RECEIVED
Feb 09 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMMY ROWDY PARKER,

APPELLANT

APPELLATE CASE NO. 2024-002186

FINAL BRIEF OF APPELLANT

MOLLY M. KEEGAN
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Cases

South Carolina Cases

Other Jurisdictions

Constitutional Provisions

Rules

Statutes

Other Authorities

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by denying appellant time served credit for the entire time that he spent in jail awaiting trial and sentencing, due to the commission of a subsequent crime while on bond, because S.C. Code Ann. § 24-13-40, as amended, violated appellant's due process rights and the separation of powers doctrine and resulted in 162 days served but not credited?

STATEMENT OF THE CASE

Appellant pled guilty to trafficking in methamphetamine (10 grams or more), second offense, trafficking methamphetamine (28 grams or more), second offense, distribution of methamphetamine, third offense, receiving stolen goods, third or subsequent property crime, and failure to stop for a blue light during the December 2024 term of York County General Sessions before the Honorable Judge Alex Kinlaw, Jr. Appellant was represented by Mark McKinnon at the plea proceeding. Marina Hamilton represented the state. Judge Kinlaw sentenced appellant to a total imprisonment term of 13 years with 307 days of time served credit.

The notice of appeal and letter containing the time served credit issue as the ground for appeal per Rule 203(d)(1)(B)(iv), SCACR, were both timely filed.

This brief follows.

STANDARD OF REVIEW

"In criminal cases, appellate courts sit to review errors of law only." *State v. Robinson*, 426 S.C. 579, 591, 828 S.E.2d 203, 209 (2019) (citing *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). "A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law." *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

A statute is presumed constitutional, and the validity will be upheld, unless its repugnance to the constitution is clear beyond a reasonable doubt. *State v. McSwain*, 445 S.C. 276, 282-83, 914 S.E.2d 124, 127 (2025). This general presumption of validity can be overcome only by a clear showing the act violates some provision of the constitution. *Doe v State*, 421 S.C. 490, 501, 808 S.E.2d 807, 813 (2017).

ARGUMENT

The trial court erred by denying appellant time served credit for the entire time that he spent in jail awaiting trial and sentencing, due to the commission of a subsequent crime while on bond, because S.C. Code Ann. § 24-13-40(3) violated appellant's substantive due process rights and the separation of powers doctrine, resulting in 162 days served but not credited.

Relevant Facts

During the March 23, 2023 term, the York County grand jury indicted appellant for trafficking methamphetamine, in violation of S.C. Code Ann. § 44-53-375(C), on or about September 21, 2022. R. 20-29. Appellant served pretrial detention, while awaiting trial and sentencing, until he posted bond on July 27, 2023. While on bond, appellant was arrested for trafficking methamphetamine, in violation of § 44-53-375(C), on or about February 28, 2024, and distribution of methamphetamine, in violation of § 44-53-375(B), on or about February 21, 2024. R. 20-29. He served pretrial detention until he posted bond on April 25, 2024. Appellant was then arrested for receiving stolen goods, third or subsequent property crime, in violation of § 16-13-0180(A), 16-1-57, and failure to stop for a blue light, in violation of § 56-05-0750(B)(1), on or about June 30, 2024. R. 20-29. From approximately June 30, 2024 to September 3, 2024, appellant served pretrial detention for an arrest in North Carolina. He was returned to South Carolina, and a bond was set on September 6, 2024.

Appellant remained in pretrial detention until his plea and sentencing hearing on December 18, 2024. R. 1. During his plea hearing, appellant pled guilty to each offense, and the court accepted his pleas as freely and voluntarily entered. R. 3, l. 1 – 11, l. 7. As to appellant's time served credit, the state provided that he had credit for 307 days but argued that under the new bond law he was not entitled to credit for any time past his subsequent arrest and bonding out. R. 11, ll.

13-17. Defense counsel argued that he had 308 days as to the first arrest, 56 days as to the second arrest, and 105 days as to the third arrest, for a total of 469 days. R. 11, ll. 19-21. Appellant objected "to Your Honor not giving him all the credit based on it being unconstitutional . . . to keep the Court from being able to give someone jail for time they've actually served incarcerated." R. 11, l. 23 – 12, l. 2. The court responded that it had "heard that argument so many times," and invited defense counsel to "challenge it." R. 12, ll. 3-6. The court stated that counsel knew "what I'm going to do," but reiterated that he should "challenge it and let those people who check my homework take a look at it." R. 12, ll. 9-13. The court imposed the negotiated 13-year total sentence and noted 307 days of time served credit. R. 13, l. 16 – 14, l. 19. Defense counsel renewed his objection to the time served credit. R. 14, l. 24 – 15, l. 2.

