002 & -05003), for a **total of 469 days.**[1] He said he understood what the statute says but that he "would be objecting to Your Honor not giving him *all that credit* based on it being unconstitutional in my view to keep the Court from being able to give someone jail for time they've actually served incarcerated." (Tr.p.11, line 19-p.12, line 2) (emphasis added). The plea judge noted he had "heard that argument so many times" and invited a challenge to his ruling because he was going to follow the statute. Counsel explained that was why he was objecting and understood what the court was going to do; however, he never stated or articulated *how* or *why* he believed the statute was unconstitutional. (Tr.p.12, lines 3-21). The court ultimately imposed a sentence of thirteen (13) years' imprisonment on three of the charges, three (3) years' imprisonment on one charge, and time served on one charge, awarding **307 days** of credit for time served on each of the five individual charges (irrespective of the dates of arrest). (Tr.p.13-p.14). Appellant's counsel stated: "And, Your Honor, one more time, I'm objecting to time served credit." (Tr.p.14, lines 24-25).

[1] Although there are minor discrepancies in the calculation of the days Appellant was detained during his three periods of pretrial detention, the totals are very close and should not impact this Court's overall analysis of the arguments raised on Appellant's behalf in this appeal.

STANDARD OF REVIEW

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012); *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law. *State v. Jacobs*, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011); *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

The appellate court has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render them valid. *State v. German*, 439 S.C. 449, 460, 887 S.E.2d 912, 917 (2023); *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001); *State v. Bouye*, 325 S.C. 260, 265, 484 S.E.2d 461, 463-64 (1997). Further, a legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt. *German* at 460, 887 S.E.2d at 917; *Curtis.* at 570, 549 S.E.2d at 597. Appellants have the burden of proving the statute unconstitutional. *State v. Conyers*, 326 S.C. 263, 266, 487 S.E.2d 181, 183 (1997); *Bouye*, 325 S.C. at 265, 484 S.E.2d at 464 (1997); *Home Health Serv., Inc. v. S.C. Tax Comm'n,* 312 S.C. 324, 440 S.E.2d 375 (1994).

ARGUMENT

I.

Appellant's argument that the trial court's denial—in compliance with section 24-13-40 of the South Carolina Code—of time-served credit for the *entire* time he spent in jail awaiting trial and sentencing violated his substantive due process rights and the separation of powers doctrine, is not preserved for appellate review because it was not sufficiently raised to or ruled upon by the circuit court. In any event, because: (1) the plea court sentenced Appellant within statutory limits for his crimes and (2) Appellant does not have a fundamental right to credit for presentence jail time where it is not part of the punishment imposed, the statutory denial of the desired credit did not implicate substantive due process and did not violate the doctrine of separation of powers.

Appellant argues the trial court erred by denying him, due to his commission of subsequent crimes while on bond, time served credit for the entire time that he spent in jail awaiting trial and sentencing because S.C. Code § 24-13-40(3) violated his substantive due process rights and the separation of powers doctrine, resulting in **162 days** served but not credited. (Brief of Appellant, p.4-p.13). In regard to substantive due process, Appellant contends the statute is facially invalid because there can be no valid application where it is not narrowly tailored to achieve a compelling state interest and where it infringes upon a constitutional liberty interest—freedom from incarceration. He further contends that even if not facially invalid, the statute is nevertheless "unconstitutional as applied" because application to him resulted in barring his receipt of credit for 162 of the days he spent in jail while awaiting trial and sentencing. In regard to separation of powers, Appellant contends the imposition of sentences is a judicial function and that where the statute at issue removes judicial sentencing discretion by denying credit for time served based on a subsequent arrest, it unconstitutionally allows the legislature to impose a sentence. (Brief of Appellant, p.4-p.13). The State disagrees

and submits Appellant's argument, and his associated sub-arguments, should be denied and dismissed on several grounds.

A. Issue Not Preserved for Appeal

First and foremost, the argument raised in Appellant's brief is not preserved for appellate review because it was not adequately raised to and ruled upon by the lower court. In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the Appellant; (3) raised in a timely manner; and (4) raised to the trial court *with sufficient specificity*. *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004) (emphasis added). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." *State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

This issue preservation requirement applies to assertions of constitutional violations. *State v. Langford*, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (2012); *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005). Indeed, our courts have consistently held that a constitutional claim must be raised and ruled upon to be preserved for appellate review. *State v. Gaster*, 349 S.C. 545, 552, 564 S.E.2d 87, 91 (2002); *In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001); *Hoffman v. Powell,* 298 S.C. 338, 380 S.E.2d 821 (1989). "A bald assertion, without supporting argument, does not preserve an issue for appeal." *McCracken* at 92, 551 S.E.2d at 235.

