RECEIVED
Mar 26 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
William C. McMaster, III, Circuit Court Judge

Appellate Case No. 2025-001473

The State, ...Respondent,

v.

Robert Daniel Mistretta,.....Appellant.

FINAL 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

CINDY S. CRICK
Solicitor, Thirteenth Judicial Circuit
305 E. North Street
Greenville, South Carolina 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases:

State Cases:

Cases from Other Jurisdictions:

Federal Constitution and Statutes:

State Constitution and Statutes:

Secondary Authorities:

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether Appellant's arguments that the trial court's denial—in apparent compliance with section 24-13-40 of the South Carolina Code—of time-served credit for the time he spent in jail awaiting sentencing on the crime for which he was convicted, placed an unconstitutional condition on his right to a jury trial and violated his substantive due process rights, are unpreserved for appellate review where they were not sufficiently raised to or ruled upon by the circuit court. Furthermore, whether the statutory denial of the desired credit did not constitute an unconstitutional condition and did not infringe upon substantive due process where: (1) the plea court sentenced Appellant within statutory limits for his crimes, (2) the alleged chilling effect on the right to a jury trial is speculative, and (3) Appellant does not have a fundamental right to credit for presentence jail time where it is not part of the punishment imposed.

STATEMENT OF THE CASE

Robert Daniel Mistretta (Appellant) was arrested on August 16, 2023, for kidnapping; however, that charge was subsequently dismissed—the same day he pled to attempted kidnapping, as described below. Appellant was indicted at the May 27, 2025 term of the grand jury for Greenville County for attempted kidnapping by way of a direct indictment. (2025-GS-23-03658A). He was represented by Assistant Public Defender Charles W. Snyder of the Thirteenth Circuit Public Defender's Office. Respondent (the State) was represented by Assistant Solicitor Peyton C. Swancy of the Thirteenth Circuit Solicitor's Office. On July 9, 2025, Appellant appeared in the Greenville County Courthouse before the Honorable William C. McMaster, III, and entered a guilty plea to the indicted charge. He was sentenced to fifteen (15) years' imprisonment. The trial court ordered one (1) day of credit for time served on the sentence. (R.p.30-p.32).

Appellant timely filed a notice of intent to appeal his sentence along with a "Rule 203 Explanation of Issue" which stated: "[Appellant] is appealing his sentence because he was not given all of his pretrial confinement credit. The denial of credit was based on an interpretation of SC 24-14-40 [sic]. At the guilty plea, [Appellant's] attorney asked for the credit, but that credit was denied." (R.p.28). By letter dated July 25, 2025, the Clerk's Office advised trial counsel the Court had reviewed the appeal and determined it would be allowed to proceed. (R.p.29). A brief was subsequently submitted in support of Appellant's appeal by Appellate Defender W. Chandler Norville of the South Carolina Commission on Indigent Defense. This Brief of Respondent on behalf of the State now follows.

STATEMENT OF FACTS

Appellant was arrested on April 18, 2023 by the Greenville City Police Department for indecent exposure. (Arrest Warrant No. 2023A2320601016; R.p.19-p.20). The same day, a municipal court set a $5,000 personal recognizance bond and Appellant was released. (R.p.21). Appellant's bond on his first arrest was never revoked.[1] Appellant was subsequently arrested on August 16, 2023, by the Greenville County Sheriff's Office for kidnapping (Arrest Warrant No. 2023A2330207225; R.p.22-p.23) and petit larceny (Arrest Warrant No. 2023A2330207227; R.p.24-p.25). Appellant petitioned the Court of General Sessions for bond but bond was denied by order dated February 2, 2024, and Appellant remained in pretrial detention until the date of his plea on July 9, 2025, approximately 694 days following his second arrest. (R.p.12; p.26).