Appellant served his notice of appeal. R. 17. Pursuant to Rule 203(d)(1)(B)(iv), SCACR, plea counsel filed an explanation of the ground to appeal, which he listed as follows: "[W]hether the trial court erred in limiting the Defendant's time served credit to the time spent in pretrial detention to his first arrest, on or about 9-21-2022. He was subsequently arrested on 2-28-2024, then again on 6-30-2024." R. 19. Counsel explained that he objected to the court's decision believing that § 24-13-40(3), as amended, was unconstitutional. R. 19. In his Rule 203(B) explanation, counsel argued that the denial of "credit for time actually spent incarcerated in jail, is cruel and unusual punishment, and denies that inmate due process." R. 19. He continued that the legislature's attempt to remove a judge's sentencing discretion violated the separation of powers. R. 19.

Discussion

In this case, appellant was denied 162 days of time served credit pursuant to S.C. Code Ann. § 24-13-40(3) (Supp. 2023) because he committed subsequent crimes while on bond. R. 10-13. The legislature's directive to deny credit on that basis is unconstitutional and violated appellant's substantive due process rights under the Fourteenth Amendment to the United States Constitution and the doctrine of separation of powers. The trial judge thus erred by failing to give appellant credit for the time he spent in jail awaiting trial and sentencing following his subsequent arrests, which resulted in 162 days spent incarcerated uncredited to any conviction.

Under S.C. Code Ann. § 24-13-40, in every case in which time served by a prisoner is computed,

> [F]ull 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; or (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 (emphasis added).

a. S.C. Code Ann. § 24-13-40(3) is unconstitutional because it violates appellant's substantive due process rights

"The line between facial and as-applied relief is [a] fluid one, any many constitutional challenges may occupy an intermediate position on the spectrum between purely as-applied relief and complete facial invalidation." *State v. German*, 439 S.C. 449, 466, 887 S.E.2d 912, 920 (2023) (citing *Doe v. State*, 421 S.C. 490, 502, 808 S.E.2d 807, 813 (2017)). A facial challenge claims

that a law is invalid "*in toto*–and therefore incapable of any valid application," and thus, "a plaintiff must establish that a law is unconstitutional in all of its applications." *Id.* (quotations omitted). An as-applied challenge requires that the "party challenging the constitutionality of the statute claims that the application of the statute in the particular context in which he has acted, or in which he proposes to act, would be unconstitutional." *Id.* (quotations omitted).

The Due Process Clause of the United States Constitution provides, "No State shall ... deprive any person of life, liberty, or property, without due process of law . . .." U.S. Const. amend. XIV, § 1. Similarly, the due process clause of the South Carolina Constitution provides that no person "shall . . . be deprived of life, liberty, or property without due process of law." S.C. Const. art. I, § 3. The clause provides both procedural and substantive due process protections. The substantive component ensures that, regardless of the fairness of the procedures used, the government's reasons for depriving a person of a protected life, liberty, or property interest are not arbitrary and have, at a minimum, 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).

The first step in a substantive due process analysis is to determine what level of scrutiny should be applied. *In re Treatment and Care of Luckabaugh*, 351 S.C. 122, 140, 568 S.E.2d 338, 346-47 (2002). The level of scrutiny to apply is determined by the nature of the rights infringed by the statute. A statute that infringes a fundamental right must satisfy strict scrutiny. *Id.* at 140-41. Strict scrutiny requires a statute to be narrowly tailored to achieve a compelling state interest. *Id.* If a fundamental right is not implicated, then the rational basis test is applied. *Id.* Specifically, it is only required that the act be reasonably designed to accomplish the legislative purpose. *State v. McSwain*, 445 S.C. 276, 283-84, 914 S.E.2d 124, 127-28 (2025). Under either analysis, the one

who attacks the law bears the burden of showing it is unconstitutional. *Luckabaugh*, 351 S.C. at 140, 568 S.E.2d at 347.

As a threshold matter, § 24-13-40(3) is unconstitutional facially and as-applied to appellant. Since the statute deprives any person credit for the time that they have spent incarcerated pending trial and sentencing due to the commission of a subsequent crime while on bond, there is no valid application of the statute. *German*, 439 S.C. at 466, 887 S.E.2d at 920. Likewise, the statute is unconstitutional as-applied because application of the statute to appellant resulted in the service of 162 days in jail while awaiting trial and sentencing and barred him from receiving credit for the time that he spent incarcerated. *Id.*

