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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from York County

Honorable Alex Kinlaw, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

SAMMY ROWDY PARKER,

APPELLANT

APPELLATE CASE NO. 2024-002186

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# FINAL REPLY BRIEF OF APPELLANT

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## ARGUMENT IN REPLY

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 substantive due process rights and the separation of powers doctrine, resulting in 162 days served but not credited.

First, despite the state's argument to the contrary, appellant's challenge to the constitutionality of § 24-13-40 is preserved for appellate review. BOR at 7-8. Generally, to preserve an issue for appellate review, an appellant must object at his first opportunity. *State v. Williams*, 417 S.C. 209, 228, 789 S.E.2d 582, 593 (Ct. App. 2016). Appellant did just that. During his plea colloquy and sentencing hearing, defense counsel made a prompt objection to the trial court's refusal to award credit for the entirety of time spent in jail. R. 11, l. 19 – 12, l. 2. Specifically, counsel objected that the refusal to award full credit was unconstitutional and argued that it was unconstitutional for the court to be kept under the statute at issue from being able to give someone credit for the time they have actually served incarcerated. R. 11, l. 19 – 12, l. 2. Thus, appellant properly objected at his first opportunity. *Williams*, 417 S.C. at 228, 789 S.E.2d at 593. Moreover, the constitutionality of § 24-13-40 was raised before the trial court. *State v. Langford*, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (2012) ("Constitutional questions must be preserved like any other issue on appeal.").

Further, error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review. *State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 594 (2010). A litigant must only fairly raise the issue to the trial court, hereby giving it an opportunity to rule on the issue. *Id.* It is evident from the record that the trial court understood the issue that appellant raised. The court explained that it had "heard that argument so

many times" and invited counsel to "challenge it." R. 11, ll. 3-6. The record also demonstrates that any further objection was futile as the court expressed to plea counsel, "[y]ou know what I'm going to do" as plea counsel attempted to articulate his objection to the court. R. 12, ll. 7-10. In any event, because the trial court understood and ruled on the time-served issue, appellant has properly preserved the challenge to the constitutionality of § 24-13-40(3) for review. *Brannon*, 388 S.C. at 502, 697 S.E.2d at 594.

Nor did appellant waive any challenge to the constitutionality of § 24-13-40, as the state urges. BOR at 8 & n. 2. As the state acknowledges, "[s]entencing, although often combined with the admission of guilt in a hearing, 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); BOR at 8 & n. 2. The challenge to the trial court's denial of time-served credit remains a post-plea challenge to the imposition of appellant's sentence. Appellant's guilty plea is entirely distinct from the penalty he received for the charges he pleaded guilty to, which included the trial court's decision to deny time-served credit based on its interpretation of § 24-13-40(3). *See State v. Donahue*, 400 S.C. 604, 606, 735 S.E.2d 547, 548 (Ct. App. 2012) ("A criminal defendant does not give up his right to challenge the circuit court's interpretation of a statute regarding his sentence simply by pleading guilty."). Thus, appellant's guilty plea did not waive the challenge to the statute before this Court.

Second, the state's reliance on *State v. Sanders*, 251 S.C. 431, 163 S.E.2d 220 (1968), for the proposition that there is no constitutional right to time-served credit is misplaced. In *Sanders*, a defendant was sentenced to the maximum statutory term of imprisonment and was not given credit for time served. *Id.* at 445, 163 S.E.2d at 228. On appeal to our Supreme Court, the defendant asserted that the failure to award time-served credit when a maximum sentence was

imposed constituted cruel and unusual punishment. *Id.*[1] The Supreme Court held that there was no statute requiring the trial court to award such credit, "and in the absence of such statute, the rule *appears to be* that a prisoner is not entitled as a matter of right to credit for his presentence jail time." *Id.* at 445-46, 163 S.E.2d at 228 (emphasis added (citing 24B C.J.S. *Criminal Law* § 1995(5)). The Court then continued to hold that the pre-trial detention was not part of the sentence, and therefore, the sentence itself could not have been cruel and unusual punishment. *Id.* at 446, 163 S.E.2d at 228.[2]

While *Sanders* may stand for the proposition that failing to award time-served credit is not unconstitutional under the Eighth Amendment, it decides nothing else. The state relies on our Supreme Court's statement that "the rule appears to be that a prisoner is not entitled as a matter of right to credit for his presentence jail time," however, this sentence is *dicta*. *Id.* at 445-46, 163 S.E.2d at 228; BOR at 13. It was not necessary for the *Sanders* Court to decide anything other than whether the Eighth Amendment prohibited denial of time-served credit nor did it. For these reasons, *Sanders* does not control the analysis here.