Appellant appeared in the Greenville County Courthouse before the Honorable William C. McMaster, III, on July 9, 2025. (R.p.1). When the case was called, the clerk of court announced that Appellant had been indicted for attempted kidnapping and was pleading to the same. He was sworn in by the clerk of court. (R.p.3). First, Appellant waived any objection he may have had to proceeding before Judge McMaster because the judge had previously served as an assistant solicitor in the Thirteenth Circuit. (R.p.3-p.4). The court then explained that Appellant was facing a sentence exposure of up to thirty (30) years for attempted kidnapping, that it was a violent offense, and that it was a most-serious offense which could lead to a future sentence of life without parole if he got another conviction for a most-serious or serious conviction. Appellant testified he understood. Next, the court advised Appellant that there were

[1] There is no record of a bond revocation in the public index and the bond was not "revoked by operation of law" due to a subsequent arrest because the previous offense (indecent exposure) was not violent and was not a felony offense involving a firearm. S.C. Code Ann. § 16-15-150; *see also* S.C. Code Ann. § 17-15-55(C)(1) (2023).

no recommendations from the State, which meant the court could sentence him to the full thirty (30) years. Again, Appellant testified he understood. (R.p.4).

The court then engaged Appellant in a standard plea colloquy, whereby Appellant testified he was not on any medication and was not under the influence of any alcohol or drugs. He said he had been treated for a mental illness in the past and was given medication for that illness, but was no longer taking that medication and was clear minded and ready to go forward. Counsel noted there were no issues regarding competency and that Appellant had been evaluated prior to the plea and was fine to proceed. (R.p.4-p.5). Appellant then testified he understood he was pleading guilty and had told his attorney everything he knew about his case. He testified his attorney had explained all of his constitutional rights, reviewed the evidence against him, and gone over the discovery materials, and that he did not need any more time to discuss the case and understood their conversations. Appellant testified that there wasn't anything he wanted his lawyer to do that he had not done, that he was completely satisfied with his lawyer, and that he had no complaints against him, the solicitor's office, law enforcement, or anyone else involved in his case. Counsel said he agreed with Appellant's decision to plead guilty. (R.p.6-p.7).

The court next explained that by entering a guilty plea Appellant was giving up certain constitutional rights, *including the right to a jury trial* where he could call and confront witnesses, subpoena witnesses to testify on his behalf, and assert any defenses he might have, as well as his right to remain silent. Appellant testified he understood his rights and did not need any more time to talk to his attorney about those rights. (R.p.7-p.9) (emphasis added). Appellant testified he had *not been forced, threatened, or pressured, to give up his rights and plead guilty*, and that it was his decision to plead. (R.p.9) (emphasis added).

Next, Appellant testified he understood that in addition to pleading guilty, he would also be subject to a permanent restraining order until July 8, 2045, regarding the victim of the attempted kidnapping and still wanted to go forward. (R.p.10). The solicitor then briefly recounted the facts of the underlying charges, whereby Appellant attempted to grab a six-year-old girl from the sidewalk as her mother was walking her to school, before Appellant's attack was thwarted and he fled to a nearby house, with the girl's school ID. Appellant testified he agreed with the facts recited by the State and said he wanted the court to accept his plea. (R.p.10-p.12). Based on Appellant's testimony, the court accepted the plea as having a substantial factual basis and *found his decision to plead guilty had been made freely and voluntarily* after Appellant thoughtfully considered the advice of competent counsel with whom he was satisfied. (R.p.12) (emphasis added).

In regard to sentencing, Appellant's counsel advised he wanted to "address the credit issue" because Appellant had been in jail for over 600 days. (R.p.12, lines 14-17). The solicitor acknowledged the lengthy period of presentence detention but argued Appellant had "been serving dead time for 694 days." The solicitor explained Appellant had been arrested for indecent exposure in April of 2023 and was subsequently arrested for the current charge in August of 2023, after the bond reform act [and the recent amendments to Section 24-13-40] had gone into effect. He explained that it was the State's position that a defendant could only get credit for the initial time he was in on the first charge and that he had been serving "dead time" ever since. (R.p.12, lines 18-25). Counsel responded:

> And, Judge, it's my position that that statute is unconstitutional. I don't agree with it. I know some judges feel the same way, and I know a month ago there were at least two lawsuits actually challenging that statute, so I believe it will be overturned at some point, and we'd ask that you award [Appellant] that credit.

(R.p.13, lines 2-7).