Here, Counsel said he: "would be objecting to Your Honor not giving [Appellant] all that credit based on it being unconstitutional in my view to keep the Court from being able to give someone jail for time they've actually served incarcerated," but Counsel never articulated *how* or *why* the statute was allegedly unconstitutional "in his view." He certainly did not mention

substantive due process or separation of powers. (Tr.p.11, line 19-p.12, line 2). Even though the plea judge noted he had "heard that argument so many times" and invited a challenge to his stated intent to deny credit under the terms of the statute, the court *also* failed to reference due process or separation of powers. (Tr.p.12, lines 3-21). Even at the end of the plea, when Counsel ostensibly renewed his objection, he merely stated: "And, Your Honor, one more time, I'm objecting to time served credit." Once again, Counsel did not claim any violation of substantive due process or separation of powers. (Tr.p.14, lines 24-25). Thus, regardless of whether there is any merit to the questions of whether the statute at issue violates substantive due process or separation of powers (which the State strongly contends it does not), Appellant was obligated to specifically bring that issue and his arguments to the attention of Judge Kinlaw before or during the plea proceeding and to obtain a ruling. Because Appellant failed to do so, this entire issue should not be addressed on appeal and the lower court's order should simply be affirmed without further discussion.[2]

B. Issue is Without Merit

If this Court determines Appellant's argument was both sufficiently specific to be preserved for appellate review *and* not waived pursuant to his free and voluntary guilty plea, it is nevertheless without merit because: (1) the plea judge acted well within his discretion by

[2] Arguably, Appellant's argument is also unpreserved because Appellant affirmatively waived all constitutional rights as part of his guilty plea. South Carolina does not recognize conditional guilty pleas. *State v. Rice*, 401 S.C. 330, 331, 737 S.E.2d 485, 485 (2013); *State v. Truesdale*, 278 S.C. 368, 370, 296 S.E.2d 528, 529 (1982). Indeed, a guilty plea constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *Rice*, at 331-32, 737 S.E.2d at 485-86. Appellant's attempt to challenge the denial of credit as a violation of his constitutional rights *after* he knowingly and voluntarily waived those rights and entered a guilty plea is akin to offering a conditional guilty plea. The State acknowledges sentencing is a separate issue from guilt and a distinct phase of the criminal process, *Easter v. State*, 355 S.C. 79, 81, 584 S.E.2d 117, 119 (2003); however, where Appellant's challenge is based on an alleged constitutional violation that was triggered by his *pre-plea* decision to commit a new crime while out on bond, it is distinguishable from a mere *post-plea* challenge to the imposition of a sentence. *State v. Tucker,* 376 S.C. 412, 418, 656 S.E.2d 403, 406–07 (Ct.App.2008) (finding a defendant's plea of guilty waived any challenge to his conviction based on an alleged pretrial violation of statutorily prescribed procedure).

sentencing Appellant within statutory limits and (2) Appellant did not have a fundamental right to credit for presentence jail time where presentence jail time is not part of the sentence imposed. Consequently, the statutory prohibition on awarding credit for presentence jail time did not infringe upon substantive due process and did not violate the doctrine of separation of powers.

1. Sentences were within Statutory Limits

A judge is allowed broad discretion in sentencing within statutory limits." *Garrett v. State*, 320 S.C. 353, 356, 465 S.E.2d 349, 350 (1995). "Absent partiality, prejudice, oppression, or corrupt motive, this Court lacks jurisdiction to disturb a sentence that is within the limit prescribed by statute." *State v. Barton*, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997). When reviewing a sentencing issue on appeal, an appellate court will only interfere with a sentencing judge's sentencing decisions in rare and unusual circumstances in light of the broad discretion afforded to sentencing judges on such matters. *State v. Ferguson*, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952); *see State v. Sidell*, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974) ("A broad discretion is allowed the trial judge in imposing sentence within the legal limits.").

