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**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Abbeville County  
The Honorable Frank R. Addy, Circuit Court Judge

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THE STATE,

Appellant,

vs.

RI'SHON KELTARIAN GILLIAM,

Respondent.

APPELLATE CASE NO 2024-001400

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**FINAL BRIEF OF APPELLANT**

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## **STATEMENT OF THE ISSUE ON APPEAL**

S.C. Code § 24-13-40 provides that defendants are entitled to credit for time served in pretrial incarceration, except when a defendant “commits a subsequent crime while out on bond.” Gilliam pleaded guilty, but the trial court refused to consider evidence that Gilliam committed subsequent crimes while out on bond because Gilliam had not been convicted of those charges. Was it error for the trial court to give credit for time served without making this determination?

## STATEMENT OF THE CASE

On May 12, 2023, Respondent Ri'Shon Gilliam was arrested for three crimes which were alleged to have occurred on that same day: trafficking methamphetamine, possession of a firearm by a person convicted of a violent crime, and another drug crime. (R.p.7–8, p.52–53). On May 19, 2023, Gilliam was arrested for burglary, criminal conspiracy, and grand larceny for events that occurred on May 11, 2023. (R.p.6, p.52–53). Gilliam spent 342 days in pretrial incarceration before bonding out on these charges. (R.p.14–15). After making bond, Gilliam was arrested again on June 19, 2024, and charged with three additional crimes: trafficking in methamphetamine, driving under suspension, and the newly-enacted crime of commission of a violent crime while under a bond order. See S.C. Code Ann. § 17-15-270 (making it a crime “for a person to commit a violent crime while under a bond order or other pretrial release order for a previous violent crime”).

On July 18, 2024, Gilliam pleaded guilty to three crimes stemming from the 2023 arrests: criminal conspiracy, trafficking methamphetamine, and the gun charge. The State and defense negotiated a 14-year sentence. (R.p.3). The State dismissed the 2024 charges pursuant to the plea agreement. However, the State argued Gilliam was not entitled to credit for time served in pretrial detention for the 2023 offenses because he committed subsequent crimes while out on bond. The State cited South Carolina Code section 24-13-40, which was amended in 2023 to provide 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 . . . .” S.C. Code Ann. § 24-13-40(3). Gilliam acknowledged that “a plain reading of the statute would . . . say that he doesn’t get any credit,” but nonetheless argued he was entitled to credit for time served because he had not been convicted of the 2024 crimes and was entitled to the presumption of innocence regarding those

charges. (R.p.14–15). The circuit court agreed with Gilliam and ordered that he be given credit for time served in pretrial detention for the 2023 charges. The State filed a motion for reconsideration, providing documentation of the facts supporting the subsequent charges and offering to proffer testimony to establish Gilliam had in fact committed the subsequently-charged crimes. (R.p.52–53). Without holding an evidentiary hearing, the trial court denied the motion in a written order filed August 13, 2024. (R.p.54–56). This appeal follows.

## **STANDARD OF REVIEW**

A question of statutory interpretation is a question of law, which is subject to de novo review.

State v. Taylor, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022).

## ARGUMENT

**The trial court erroneously refused to determine whether Gilliam committed a subsequent crime while out on bond for the offense to which he pleaded guilty and was therefore unable to determine whether Gilliam was lawfully entitled to credit for time served in pretrial incarceration under S.C. Code § 24-13-40.**

The trial court erroneously refused to apply the plain terms of South Carolina Code section 24-13-40, which provides that a criminal defendant, upon conviction, shall not receive credit for time served in pretrial incarceration if the defendant committed a subsequent crime while out on bond. The trial court reasoned Gilliam was presumed innocent of the subsequent crimes for which he was arrested, but it made no effort to determine whether Gilliam had in fact committed the subsequent crimes. Had the court considered the evidence offered by the State, it would almost certainly have concluded Gilliam committed the subsequent crimes and was therefore precluded from being credited with time spent in pretrial incarceration for the crimes for which he pled guilty.<sup>1</sup> This Court should reverse and remand for a hearing to determine whether Gilliam committed subsequent crimes while out on bond such that he is not entitled to credit for time served in pretrial incarceration.

There is no constitutional right to credit for time served in pretrial incarceration. State v. Sanders, 251 S.C. 431, 445–46, 163 S.E.2d 220, 228 (1968). Rather, a defendant’s right to credit for time served is controlled by statute. Id. See also Martin v. Pennsylvania Bd. of Prob. & Parole, 840 A.2d 299, 304 (Pa. 2003) (“It is well established that there is no constitutional right to pre-sentence confinement credit and that credit statutes stem principally from the recognition that pre-sentence detention is often the result of indigency.”); Wade R. Habeeb, Right to Credit for Time Spent in Custody Prior to Trial or Sentence, 77 A.L.R.3d 182 (1977). South Carolina

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<sup>1</sup> Gilliam was arrested with 33 grams of methamphetamine in his pants pocket. (R.p.52–53).

Code section 24-13-40 governs the computation of time served by prisoners. It provides that “full credit against the sentence must be given for time served prior to trial and sentencing . . . .” S.C. Code Ann. § 24-13-40. However, on June 20, 2023, the legislature amended the law to provide 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 . . . .” S.C. Code Ann. § 24-13-40(3). Thus Gilliam is precluded by statute from receiving credit for time served in pretrial incarceration if he “committed” a subsequent crime while out on bond.

In interpreting a statute, the court's primary purpose is to ascertain and effectuate the actual intent of the legislature. State v. Grooms, 343 S.C. 248, 252, 540 S.E.2d 99, 101 (2000). Its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Id. Where a statute's language is plain, unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning. State v. Taylor, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022). However, if a statute is ambiguous, the court must construe its terms. Id.