The plea court then proceeded with sentencing. The plea judge: (1) heard from trial counsel in mitigation, which included a request for a sentence of no more than a ten (10) year sentence; (2) considered Appellant's prior record; (3) heard about the State's prior recommendation of eighteen (18) years with a permanent restraining order and sex offender registration; (4) listened to Appellant's apology; and (5) considered how Appellant narrowly avoided having his current conviction treated as a second most-serious offense rather than a first. (R.p.13-p.16) In regard to the credit issue, the following exchange occurred:

> THE COURT: Your objection's noted to the time credit, Mr. Snyder. That objection's noted. However, I'm going to follow the statute as it is at this time.
>
> ATTORNEY SNYDER: Yes, sir. Yes, sir.
>
> THE COURT: I understand that you indicate that it could be overturned in the future. There may be situations there, but your objection is noted there. But I'm going to go along with it, the one-day credit time.
>
> ATTORNEY SNYDER: Yes, sir.

(R.p.16, line 21-p.17, line 4). The court then sentenced Appellant to fifteen (15) years' imprisonment and ordered one (1) day of credit for time served, presumably for the single day Appellant was in pretrial detention for the prior arrest for indecent exposure before his release on bond. (R.p.17).

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 arguments that the trial court's denial—in apparent compliance with section 24-13-40 of the South Carolina Code—of time-served credit for the time he spent in jail awaiting sentencing on the crime for which he was convicted, placed an unconstitutional condition on his right to a jury trial and violated his substantive due process rights, are not preserved for appellate review because they were 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, (2) the alleged chilling effect on the right to a jury trial is speculative, and (3) 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 constitute an unconstitutional condition and did not infringe upon substantive due process.

Appellant argues the trial court erred by denying him, due to his commission of a subsequent crime while on bond, time served credit for the time that he spent in jail awaiting

sentencing, because S.C. Code § 24-13-40(3) placed an unconstitutional condition on his right to a jury trial and violated his substantive due process rights, resulting in **694 days** served but not credited.[2] He contends the statute is unconstitutional both facially and "as applied." In regard to the unconstitutional condition claim, Appellant argues the statute unconstitutionally conditions the fundamental right to a jury trial on the loss of time served credit. He contends that because a person who wants a jury trial "could potentially wait months or years to have their case brought to trial," the statute effectively forces the waiver of the right to a jury trial by conditioning the benefit of "getting out of jail sooner" on waiver of that right. (Brief of Appellant, p.5-p.8). 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 fundamental constitutional right—personal liberty. (Brief of Appellant, p.8-p.16). He further contends that even if it fails to impact a fundamental right, the bond statute likewise fails under rational basis review because it is arbitrary and not reasonably related to any lawful purpose. (Brief of Appellant, p.16-p.18). Finally, with no analysis, Appellant contends that even if not facially invalid, the statute is nevertheless "unconstitutional as applied." (Brief of Appellant, p.5). The State disagrees and submits Appellant's overall argument and his associated sub-arguments should all be denied and dismissed on several grounds.

[2] Based on the solicitor's argument, defense counsel's response, and comments from the judge, the plea court's refusal to award credit for presentence detention time seems to have been based on subsection (3) of section 24-13-40 ["credit for time served prior to trial and sentencing shall not be given . . . when the prisoner commits a subsequent crime while out on bond"], rather than subsection (4) of section 24-13-40 ["credit for time served prior to trial and sentencing shall not be given . . . when the prisoner . . . has bond revoked on any charge prior to trial or plea"]. Regardless of which subsection was applied, the lack of any specific objection or particular reference to the subsection on which the parties relied serves to highlight the issue preservation problem discussed below.

A. Issues Not Preserved for Appeal

First and foremost, the arguments raised in Appellant's brief are not preserved for appellate review because they were 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 took the position that the statute was unconstitutional and said he believed it would eventually be overturned, but Counsel *never articulated how* or *why* the statute was allegedly unconstitutional. (R.p.12-p.16). He certainly did not argue it was an unconstitutional condition on Appellant's right to a jury trial and he never mentioned substantive due process, claimed it infringes upon a fundamental right, or asked the plea court to evaluate it under strict scrutiny or the rational basis test. Even though the plea judge said the objection was noted, the

court *also* failed to reference due process or any other constitutional provisions in applying the terms of the statute. (R.p.12, lines 3-21). Thus, regardless of whether there is any merit to the questions of whether the statute at issue constitutes an unconstitutional condition or violates substantive due process (which the State strongly contends it does not), Appellant was obligated to specifically bring those issues and his arguments to the attention of Judge McMaster before or during the plea proceeding and to obtain a ruling. Because Appellant failed to do so, this entire matter should not be addressed on appeal and the lower court's order should simply be affirmed without further discussion.[3]