Here, each of the five sentences imposed by the plea court fell well below the statutory maximum sentence for its offense. As explained by the court during the plea proceeding, Appellant faced a sentencing exposure of: ten (10) to thirty (30) years for distribution of methamphetamine – third or subsequent offense [S.C. Code Ann. § 44-53-375(B)(3)]; seven (7) to thirty (30) years for trafficking 28 grams or more of methamphetamine – second offense [S.C. Code Ann. § 44-53-375(C)(2)(b)]; five (5) to thirty (30) years for trafficking 10 grams or more of methamphetamine – second offense [S.C. Code Ann. § 44-53-375(C)(1)(b)]; zero (0) to ten (10) years for receiving stolen goods – third offense [S.C. Code Ann. §§ 16-13-180(C)(1) & 16-1-57]; and zero (0) to three (3) years for failure to stop for a blue light [S.C. Code Ann. § 56-5-

750(B)(1)]. (Tr.p.4-p.6). Even if 162 days of credit was added to each individual sentence imposed, the sentences would fall short of the maximum penalty that could have been imposed for each charge.

Although not without exception,[3] where a trial court has imposed a sentence of less time than the maximum, courts have generally upheld the denial of credit based on the rebuttable or conclusive presumption that the trial court took the presentence jail time into consideration. 21 AM. JUR. 2D *Criminal Law* § 743 (2025); *See Durkin v. Davis*, 538 F.2d 1037, 1040 (4th Cir. 1976) (recognizing the right to credit for jail time awaiting trial on a bailable offense is sometimes constitutionally mandated, but also acknowledging the general limitation on any right to such credit where the sentence, when increased by that time, does not exceed the maximum sentence, because of the generally recognized presumption that the sentencing judge had given credit in his or her sentence to such jail time); *State v. Starr*, 521 P.2d 1126 (Ariz. 1974) (holding that when the actual sentence imposed plus the time in jail does not exceed the maximum sentence which could be imposed, it will be conclusively presumed that the sentencing court gave the defendant credit for all presentence time spent in jail). In this case, given: (1) the much lower-than-maximum sentences imposed, and (2) the plea court's affirmative decision to award 307 days of presentence jail credit despite the prohibitive language in the statute, even on the four sentences for which the initial term of presentence jail time should *not* have applied,[4] there

[3] Certain authorities recognize a defendant's right to presentence jail credit where the custody was due to the defendant's financial inability to make bail, and a denial of credit would therefore be considered discriminatory. 21 AM. JUR. 2D *Criminal Law* § 743 (2025); *see e.g., Ange v. Paderick*, 521 F.2d 1066 (4th Cir. 1975).

[4] The statute provides that: "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 . . . ." S.C. Code Ann. § 24-13-40 (emphasis added). Thus, even in a standard sentence calculation where none of the four disqualifying factors is present, the award of credit for each "sentence" imposed must be related to the "time served prior to trial and sentencing" on *that sentence*—not other sentences for which the defendant had not even yet been charged or arrested. *Cf. Blakeney v. State*, 339 S.C. 86, 529 S.E.2d 9 (2000) (holding that a defendant, who was jailed in another county on unrelated charges and had a "hold" placed on him for the current robbery charge, was entitled to credit for time served from

is simply no way the refusal to award an additional 162 days of credit could have infringed upon Appellant's right to substantive due process, or any other of Appellant's constitutional rights. Appellant has failed to demonstrate any rare and unusual circumstances that would warrant this Court interfering in the plea court's discretionary sentencing decision. Therefore, the plea court's credit ruling should be affirmed.

2. No Fundamental Right to Credit for Presentence Jail Time

Even if this Court finds the application of § 24-13-40 somehow presents rare and unusual circumstances, the plea court's actions to refuse to award an additional 162 days of credit in defiance of the statute did not implicate substantive due process. Both the United States and the South Carolina Constitutions provide that no person shall be deprived of life, liberty, or property without due process of law." U.S. Const. Amend. XIV, § 1, S.C. Const. art. I, § 3. Appellant's "substantive due process" claim relies upon a line of United States Supreme Court cases which interprets the Fourteenth Amendment's guarantee of "due process of law" to include a substantive component which forbids the government from infringing upon certain "fundamental" liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. *Reno v. Flores,* 507 U.S. 292, 301 (1993). Thus, the due process clause protects individual liberty against "certain government actions regardless of the fairness of the procedures used to implement them." *Washington v. Glucksberg,* 521 U.S. 702, 719 (1997) (quoting *Daniels v. Williams,* 474 U.S. 327 (1986)); *United States v. Juvenile Male,* 670 F.3d 999, 1012 (9th Cir. 2012). Consequently, the first step in any substantive due process analysis is "to determine whether the claimed violation involves

