

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM PICKENS COUNTY
Court of General Sessions
Jessica Ann Salvini, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2023-GS-39-02518

The State,Respondent,

v.

Benjamin Allen Harkema,Appellant.

Notice of Appeal

Benjamin Harkema appeals his sentence. The Honorable Jessica Ann Salvini imposed the sentence on February 11, 2026.

This appeal follows a guilty plea. Pursuant to Rule 203(d)(1)(B)(iv), SCACR, Mr. Harkema explains that this appeal challenges the denial of credit for time served during pre-trial detention. Specifically, Mr. Harkema challenges that constitutionality the portions of S.C. Code Ann. § 24-13-40 which provides, “[C]redit for time served prior to trial and sentencing shall not be given: . . . (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.”

During the guilty plea, Mr. Harkema requested credit for time served in pre-trial detention and asked the sentencing court to declare the above referenced portions of § 24-13-40 unconstitutional as violations of due process, equal protection, and multiple punishments for the same offense. The sentencing court denied credit for time served during pre-trial detention and declined to declare these portions of the statute unconstitutional.

Sentencing errors are reviewable on appeal. *See, e.g. State v. Brown*, 426 S.C. 63, 824 S.E.2d 476 (Ct. App. 2019) (defendant was entitled to credit for time served for the period of time he was civilly committed after he was found incompetent to stand trial and was deemed to have a genuine mental illness); *State v. Boggs*, 388 S.C. 314, 696 S.E.2d 597 (Ct. App. 2010) (plea judge’s denial of jail credit for time defendant served in pretrial detention based upon state’s decision to drop charge against defendant from armed robbery to strong arm robbery was an error at law). *See also State v. Hawes*, 411 S.C. 188, 191, 767

S.E.2d 707, 708 (2015) (“A failure to exercise discretion amounts to an abuse of that discretion.”) (citing *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App.1997)).

Pursuant to Rule 203(d)(1)(A)(ii), SCACR, this appeal is to the Supreme Court because the principal issue is the constitutionality of portions of § 24-13-40.

Respectfully Submitted,

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