B. Issues are Without Merit

If this Court determines Appellant's arguments were both sufficiently specific to be preserved for appellate review *and* not waived pursuant to his free and voluntary guilty plea, they are nevertheless without merit because: (1) the plea judge acted well within his discretion by sentencing Appellant within statutory limits, (2) the claim the statute would have a chilling effect on the exercise of the right to a jury trial is entirely speculative, and (3) 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 amendments prohibiting the award of credit for

[3] 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 either commit a new crime while out on bond or do something that got his bond revoked, 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). Additionally, Appellant testified, under oath, that he had not been forced, threatened, or pressured to give up his rights and plead guilty. (R.p.9). This affirmative waiver should, at the very least, eliminate Appellant's attempt to argue the statute creates an unconstitutional condition.

presentence jail time do not constitute unconstitutional conditions and they do not infringe upon substantive due process, either on their face or "as applied" to Appellant.

1. Sentence was 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, the appellate 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, the sentence imposed by the plea court—fifteen (15) years—fell well below the statutory maximum sentence for the offense—thirty (30) years. As explained by the court during the plea proceeding, Appellant faced a sentencing exposure of thirty (30) years for attempted kidnapping. (R.p.4). Even if 694 days of credit were added to the sentence imposed, the resulting sentence of sixteen (16) years and three hundred and twenty-nine (329) days would still fall substantially short of the maximum thirty (30) year penalty that could have been imposed for the charge.

Although not without exception,[4] 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

[4] Certain authorities recognize a defendant's right to presentence jail credit where the custody was *solely* 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).

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 the lower-than-maximum sentence imposed [despite the plea judge's warning that he could impose a thirty (30) year sentence], there is simply no way the refusal to award 694 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. Does not Constitute an Unconstitutional Condition

Appellant argues the statute unconstitutionally conditions the fundamental right to a jury trial on the loss of time served credit. He contends that because a person who wants a jury trial "could potentially wait months or years to have their case brought to trial," the statute effectively forces the waiver of the right to a jury trial by conditioning the benefit of "getting out of jail sooner" on waiver of that right. (Brief of Appellant, p.5-p.8).

But Appellant's claim is belied by the plain text of the statute, which makes no connection between the entitlement to credit and the manner in which the charges are disposed. Indeed, there is simply no statutory relationship between the entitlement to credit and the exercise of the right to a jury trial. Indeed, offending defendants are denied credit whether they plead guilty or are convicted after trial. Furthermore, Appellant's attempt to show that the statute will have a chilling effect on defendants' exercise of their right to a jury trial rests on pure speculation and is untethered from the facts of this case. Appellant never alleged he pled guilty in order to avoid accruing additional time in pretrial incarceration for which he would not be credited upon conviction. Rather, Appellant told the plea judge, under oath, that he had not been forced, threatened, or pressured to give up his rights and plead guilty. (R.p.9). Thus, the allegedly coercive statute could not have created an unconstitutional condition "as applied" to Appellant.

Appellant speculates the statute could nevertheless chill the exercise of all defendants' rights to a jury trial. But defendants are equally likely to insist on, rather than forego, a jury trial when faced with the denial of credit upon conviction. In fact, Appellant's argument seems to rely on the assumption that defendants will necessarily be found guilty at trial. Under our jury trial system and the high burden of proof, such an assumption is far from valid. Defendants could reasonably decide to file a motion for speedy trial and seek acquittal rather than plead guilty. Alternatively, defendants could seek reconsideration of their bond order. Surely the statute will not impermissibly burden the right to a jury trial in every case, as must be shown to mount a successful facial challenge. In fact, neither subsection (3) nor subsection (4) of section 24-13-40 has any bearing on whether bail will be granted or the amount of time a defendant will spend in pretrial incarceration.