---

the date on which sheriff's department issued the warrant for his arrest for the robbery). Whatever interest the statute may create in pretrial confinement credit does not extent to using them on a sentence that does not arise from the same act or arrest. *Cf. Wolff v. McDonald,* 418 U.S. 539, 556-57 (1974); *Bd. of Regents v. Roth,* 408 U.S. 564, 577 (1972).

one of 'those fundamental rights and liberties which are, objectively, deeply rooted in the Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that neither liberty nor justice would exist if they were sacrificed." *Hawkins v. Freeman,* 195 F.3d 732 (4th Cir. 1999) (quoting *Glucksberg & Palko v. Connecticut* 302 U.S. 319 (1937) respectively). The next step depends for its nature upon the result of the first. *Id.* at 739. If the asserted interest has been determined to be "fundamental," it is entitled in the second step to the protection of strict scrutiny judicial review of the challenged legislation. *Id.* at 739. If the interest is determined not to be "fundamental," it it is entitled only to the protection of rational-basis judicial review. *Id.*

"It has been traditionally held that *in the absence of an applicable statute to the contrary*, the defendant does not have a fundamental right to credit for time spent in custody prior to trial or sentence, the courts frequently reasoning that the confinement simply does not relate in any way to the subsequent punishment imposed." 77 A.L.R. 3D 182 § 2 (1977 & Cum. Supp. 2025) (emphasis added). South Carolina is one of a number of states[5] that long followed this tradition by noting, prior to the enactment of § 24-13-40, in the context of a challenge to the denial of credit as constituting cruel and unusual punishment, that: "In the absence of a statute requiring the trial judge to give a prisoner credit for the time spent in custody prior to trial, the rule appears

[5] *See Ryan v. State*, 14 So. 766 (Ala 1894) ("[i]t could not any more be said to be a part of the punishment itself, or to be proper for consideration in fixing adequate punishment, that the ills and inconveniences and the sting of remorse of a criminal who eluded arrest and absconded could be said to be a part of his final punishment, or proper to be taken into consideration in the imposition of the punishment which the law laid against the crime."); *People v Jones*, 489 P.2d 596 (Col. 1971) ("without legislation, credit for presentence confinement was not a matter of right, since there was no constitutional right to credit"); *State v Walker*, 177 S.E.2d 868 (N.C. 1970) (until the date of his commitment the defendant's status was that of a prisoner under indictment awaiting trial in default of bond, and not that of a prisoner serving a sentence); *State v Winston*, 252 A.2d 354 (R.I. 1969) (at the time sentence was pronounced there was no statute requiring the trial judge to give a person credit for time spent in custody prior to trial, and that in the absence of such a statute a prisoner was not entitled as a matter of right to credit for his presentence jail time); *People v. Carrillo*, 297 P.3d 1028 (Colo. App. 2013) ("There is simply no constitutional right to receive presentence confinement credit."); *State v. Deshawn D.*, 44 A.3d 907 (Conn. 2012) ("Presentence confinement credit is a creature of statute and, as a general rule, is not constitutionally required."); *Commonwealth. v. Johnson*, 967 A.2d 1001 (Pa. 2009) ("There is no constitutional right to credit for time served prior to trial or sentence.").

to be that a prisoner is not entitled as a matter of right to credit for his presentence jail time." *State v. Sanders*, 251 S.C. 431, 445-46, 163 S.E.2d 220, 228 (1968). Our supreme court explained: "The time for which credit is sought was spent in jail awaiting trial and not pursuant to any punishment imposed for the crime charged." *Id.* It further explained: "Since the presentence jail time was *no part of the punishment imposed*, it cannot be considered in determining whether the punishment was cruel and unusual." *Id.* (emphasis added). The U.S. District Court for the District of South Carolina agreed, concluding that despite the fact that Sanders "was given the maximum sentence authorized by South Carolina Law for forgery . . . [he] was not entitled as a matter of right to credit for presentence custody, nor can it be held as a matter of law that excessive, cruel or unusual punishment has been imposed upon him." *Sanders v. South Carolina*, 296 F. Supp. 563, 573 (D.S.C. 1969). Notably, these decisions are consistent with the sentiment expressed by Justice Douglas when considering an application for release on personal recognizance pending disposition of petitions for certiorari filed by the applicant wherein he stated: "During the time in which these proceedings in the Eighth Circuit have continued, Bandy has not served any part of his sentence, but has been held in the county jail. *Bandy v. United States*, 82 S.Ct. 11 (1961).