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[1] The *Sanders* opinion does not state whether the argument was made under the Eighth Amendment or the South Carolina Constitution.

[2] In addition, *Sanders* was decided at a very different time. At the time *Sanders* was decided, it appears that no state awarded credit for time spent in pre-trial incarceration. *See generally,* National Conf. on Bail and Crim. J., *Bail in the United States: 1964* (May 27-29, 1964). Moreover, *Sanders* was decided before, in 1973, Act No. 146, 1973 Acts 181, provided that all defendants automatically and categorically received credit for time served prior to sentencing, unless subject to another sentence under S.C. Code Ann. § 24-13-40. At the same time, however, almost all states and the federal government afforded those charged with crimes an *absolute* right to bail in non-capital cases. *Id.* at 2 (*citing inter alia Judiciary Act of 1789*, 1 Stat. 73, 91 (1789)). And, at the time, "American judges, unlike their English counterparts, [were] not authorized to use pretrial bail as a device to protect society from possible new crimes by the accused." *Id.* at 5; *compare Stack v. Boyle*, 342 U.S. 1 (1951), *with United States v. Salerno*, 481 U.S. 739 (1987). The combination of these factors means that the "general rule" that was non-authoritatively announced in *Sanders* merits a second look by this Court.

Even further, the denial of credit for time served solely due to the commission of a crime while on bond is punishment. The state seeks to separate the time spent in pre-trial detention from the punishment imposed, *i.e.* the sentence, however, the denial of credit for time served is punitive, and all time spent incarcerated should count toward the ultimately imposed sentence. BOR at 13.

The sole purpose for denying this credit is to punish disfavored defendants. Consider, for example, a sentence of time served, which in appellant's case he received for his failure to stop for a blue light offense. R. 28-29, 38. The mere existence of a time-served sentence necessarily implies that pre-trial detention is, at least in certain circumstances, punitive. Otherwise, every defendant sentenced to time served for an offense, which occurs several times per day in this state's criminal courts, has not been "punished" for the offense they pleaded guilty to. It cannot be said that appellant was not "punished" for his failure to stop for a blue light offense or that his time spent in pre-trial detention cannot constitute part of the sentence where that very credit comprises the sentence imposed for the failure to stop for a blue light offense. R. 28-29, 38. Moreover, by granting credit in most cases, S.C. Code Ann. § 24-13-40 itself recognizes that pre-sentence incarceration is sufficiently equivalent to post-sentence incarceration as to justify a day-for-day credit on the sentence in satisfaction of the penological goals of punishment. *See Owens v. Stirling*, 443 S.C. 246, 268, 904 S.E.2d 580, 591 (2024) (noting the "three purposes of punishment . . . (1) reform or rehabilitation, (2) general deterrence, and (3) specific deterrence" (citing 4 William Blackstone, Commentaries on the Laws of England *11-12)). In addition, the state contends § 24-13-40 was specifically enacted, at the least, for the purposes of "deterrence" which constitutes two of the "three purposes of punishment." *Owens*, 443 S.C. at 268, 904 S.E.2d at 591 (citing 4 Blackstone, *supra*); BOR at 15.

Regardless of any claimed goals for the denial of time-served credit, the result is inherently punitive. Denying credit for time served is punishment because incarceration is punishment, regardless of when the conviction occurs. *See Anglin v. State*, 90 Nev. 287, 290, 525 P.2d 34, 36 (Nev. 1974) ("Presentence detention is behind-bars confinement. Legal categories do not remove the punitive aspects of the rigors and restraints of detention.").[3] Moreover, considering the function and possibility for a trial court to impose a time-served sentence, as it did here for appellant's failure to stop for a blue light offense, it is evident that the denial of time-served credit is punishment as it can serve as a sentence on its own.

The constitutional analysis must proceed in the light that the denial of time-served credit is a punishment. *See State v. Kimbrough*, 212 S.C. 348, 358, 46 S.E.2d 273, 277 (1948) ("A just sentence is imperative and must not be denied."). Substantive due process "ensures . . . 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." *State v. McSwain*, 445 S.C. 276, 283, 914 S.E.2d 124, 127 (2025) (citations omitted). The state insists that strict scrutiny does not apply to the substantive due process analysis based on its contention that there is not a fundamental right to pre-sentence credit. BOR at 14.[4] However, such

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[3] *See also Durkin v. Davis*, 538 F.2d 1037, 1041 (4th Cir. 1976) ("[P]retrial detention is nothing less than punishment." (alteration original) (citation omitted)); *Jackson v. State*, 209 P.3d 897, 900 (Wyo. 2009) ("We find no merit in the argument sometimes advanced that presentence jail time should not be credited because it is not 'punishment.' Whatever it may be called, it is certainly a deprivation of liberty, which, in itself, is punishment to most human beings." (quoting *Smith v. State*, 508 S.W.2d 54, 57 (Ark. 1974))); *id.* ("Put simply, a day in jail is a day in jail . . .").