And even if the denial of credit for time served created additional *incentive* to plead guilty, this would not make the statute unique or unconstitutional. Appellant asserts the statute forces defendants "to choose between their rights and their liberty." (Brief of Appellant, p.7). But every criminal defendant must balance the costs and benefits of exercising their right to a jury trial. Waiver of that right nearly always results in substantial reduction in their sentence. This does not make pretrial incarceration, or lenient plea offers, unconstitutional. *See Corbitt v. New Jersey*, 439 U.S. 212, 218 (1978) (explaining "not every burden on the exercise of a constitutional right, and not every pressure or encouragement to waive such a right, is invalid"). The bond statute certainly does not "force" any defendant to plead guilty, much less all defendants. Consequently, the allegedly coercive statute does not create a facially unconstitutional condition.

3. Statute Complies with Substantive Due Process

Appellant contends section 24-13-40(3) is unconstitutional both facially and "as applied" to him because it so clearly violates the due process clauses in our federal and state constitutions. This argument, however, relies in whole or in part on a single flawed premise: that presentence detention is punishment, and therefore the denial of credit for time spent in custody prior to sentencing is punishment. Neither aspect of this premise is true; therefore, Appellant cannot meet the high burden of showing that section 24-13-40(3) is facially invalid or invalid "as applied" on substantive due process grounds.

a. Presentence Detention is *not* part of the Punishment for a Crime

"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." Wade R. Habeeb, *Right to Credit for Time Spent in Custody Prior to Trial or Sentence*, 77 A.L.R. 3D 182 § 2 (1977 & Cum. Supp. 2025) (emphasis added).[5] South Carolina is one of a number of states[6] that long followed this tradition by concluding—prior to the 1973 amendment to the sentence computation statute [1962 S.C. Code of Laws § 55-11], which included presentence credit for the first time, and 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 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).

---

[5] Some courts have recognized an exception to this general rule when a defendant is sentenced to the statutory maximum and, having been unable to make bail due to indigency, will serve more time actually incarcerated than the statute allows. *See Palmer v. Dugger*, 833 F.2d, 253, 254 (11th Cir. 1987). But those facts are not presented by this case.

[6] *See* e.g. *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, than 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) (recognizing that 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) (finding that 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.").

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 several 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*, ___ U.S. ___, 82 S.Ct. 11 (1961) (emphasis added).[7] Similarly, they comport with the United States Supreme Court's recognition that: "pretrial detention . . . is regulatory, not penal." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

Although this rule in South Carolina was superseded by an amendment 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 amended statute, by which the legislature mandated the award of credit for time served under certain circumstances, was again amended by the legislature in 2023. The 2023 amendment prohibits the award of credit under additional exclusionary circumstances, such as "when the prisoner commits a subsequent crime while out on bond" or "when the prisoner . . .

[7] The State acknowledges that *Bandy* is a decision rendered by a single justice, and hence of no binding force upon the federal courts. *See Territorial Court of Virgin Islands v. Richards*, 674 F.Supp. 180, 181 n. 2 (D.Vi.1987) ("Moreover, since he was sitting as a Circuit Justice, his decision does not carry the precedential value of an opinion of the United States Supreme Court."). Nevertheless, the distinction drawn by Justice Douglas between presentence confinement in jail and postconviction service of a sentence, is spot-on.

has bond revoked on any charge prior to trial or plea." S.C. Code Ann. §§ 24-13-40(3) & (4) (2023). 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 explained by the United States Supreme Court in conducting a due process analysis of a comparable Nebraska 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 v. McDonnell*, 418 U.S. 539, 557 (1974). Similarly, the South Carolina General Assembly has the authority to create, *or not*, a right to credit for presentence jail time. The decision to limit a statutory right to presentence jail time when a defendant commits a subsequent crime while out on bond, does not equate to punishment.