Further, substantive due process requires § 24-13-40(3) be narrowly tailored to achieve a compelling state interest because it infringes upon a constitutional liberty interest. *See Tant v. South Carolina Dept. of Corrections*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (stating that "[t]here can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest."); *see also State v. Binnarr*, 400 S.C. 156, 165, 733 S.E.2d 890, 895 (2012) (explaining that freedom from bodily restraint "has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental actions."). Notably, the General Assembly does not expressly provide its purpose for restricting time served credit based on a subsequent arrest while on bond, although it does provide a general directive to award full credit for any time spent in jail prior to trial or sentencing unless an exception applies. *See generally* S.C. Code Ann. § 24-13-40. While it may be inferred that the legislative purpose is to deter the commission of crimes while on bond, the General Assembly provides neither preamble nor prefatory language to enshrine such intent. *See id.* To that end, the General Assembly has not articulated a purpose to burden the fundamental right to liberty and has not crafted a statute narrowly tailored to further the inferred

goal of deterrence of reoffending while on bond. *Luckabaugh*, 351 S.C. at 140, 568 S.E.2d at 347; *see also United States v. Salerno*, 481 U.S. 739, 750-51, 107 S. Ct. 2095 (1987) (explaining that although the importance and fundamental nature of an individual's liberty interest cannot be minimized, the right may, where the government's interest is sufficiently weighty, be subordinated by the greater needs of society). Moreover, the denial of credit for time spent in pretrial detention due to a subsequent arrest does not serve the state's interest because other avenues exist to deter reoffending while on bond that are less restrictive, and thus, the statute is not narrowly tailored, and the denial of credit is an arbitrary restriction.

In addition, while every jurisdiction in the United States awards time served credit for time spent in pretrial detention, no other state harshly limits credit for time served based on a subsequent arrest committed while on bond nor does the federal government.[1] Accordingly, South Carolina stands alone in burdening the liberty interest of an incarcerated individual by denying time served credit due to a subsequent arrest while on bond with no articulated purpose or interest in such a deprivation.

Even further, the limitation on time served in § 24-13-40(3) differs from the denial of time served due to an individual's status as an escapee. *Compare* § 24-13-40(3), *with* § 24-13-40(1). The South Carolina Supreme Court and several other states have ruled that an escapee cannot be credited with time served in another jurisdiction on a subsequent crime. *Delahoussaye v. State*,

[1] *See* 18 U.S.C. § 3585(b), providing that "A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences (1) as a result of the offense for which the sentence was imposed; or (2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed; that has not been credited against another sentence." *See also* Kimberly Kessler Ferzan, *The Trouble with Time Served*, 48 BYU L. Rev. 2001, 2005-06 (2023) (explaining that every state provides credit for time served and citing to each state's authority granting an award of time served credit).

369 S.C. 522, 529, 633 S.E.2d 158, 162 (2006) (explaining that "[i]t would be a novel rule which would allow a *sentenced* criminal, by the simple expedient of escape, to select the state in which he wishes to serve his incarceration") (emphasis added). Denial of time served credit due to escapee status is distinguishable because it ordinarily contemplates time served in another jurisdiction after the imposition of a South Carolina sentence, whereas the denial of time served due to a subsequent arrest on bond concerns time spent in jail before the imposition of a sentence. Similarly, the South Carolina Supreme Court has explained that when an appellant's entire absence was due to his escape and resistance to the efforts of the State of South Carolina to affect his return, he is not entitled to credit for any time spent as an escapee. *Kephart v. State*, 277 S.C. 395, 396, 289 SE.2d 402 (1982). Particularly, unlike *Kephart*, concerning the 162 days of denied time served, the appellant was returned to pretrial detention, after his subsequent arrests rather than remaining absent due to escapee status. *Compare Kephart*, 277 S.C. at 396, 289 SE.2d at 402, *with* S.C. Code Ann. § 24-13-40(3).[2] Moreover, the 162 days of credit that appellant was denied relates to time spent exclusively in South Carolina detention awaiting trial and sentencing.

Even assuming that the statute does not implicate a fundamental right and is subject to rational-basis review, it is likewise not reasonably designed to accomplish the legislative purpose. *McSwain*, 445 S.C. at 283-84, 914 S.E.2d at 124. There is no rational basis to further restrict appellant's liberty by denying him credit for time actually served when a subsequent arrest while on bond already triggers detention and serves as a deterrent. *See Hawkins v. Freeman*, 195 F.3d 732, 748 (4th Cir. 1999) (explaining that "[g]iven the obvious state interests involved in

[2] It should be noted that from approximately June 30, 2024, to September 3, 2024, appellant was detained in Mecklenburg County and was returned to South Carolina after service of a Governor's warrant. Appellant did not receive any time served credit for the period of time he spent detained in North Carolina.