[4] Even under rational-basis review, which the state asserts is the proper level of scrutiny, the statute is not reasonably designed to accomplish the legislative purpose. BOR at 15.; *see also* BOA at 10-11. There is not a rational relationship between the statute and the state's interest in deterrence, given that the statute arbitrarily and unreasonably deprives appellant of credit for time spent actually incarcerated prior to sentencing. *See Hamilton v. Board of Trustees of Oconee Cnty. School Dist.*, 282 S.C. 519, 524-25, 319 S.E.2d 717, 721 (Ct. App. 1984) ("Substantive due process

a contention ignores that incarceration compromises a person's fundamental liberty right to be "free from bodily restraint by the government" which is "'at the core of the liberty protected by the Due Process Clause from arbitrary governmental actions.'" *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002) (citation omitted). Where fundamental rights are concerned, the statute "must meet a compelling state interest and be narrowly tailored to effectuate that interest." *Luckabaugh*, 351 S.C. at 141, 568 S.E.2d at 347. Denying appellant credit for time served prior to sentencing implicates his fundamental liberty interest because it increases the time he spends incarcerated. *Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest." (citation omitted)). The result is that the statute infringes on appellant's fundamental liberty interest, and thus, strict scrutiny applies. U.S. Const. amend. XIV ("No State shall . . . deprive any person of life, *liberty*, or property, without due process of law . . .." (emphasis added)); *Luckabaugh*, 351 S.C. at 141, 568 S.E.2d at 347.

The state articulates that the legislative purpose of the statute is to deter continuing criminal behavior. BOR at 15. Even assuming that the General Assembly had a compelling interest, the statute is not narrowly tailored. To be narrowly tailored to a compelling government interest, the law must be "necessary" to achieve that interest. *See Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 207 (2023). The 2023 amendment violates due process requirements because it extends a defendant's punishment by an arbitrary

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means state action which deprives a person of life, liberty, or property, must have a rational basis—the reason for the deprivation may not be so inadequate that the judiciary will characterize it as arbitrary."); *Nebbia v. People of New York*, 291 U.S. 502, 525 (1934) (explaining that the guarantee of due process, "as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected have shall have a real and substantial relation to the object sought to be attained.").

amount of time untethered from any purposeful rationale. The effect of denial depends only on how long it takes to get from arrest to sentence, rather than any legitimate penological or other governmental interest. It therefore violates the Due Process Clause. *See Foucha v. Louisiana*, 504 U.S. 71, 79 (1992) (citations omitted) ("Due process requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed."). The denial of credit cannot be narrowly tailored when its effect is virtually random and fundamentally arbitrary.

Nor is the statute narrowly tailored, because there are multiple available alternatives without the arbitrariness of the denial of time-served credit. *Cf., United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 809 (2000) (striking down statute where there were plausible, less restrictive means of accomplishing the government's aims). The first alternative is already more narrowly provided by the General Assembly: create an additional offense for committing a crime while on bond. *See* S.C. Code Ann. § 17-15-270 (Supp. 2025) (criminalizing the commission of a subsequent violent crime while on bond for an initial violent crime). There is no reason to impose this variable punishment created by § 24-13-40—without any identified procedural safeguards—when the Legislature has clearly identified criminalization as a valid alternative for at least one category of offenses. Alternatively, there could be a statutory aggravator that requires service of an additional length of time to enhance punishment for a subsequent offense while on bond. *Cf. State v. De La Cruz*, 302 S.C. 13, 15, 393 S.E.2d 184, 185 (1990) (upholding constitutionality of mandatory minimum punishment of twenty-five years). These solutions would accomplish the claimed goals without extending appellant's punishment in an arbitrary way. Therefore, under strict scrutiny, the proper level of review, the state has not shown a compelling interest for denying time-served credit based on a subsequent offense while on bond, and § 24-13-

40 is thus not narrowly tailored. The result is an arbitrary restriction on an appellant's liberty interest.

In sum, appellant's arguments are preserved for appellate review because he did not waive his challenge by virtue of his guilty plea, and the constitutionality of the statute was raised to and ruled on by the trial court. Moreover, S.C. Code Ann. § 24-13-40, as amended, violated appellant's substantive due process rights and the separation of powers doctrine, resulting in 162 days served but not credited.

## CONCLUSION

Based on the foregoing argument, and those made in the Brief of Appellant, appellant respectfully requests this Court to vacate his sentence and remand for resentencing.

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Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of February, 2026.

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**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this final reply 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."

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This 9th day of February, 2026.