This distinction becomes especially clear when one considers the underlying purpose of bond conditions in a criminal case. As explicitly described in South Carolina law, that purpose is to ensure a defendant's presence at trial *and* to prevent danger to the community. S.C. Code Ann. § 17-15-10 (2023); *see also Ex parte Milburn*, 34 U.S. 704, 710 (1835) ("A recognizance of bail, in a criminal case, is taken to secure the due attendance of the party accused, to answer the indictment, and to submit to a trial, and the judgment of the court thereon. It is not designed as a satisfaction for the offence . . . ."). Indeed, preventing potential danger to witnesses, jurors, and the community based on the likelihood of the repetition of criminal conduct was specifically recognized by United States Supreme Court Justice Douglas as a valid ground for, in extreme or unusual cases, denying bail "in the public interest." *Carbo v. United States*, ___ U.S. ___, 82 S.Ct. 662, 669 (1962). Here, Appellant demonstrated more than a mere likelihood of repeated

criminal conduct—he committed a subsequent crime. Similarly, after a grant of bail our courts have also recognized that where the community safety purpose of bond is not met, such as when a defendant out on bond has committed another crime, the lower courts should consider the prejudice or additional expense to the State when determining whether, and to what extent, bond should be remitted. *State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 780 (Ct. App. 2013); *see also State v. Mitchell*, 421 S.C. 365, 369, 807 S.E.2d 193, 194 (2017) (recognizing that a good behavior violation is committed when a defendant has committed another crime while out on bond). In all such circumstances, our legislature is properly concerned with community safety but not punishment. This is because the constitution does not allow bond to be punitive. *Bell v. Wolfish*, 441 U.S. 520, 535-36 (1979). Thus, while pretrial detention deprives an arrestee of liberty, it is not part of a defendant's sentence.

Further supporting this distinction is a consideration of the practical application of our statute on the computation of time served by prisoners. When a criminal defendant is sentenced to a term of incarceration after conviction, our legislature has provided that time spent in pretrial detention is normally to be "credited" against the sentence. S.C. Code Ann. § 24-13-40. This means the amount of time spent in pretrial detention will be *subtracted* from the overall length of the sentence imposed. *See Vasquez v. Cooper*, 862 F.2d 250, 255 (10th Cir. 1988) ("Awarding 'credit' for presentencing jail time is, by its nature, a reduction of the given sentence.") (emphasis added). As a corollary, the denial of credit *does not increase* the length of any defendant's sentence. Rather, it merely leaves the imposed sentence intact. Again, the presentencing detention is not part of the sentence or punishment for the crime.

From a theoretical standpoint, the presentencing credit serves two main functions. First, it ensures defendants will not spend more time incarcerated than the statutory maximum sentence

provides. Second, it reduces unequal outcomes for defendants who are unable to afford bail solely due to indigency. Nevertheless, giving credit for time served in pretrial detention is "an act of legislative grace . . . ." *Dugger*, 833 F.2d at 256. The "credit" reflects the legislative judgment that because pretrial detainees have been deprived of liberty, even though *not* for a punitive purpose, such time fairly should be deducted from their ultimate sentence. Thus whether a defendant is entitled to "credit" for time served in pretrial detention is a sentencing issue, not a pretrial liberty issue. And as a sentencing issue, it is purely a matter of legislative prerogative. *State v. Burdette*, 335 S.C. 34, 41, 515 S.E.2d 525, 529 (1999); *State v. De La Cruz*, 302 S.C. 13, 15, 393 S.E.2d 184, 186 (1990). As explained above, as long as the sentence imposed is within statutory limits, it should not be disturbed on appeal. *State v. Bynes*, 304 S.C. 62, 64, 403 S.E.2d 126, 127 (Ct. App. 1991) ("A judge has discretion to impose any sentence which is within the limits prescribed by statute."). Appellant's due process argument should be rejected out of hand where presentence confinement is not punishment.

b. No Violation of Substantive Due Process where there is No Fundamental Right to Credit for Presentence Jail Time

In regard to substantive due process, Appellant contends section 24-13-40(3) is facially invalid because there can be no valid application where it infringes upon a constitutional liberty interest—freedom from incarceration—and where it is not narrowly tailored to achieve a compelling state interest. The State disagrees.