reimprisoning any erroneously released convict, legislation requiring it" survives rational basis review) (internal citations omitted). Nor is the state's interest in deterrence undermined by receiving credit for time served because a subsequent arrest on bond can still be addressed through re-incarceration pending trial or bond revocation, which sufficiently serves as a deterrent for reoffending while on bond. Further, in *McSwain*, the South Carolina Supreme Court determined that the challenged amended portions of South Carolina's Sex Offender Registry Act ("SORA") were rationally related to SORA's legislative purpose and highlighted that SORA mirrored the federal registry and the majority of states enacted identical or similar tiered systems for removal from the registry. 445 S.C at 285-86, 914 S.E.2d at 129. Notably, the denial of time served credit at issue is distinguishable because it is absent from the federal statute and no other state imposes such a restriction. Therefore, the added liberty restriction of denying credit for the time spent in pretrial detention on a subsequent arrest is arbitrary and has no rational relationship to a legitimate governmental purpose. *Planned Parenthood S. Atl.*, 438 S.C. at 250, 882 S.E.2d at 803.

In sum, the General Assembly has not articulated a purpose, much less shown a compelling interest, for denying time served credit based on a subsequent arrest while on bond and § 24-13-40(3) is not narrowly tailored to achieve its inferred purpose of deterrence because it is not crafted to further the goal of deterrence and arbitrarily deprives appellant of his liberty.

b. S.C. Code Ann. § 24-13-40(3) is unconstitutional because it violates the separation of powers doctrine

"In the government of this State, 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. Further, the "separation of governmental powers into three

coordinate Branches is essential to the preservation of liberty." *Mistretta v. United States*, 488 U.S. 361, 380, 109 S. Ct. 647, 659 (1989).

The imposition of sentences is a judicial function. *See generally State v. De La Cruz*, 302 S.C. 13, 393 S.E. 2d 184 (1990). However, the penalty for a particular offense, except in rare cases, is a matter of legislative prerogative and the legislature's judgment will not be disturbed. *Id.* at 15 (citing *State v. Smith*, 275 S.C. 164, 167, 268 S.E.2d 276, 277 (1980)). "Judicial discretion in sentencing, suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory restriction." *Id.* at 15 (citing *Mistretta*, 488 U.S. at 361, 109 S. Ct. at 647).

In *State v. De La Cruz*, the appellant challenged the constitutionality of S.C. Code Ann. § 44-53-370(e)(2) as a violation of the separation of powers because the mandatory term of 25 years' imprisonment, no part of which could be suspended, set forth by the legislature impermissibly intruded into inherent judicial powers by removing all judicial sentencing discretion. 302 S.C. at 15, 393 S.E.2d at 185-86. The South Carolina Supreme Court held that the legislature had the ability to limit judicial discretion as it did, whatever the legislature's reasons were. *Id.* at 16.

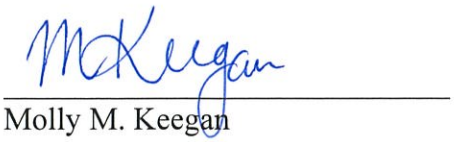
Here, the amended provision of § 24-13-40 violates the doctrine of separation of powers. Generally, the plea court has wide discretion in determining what sentence may be imposed. *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976). However, the statute at issue removes judicial sentencing discretion by denying credit for time served based on a subsequent arrest, and, in effect, instead allows the legislature to impose a sentence. In addition, the statute is distinguishable from the types of limits on judicial discretion that have been found to be within the legislature's ability. *De La Cruz*, 302 S.C. at 15-16, 393 S.E. 2d at 185-86; *Mistretta*, 488 U.S.

at 361, 109 S. Ct. at 647. Specifically, the computation of time served contemplates time already spent in jail prior to the imposition of a sentence whereas suspending a sentence, imposing a concurrent or consecutive sentence, or imposing a mandatory sentence set by the legislature contemplate time that will be spent in prison after the court imposes its sentence. Moreover, while the penalty for an offense is generally a matter of legislative prerogative, the denial of the time served credit at issue refers to the computation of a sentence itself which is unlike a mandatory penalty, imposed by statute, for a particular offense, and instead functions like the imposition of a sentence. *See De La Cruz*, 302 S.C. at 15, 393 S.E. 2d at 185-86; *see also* S.C. Code Ann. § 24-13-40.

Therefore, because the amended statute enacts a blanket denial of time served credit for time spent in jail if a subsequent crime is committed while on bond encroaches on the judiciary's sentencing function and allows the legislature to impose a sentence, the denial of time served set out by the legislature violates the separation of powers doctrine, which is essential to the preservation of liberty. S.C. Const. art. I, § 8; *Mistretta*, 488 U.S. at 380, 109 S. Ct. at 659.

CONCLUSION

For the foregoing reasons, appellant Sammy Parker respectfully requests this Court to vacate his sentence and remand for resentencing.



Molly M. Keegan
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of February, 2026.

RECEIVED
Feb 09 2026
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this final brief of appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Molly M. Keegan
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 9th day of February, 2026.