In enacting § 24-13-40(3), the legislature unambiguously provided that defendants who commit crimes while out on bond “shall not” receive credit for time spent in pretrial incarceration. Therefore, in order to effectuate a proper sentence, trial courts must determine whether a defendant “committed” a subsequent crime while out on bond. The trial court in this case simply refused to do so.

Instead, the court held that § 24-13-40(3) only applies when a defendant has been convicted of a subsequent crime. This was an error of law. If the legislature intended to require a conviction to trigger § 40(3), it would have said so. Instead, it provided that credit should be

denied when a defendant “commits” a subsequent crime. That “committed” does not equal “convicted of” is illustrated by §17-15-270, which makes it a crime for a person to “commit” a violent crime while under a bond order for a previous violent crime. In this closely-related statute, enacted contemporaneously with the amendment to § 24-13-40, the legislature chose to use both terms, but in entirely different ways. The legislature provided:

It is unlawful for a person **to commit** a violent crime while under a bond order or other pretrial release order for a previous violent crime. **If the person is convicted** of the subsequent violent crime, and is thereafter **convicted** of a violation of this section, the person is guilty of a felony and must be imprisoned not more than five years.

S.C. Code Ann. § 17-15-270 (emphasis added). Thus the “commission” of a crime and the defendant’s later being convicted of that crime are two distinct events with different meanings (and different consequences) under the statutory scheme. Section 24-13-40 does not require a “conviction” in order to trigger subsection 3. It only requires that a defendant “commit” a subsequent crime while out on bond.

The question then becomes procedural; what proof is required to show that a defendant has committed a subsequent crime? The State submits the trial court must find based on a preponderance of the evidence that the defendant committed a subsequent crime while out on bond.

In State v. Miller, 122 S.C. 468, 115 S.E. 742, 745 (1923), the supreme court considered the appropriate standard for trial courts to employ in hearings to determine whether a suspended sentence should be activated. The court held the defendant was not entitled to a trial on the issue. Instead, the “nature of the inquiry and extent of the investigation to be conducted by the court of general sessions in determining whether the condition of a suspended sentence has been violated are matters that rest in the sound discretion of that court.” Id. However, “the authority

of the court of general sessions to revoke such suspension of sentence may not be capriciously or arbitrarily exercised, but should always be predicated upon an evidentiary showing of fact tending to establish violation of the conditions.” Id. Miller had been convicted of an additional crime while his sentence was under suspension, but Miller contested the validity of that conviction. The court explained the trial court’s determination whether Miller had violated the conditions of his suspended sentence did not depend “upon the validity of the conviction . . . .” Id. Rather, the trial court was simply required to determine based on the evidence before it whether Miller had violated the conditions of his release. The Miller standard continues to be used in probation revocation hearings. See State v. Lee, 350 S.C. 125, 131, 564 S.E.2d 372, 375 (Ct. App. 2002); State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006).

In State v. Burgins, 464 S.W.3d 298 (Tenn. 2015), the Supreme Court of Tennessee considered the appropriate standard for determining whether a defendant violated the conditions of his bond justifying bond revocation. The court surveyed the law from various states, explaining courts have adopted standards ranging from probable cause to clear and convincing evidence. Id. at 308–09. The court held a preponderance of the evidence standard was appropriate:

At the close of proof, if the trial court finds that the State has shown, by a preponderance of the evidence, that the defendant has violated a condition of release, **has committed a criminal offense while released on bond**, or has engaged in conduct resulting in the obstruction of the orderly and expeditious progress of the trial or other proceedings, then the trial court may either revoke bail and hold the defendant until trial or continue bail with the possibility of additional conditions or an increased bond amount.

Id. at 311 (emphasis added).

Just as in probation or bond revocation hearings, the beyond a reasonable doubt standard is not appropriate for § 24-13-40 hearings. These hearings are not trials, and the defendant is not

being convicted of an additional crime. Cf. S.C. Code Ann. § 17-15-270 (establishing additional crime where defendant is convicted of subsequent offense while out on bond); see also State v. Parker, 267 S.C. 317, 326, 227 S.E.2d 677, 680 (1976) (holding statute providing distinct punishment for failure to appear for court created a separate crime distinct from court’s contempt power). Rather, the court is merely finding facts regarding the defendant’s conduct while out on bond in order to determine whether the defendant is statutorily entitled to credit for time served in relation to the crimes for which he is being convicted. The court’s reliance on the presumption of innocence was misplaced.

The trial court’s ruling requiring proof of a conviction in order to show the defendant “committed” another crime while out on bond would effectively require the State to hold a separate trial in order to properly sentence a defendant for the offense for which he has been convicted. This would produce an absurd result not intended by the legislature. See Taylor, 436 S.C. at 34, 870 S.E.2d at 171 (“The Court must reject a statutory interpretation if it leads to an absurd result that could not possibly have been intended by the legislature or that defeats plain legislative intent.”). Instead, the trial court must determine after a hearing—upon sufficient facts presented by the State—whether the defendant has committed a subsequent crime while out on bond and sentence the defendant accordingly.

The trial court committed an error of law when it refused to determine whether Gilliam “committed” a subsequent crime while out on bond and instead held § 24-13-40(3) requires proof of a conviction. This Court should reverse and remand for a hearing to determine whether Gilliam committed a crime while out on bond for the offenses to which he pled guilty.

**CONCLUSION**

For the foregoing reasons, this Court should reverse and remand.

Respectfully submitted,

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