A facial challenge is an attack on a statute itself, *in toto*, as opposed to a particular application. *City of Los Angeles, Calif., v. Patel*, 576 U.S. 409, 415 (2015); *Steffel v. Thompson*, 415 U.S. 452, 474 (1974); *Doe v. State*, 421 S.C. 490, 502, 808 S.E.2d 807, 813 (2017); *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016). Consequently, in analyzing a facial challenge to the constitutional validity of a statute, a court considers only the text of the measure itself and

not its application to the particular circumstances of an individual. *Doe*, 421 S.C. at 502, 808 S.E.2d at 813. Such challenges are the most difficult to mount successfully, because they require the challenger to show the legislation at issue is unconstitutional in all its applications. *Salerno*, 481 U.S. at 745; *Doe*, 421 S.C. at 503, 808 S.E.2d at 813; *Legg*, 416 S.C. at 13, 785 S.E.2d at 371. Statutes are presumed constitutional, and this "weighty" presumption can be overcome "only by a showing of unconstitutionality beyond a reasonable doubt." *Planned Parenthood S. Atl. v. State*, 440 S.C. 465, 476, 892 S.E.2d 121, 127 (2023); *Owens v. Stirling*, 443 S.C. 246, 261, 904 S.E.2d 580, 587–88 (2024). Here, Appellant has failed to carry this high burden of proof under the constitutional challenge advanced. Consequently, his facial challenge should be denied and dismissed.

Appellant argues that denying credit for time served prior to sentencing implicates his fundamental liberty interest because it effectively increases the time he spends incarcerated. As noted above, this argument hinges on the contention that presentence detention is punishment, and then pushes the arguments that the extension of such "punishment" violates substantive due process because it is neither narrowly tailored to a compelling state interest, nor rationally related to any lawful purpose. (Brief of Appellant p.8-p.16). But defendants do not have a fundamental right to credit for presentence jail time where presentence jail time is not part of the sentence imposed. Thus, the statutory prohibition on awarding credit for presentence jail time for serial offenders does not infringe upon substantive due process under either strict scrutiny or rational basis review.

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 cases

from our Supreme Court and the United States Supreme Court which interpret the guarantee of "due process of law" to include a substantive component which forbids the government to infringe 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 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 Supreme Court does not lightly grant fundamental right status to every claimed liberty interest. In order to maintain responsible decision-making and respect for legislative enactments, the Court requires a "careful description" of the asserted fundamental liberty interest. *Id.*

The next step depends upon the result of the first. *Hawkins* 195 F.3d 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.* If the interest is determined not to be "fundamental," it is entitled only to the protection of rational-basis judicial review. *Glucksberg*, 521 U.S. at 719. Appellant argues this Court should apply strict scrutiny analysis to the bond statute, asserting the fundamental right at stake is the interest in "liberty"

because incarceration compromises the right to be free from bodily restraint by the government. (Brief of Appellant, p.9-p.10). But this is not a "careful description" of the claimed fundamental right. The purported right at stake is not generic "liberty," but the right to credit for time served in pretrial incarceration when the defendant's overall period of incarceration does not exceed the statutory maximum. There is no such constitutional right, much less a fundamental right. *See Harris v. Comm'r of Correction*, 860 A.2d 715, 732 (Conn. 2004) (explaining "[b]ecause such credit is not constitutionally mandated, it is not one of those few rights deemed so fundamental that the state cannot impinge upon it in the absence of a compelling reason"); Wade R. Habeeb, Annotation, *Right to Credit for Time Spent in Custody Prior to Trial or Sentence*, 77 A.L.R. 3D 182 § 2 (1977 & Cum. Supp. 2025) (recognizing the general rule that, in the absence of an applicable statute to the contrary, a defendant does not have a fundamental right to credit for time spent in custody prior to trial or sentence because the confinement does not relate in any way to the subsequent punishment imposed). Accordingly, in a comparable matter, the United States Supreme Court applied rational basis scrutiny to reject a claim of entitlement to good time credit accrued in pretrial incarceration. *McGinnis v. Royster*, 410 U.S. 263 (1973). The same application should apply here.

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). 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 bond statute fails under even rational basis review because it is arbitrary and not reasonably related to any lawful purpose. (Brief of Appellant p.16-p.18). He seems to characterize the due process clauses as erecting an impenetrable wall in this area that no governmental interest, rational, important, compelling, or otherwise may surmount. But this concept was explicitly rejected by our United States Supreme Court. "We do not think the Clause lays down any such categorical imperative. We have repeatedly held that the Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest." *Salerno*, 481 U.S. at 748. Indeed, "The government's interest in preventing crime by arrestees is both legitimate and compelling." *Id.* At 749. In regard to section 24-13-40(3), the law operates only on individuals who have been rearrested and found to have committed a new offense, after release on bail. The government's interest in this realm could not be more legitimate and compelling.