Although this rule in South Carolina was superseded by statute in 1973, *See State v. Dozier*, 263 S.C. 267, 273, 210 S.E.2d 225, 227 (1974) (recognizing that, until the enactment of the amendment, a prisoner was not entitled as a matter of right to credit for his presentence jail time), that statute, by which the legislature had mandated the award of credit for time served under certain circumstances, was amended by the legislature in 2023 to prohibit the award of credit under additional exclusionary circumstances, such as "when the prisoner commits a subsequent crime while out on bond." S.C. Code Ann. § 24-13-40. Where there was no

fundamental right to credit for presentence jail time prior to 1973, and any later entitlement to credit was purely a function of statutory enactment, then removal of the statutory entitlement by subsequent legislation necessarily reverts South Carolina back to the original rule—which recognized no fundamental right to that credit. As recognized by the United States Supreme Court in conducting a due process analysis of Nebraska's statute permitting the revocation of prisoner credits for good behavior: "Nebraska may have the authority to create, or not, a right to a shortened prison sentence through the accumulation of credits for good behavior." *Wolff*, 418 U.S. at 557. Similarly, the South Carolina General Assembly has the authority to create, *or not*, a right to credits for presentence jail time.

Appellant compares the denial of time served credit due to an individual's status as an escapee under 24-13-40(1), which was upheld in *Delahoussay v. State*, 369 S.C. 522, 633 S.E.2d 158 (2006), with the denial of time served credit due to an individual committing a subsequent crime under 24-13-40(3), and argues because the status is easily distinguishable, the denial of presentence credit impacts a fundamental right. To the contrary, as recognized by our supreme court in *Sanders*, the status of the credit at issue being presentence jail time, which is *not* part of the punishment imposed, further removes it from qualifying as a fundamental right.

Because there is not a fundamental right to presentence credit, strict scrutiny does not apply to a substantive due process analysis. *State v. McSwain*, 445 S.C. 276, 283-84, 914 S.E.2d 124, 127-28 (2025); *In re Treatment and Care of Luckabaugh*, 351 S.C. 122, 140, 568 S.E.2d 338, 346-47 (2002). Instead, the rational basis test applies, and the General Assembly need only have passed a statue with a rational relationship to a legitimate governmental purpose. *Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 250, 882 S.E.2d 770, 803 (2023). As explained above, when a legislative act is challenged under the due process clause, and a fundamental right or

suspect class is not involved, we require only that the act be reasonably designed to accomplish the legislative purpose. *McSwain*, 445 S.C. at 283-84, 914 S.E.2d 124 at 128. Further, under the standard of review, all statutes are presumed constitutional. *German*, 439 S.C. at 460, 887 S.E.2d at 917.

Appellant argues the amendments to Section 24-13-40 were not reasonably designed to accomplish the legislative purpose and that there is no rational basis to further restrict his liberty by denying him credit for time actually served, because a subsequent arrest while on bond already triggers detention and serves as a deterrent. (Brief of Appellant, p. 10). However, the possibility of losing the presentence credit that would otherwise have been awarded serves as its own, independent deterrent to continued criminal behavior, above and beyond the possibility of further detention due to a subsequent arrest. The existence of other methods to address a subsequent arrest does not eliminate the rational basis for this legislation. In fact, it is up to the legislature to decide what it believes are the most appropriate deterrents for defendants who have been released on bail to encourage them to refrain from committing additional crimes. Simply because the General Assembly did not specifically articulate this purpose when passing the legislation does not mean the amendment does not have a rational basis. Here, the amendment appears to have been reasonably designed to accomplish the legislative purpose of deterring continuing criminal behavior in much the same way a potential arrest, conviction, and sentence deters criminal behavior in the first place. Because there was no substantive due process violation, the plea court's credit ruling should be affirmed.

3. No Violation of Separation of Powers

In a similar vein, there can be no violation of separation of powers where the right at issue was created by statute rather than springing from the constitution. Our constitution

mandates that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." S.C. Const. art. I, § 8. As explained by our supreme court:

> One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government. It prevents the concentration of power in the hands of too few and provides a system of checks and balances. The legislative department makes the laws; the executive department carries the laws into effect; and the judicial department interprets and declares the laws.

Langford, 400 S.C. at 434, 735 S.E.2d at 478; *State ex rel. McLeod v. McInnis,* 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982).