In other words, section 24-13-40(3) easily passes rational basis review. The statute is designed to deter habitual criminals from committing repeat offenses while out on bond. This statutory purpose is well within the legislature's police power to protect the public from serial criminals. Similar to the federal concerns addressed by the Bail Reform Act of 1984, which was: "Responding to the alarming problem of crimes committed by persons on release," *Salerno*, 481 U.S. at 742, the threat of denial of credit is rationally related to this goal.

In *Salerno*, the Court explained the government's general interest in preventing crime is compelling, and that this interest is *heightened* when the Government musters convincing proof that the arrestee, already indicted or held to answer for a serious crime, presents a demonstrable

danger to the community. *Salerno*, 481 U.S. at 750. In the case of either section 24-13-40(3) or 24-13-40(4), the defendant himself proves his danger to the community through his rearrest and the court's determination that he committed a new crime, or the determination that bond should be revoked; therefore, consistent with the due process clause, the legislature should be free to prohibit the grant of pretrial credit in an effort to prevent the arrestee from further posing a danger. *Id.* at 751. The *Salerno* court recognized there is nothing inherently unattainable about a prediction of future criminal conduct. *Salerno* at 751. Here, by comparison, no prediction is necessary because the statute only applies to a defendant who has already demonstrated additional criminal conduct or already demonstrated conduct worthy of bond revocation.

Thus, even under strict scrutiny review, the statute passes muster. It is aimed at a narrow class of defendants: those who commit subsequent crimes while out on bond or otherwise have bond revoked. The consequences are easily avoided by those who don't commit additional crimes while out on bond or violate bond conditions. The denial of credit only occurs after the defendant has been convicted of the underlying offense and a determination that the defendant has in fact committed a subsequent crime while out on bond.

As in *Salerno*, the government's overwhelming interest in deterring serial criminals is plain. Section 24-13-40(3) serves this compelling government interest by threatening to withhold sentencing credit from defendants who commit additional crimes while out on bond. Similarly, section 24-13-40(4) does so for any defendant who "has bond revoked on any charge prior to trial or plea." The legislature has determined these provisions are necessary to close the "revolving door" of repeat offenders who threaten public safety. This legislative judgment is entitled to great deference from this Court. *See Planned Parenthood S. Atl.*, 440 S.C. at 475, 892

S.E.2d at 127 (explaining the need for judicial restraint when considering constitutional challenges to presumptively-valid statutes).

It is conceivable that the refusal to award credit could raise constitutional concerns in some circumstances, such as when the denial of credit results in a defendant being incarcerated for longer than the statutory maximum *solely* due to indigency. *See Williams v. Illinois*, 399 U.S. 235, 241–42 (1970) (explaining "once the State has defined the outer limits of incarceration necessary to satisfy its penological interests and policies, it may not then subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely by reason of their indigency"). But no such circumstances are present here, as Appellant was sentenced well below the statutory maximum. The statute, as applied to this case, does not violate substantive due process. Because sections 24-13-40(3) and 24-23-40(4) do not violate substantive due process, Appellant's facial challenge should be rejected.

c. Statute is Constitutional "As Applied"

With little to no analysis, Appellant contends that even if not facially invalid, the statute is nevertheless "unconstitutional as applied" and violates substantive due process, presumably because it will result in him serving incarceration in excess of the fifteen (15) year sentence imposed for his offense. (Brief of Appellant, p.5). To the contrary, the plea court acted within the parameters of all relevant constitutional provisions when, in compliance with section 24-13-40, it refused to award the 694 days of credit requested by Appellant in this case.

As explained above, the maximum sentence on Appellant's conviction was thirty (30) years. Where Appellant was given a fifteen (15) year sentence by the plea court, the addition of 694 days of credit to that sentence would result in his serving an aggregate period of time that falls well short of the thirty (30) year sentence exposure. Thus, there are no due process

implications for Appellant in this case. For this reason, and the fact that pretrial detention is not part of the punishment for the crime, Appellant's "as applied" due process argument should be denied and dismissed.

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 694 days of 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

CINDY S. CRICK
Solicitor, Thirteenth 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
March 26, 2026