Despite this requirement for this distinct separation, our supreme court has also recognized: "Separation of powers does not require that the branches of government be hermetically sealed." 16A AM. JUR. 2D *Constitutional Law* § 244 (2025). Accordingly, allowing some degree of overlap between the branches has been a feature of our government since the founding of the Republic." *S.C. Pub. Int. Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 649, 744 S.E.2d 521, 526 (2013). The supreme court further explained how, in light of this overlap, the judiciary must defer to the legislature in matters of public policy by reiterating:

> As we recently reiterated in *ArrowPointe Federal Credit Union v. Bailey*, Determinations of public policy "are chiefly within the province of the legislature, whose authority on these matters we must respect." *Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265, 271, 802 S.E.2d 794, 797 (2017). We do not sit as a superlegislature to second-guess the General Assembly's decisions. *Keyserling v. Beasley*, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996); *see Smith v. Tiffany*, 419 S.C. 548, 565, 799 S.E.2d 479, 488 (2017) ("We are a court, not a legislative body."). "Respect for separation of powers compels us to recognize that the General Assembly is the author of our state's public policy ...." *State v. Slocumb*, 426 S.C. 297, 314, 827 S.E.2d 148, 157 (2019). 438 S.C.

> 573, 580, 884 S.E.2d 506, 509 (2023) (citation modified). The importance of restraint on our part cannot be overstated.

S.C. Pub. Int. Found. v. Wilson, (Op. No. 28307 filed November 12, 2025) (2025 WL 3153689).

In regard to the 2023 amendments to section 24-13-40 of the Code, the legislature made a clear public policy determination to prohibit the award of presentence credit to defendants who commit subsequent crimes while out on bond for a prior arrest. This was done as part of a broad effort to stem what was described in the media as a "catch and release" or "revolving door" bond system.[6] That public policy determination should engender restraint on the part of this Court, particularly in light of our supreme court's prior declaration that: "[t]he penalty assessed for a particular offense is, except in the rarest of cases, 'purely a matter of legislative prerogative,' and the legislature's judgment will not be disturbed." *State v. De La Cruz,* 302 S.C. 13, 16, 393 S.E.2d 184, 186 (1990); *see also State v. Johnson*, 350 S.C. 543, 545–46, 567 S.E.2d 486, 487 (Ct. App. 2002) (recognizing judicial discretion in sentencing is subject to statutory restriction without any violation of the separation of powers doctrine.); *State v. Burdette*, 335 S.C. 34, 41, 515 S.E.2d 525, 529 (1999) (finding that the legislature designating life in prison without parole as the appropriate sentence does not violate the separation of powers doctrine.). Thus, to the extent this Court finds, contrary to what the supreme court found in *Sanders*, that presentence jail time *is* part of the punishment for a crime, such punishment is purely a matter of legislative prerogative, and the General Assembly's act of binding the judicial branch to deny the award of presentence jail credit does not violate the separation of powers. Thus, the plea court, in compliance with separation of powers, complied with section 24-13-40 and refused to award the 162 days of additional credit in this case. That decision should be affirmed.

---

[6] Lyn Riddle, *Too many accused of violent crimes are let go to commit more, SC sheriff says after mass shooting*, Columbia, SC, The State, May 1, 2023, https://www.thestate.com/news/local/article274923746.html.

CONCLUSION

For all of the foregoing reasons, the State submits this appeal should be denied and dismissed. To the extent this Court disagrees and finds the alleged error is preserved, and that there was a constitutional error in the circuit court applying section 24-13-40 and denying the 162 days of additional credit, the State submits any grant of relief must include a remand for an entirely new sentencing proceeding with reconsideration of the term of years imposed *and* the credit awarded.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: 
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
December 9, 2025

RECEIVED
Dec 09 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2024-002186

The State, ...Respondent,

v.

Sammy Rowdy Parker, ...Appellant.

PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Initial Brief of Respondent* and *Designation of Matter*, both dated December 9, 2025, on Appellant by sending an electronic copy via email to Molly M. Keegan, counsel of record for Appellant, at the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served. This 9th day of December, 2025.

Susan Spencer

Susan Spencer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

Susan Spencer

From: Susan Spencer
Sent: Tuesday, December 9, 2025 3:28 PM
To: mkeegan@sccid.sc.gov
Cc: Ben Aplin; Warren, Kaylynn
Subject: The State v. Sammy Parker (2024-002186)
Attachments: PARKER Sammy - Initial Brief of Respondent.pdf

Good afternoon Ms. Keegan,

Attached please find the Initial Brief of Respondent and Designation of Matter in The State v. Sammy Parker (2024-002186). This Brief will be filed today with the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

SUSAN SPENCER, Legal Assistant
South Carolina Attorney General's Office
Criminal Appeals | Office 803-734-3219 | susanspencer@scag.gov
P.O. Box 11549 | Columbia, SC 29211
scag.gov