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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No. 2025-000620

The State, ...Respondent,

v.

Lintel Lazzil Kirkland, ...Appellant.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

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

STATEMENT OF THE CASE

Lintel Lazzil Kirkland (Appellant) was indicted at the July 2024 term of the grand jury for Barnwell County for second-degree criminal sexual conduct (CSC) with a minor. (2024-GS-06-00214). He was represented by Assistant Public Defenders C. David Hayes and A. Wallis Alves of the Second Circuit Public Defender's Office. Respondent (the State) was represented by Deputy Solicitor David W. Miller and Assistant Solicitor Leigh B. Staggs of the Second Circuit Solicitor's Office. On March 25-27, 2025, Appellant proceeded to trial in the Barnwell County Courthouse before the Honorable Walton J. McLeod, IV, and a jury, and was convicted of the indicted charge. He was sentenced to eight (8) years' imprisonment. On the sentencing sheet, the trial court checked the box ordering that: "The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDC." (R.p.300-p.301; p.309-p.311).

Appellant timely filed a notice of intent to appeal his conviction and sentence and a brief was submitted in support of Appellant's appeal by Appellate Defender Jessica M. Saxon of the South Carolina Commission on Indigent Defense. This Brief of Respondent on behalf of the State now follows.

STATEMENT OF FACTS

On July 14, 2021, Appellant was arrested in Aiken County for two counts of kidnapping (Arrest Warrant Nos. 2021A0220102082 & 2021A0220102095); five counts of armed robbery (Arrest Warrant Nos. 2021A0220102081, 2021A0220102084, 2021A0220102085, 2021A0220102090, & 2021A0220102092); one count of attempted armed robbery (2021A0220102094); four counts of possession of a weapon during a violent crime

(2021A0220102083, 2021A0220102088, 2021A0220102091, & 2021A0220102093); and two counts of pointing and presenting a firearm (Arrest Warrant Nos. 2021A0220102086 & 2021A0220102087).[1] On August 6, 2021, Appellant was served with Aiken County arrest warrants for one additional count of armed robbery (2021A0210700290) and one additional count of possession of a weapon during commission of a violent crime (2021A0210700292). On January 6, 2023, a circuit court set either a $10,000 cash surety bond or a $5,000 cash surety bond on each charge for a bond totalling $100,000. (R.p.307-308). On January 9, 2023, Appellant posted bond on his Aiken County charges and was released from custody.

Approximately six months later, on July 19, 2023, Appellant was arrested by the Barnwell County Sheriff's Office for a single count of second-degree CSC with a minor. (R.p.305-p.306; p.309-p.310). The Aiken County bonds were revoked as a matter of law pursuant to § 17-15-55(C)(1) of the South Carolina Code upon Appellant's arrest on the Barnwell County charge, and they were also revoked by order of the court by way of the issuance of a formal order by the Honorable Courtney Clyburn Pope dated July 27, 2023, eight days after the Barnwell County arrest. (R.p.307-p.308). Bond was denied on the Barnwell county charge (R.p.305-p.306), and Appellant consequently remained incarcerated from his July 19, 2023, arrest until his sentencing in Barnwell County on March 27, 2025 [**618 days**].

On March 25-27, 2025, Appellant proceeded to jury trial in Barnwell County before Judge McLeod and was convicted of the indicted charge. (R.p.284-p.289). Following the verdict, while discussing sentencing, Deputy Solicitor Miller stated:

> Just one thing, Your Honor. . . . [Appellant] was on bond on a number of Aiken County charges at the time this offense was committed, we moved very quickly after he was arrested to have

[1] Unless otherwise indicated, information in this Brief concerning the Aiken County charges was gathered from the Aiken County public index and the July 27, 2023 Order Revoking Bond).

his bonds on his Aiken County charges revoked. Those bonds were all revoked July 27th of 2023. . . . pursuant to Section 24-13-40, [Appellant] is entitled to zero days credit for time served because he was on bond at the time these charges arose. I wanted to note that for the Court.

(R.p.292, lines 2-14).

Appellant's counsel objected and engaged in the following exchange with the trial court:

MR. HAYES: As for the no credit, Judge, *I would object to that. I think that statute unfairly creates a situation where a defendant can get more time than what the statute constitutionally allows* and what the legislature has given Your Honor the authority to give for these charges.

If he was to get no credit in this case and then be sentenced to the 20-year maximum, he would be losing 618 days. That's -- we're looking at almost three years -- two years and some change worth of credit that he would be doing for a second time. I don't think that was the intention of the legislature. I believe their intent was that if he were on bond in another county - -

THE COURT: He's been in Barnwell for 618 days?

MR. HAYES: 618 if I'm doing my math correct, Your Honor. My understanding - - the way I'm reading it and I think they way their intent was is that you cannot be arrested on other charges, like, Aiken coming to Barnwell and then sit in Barnwell County for two years and expect that the two years while you were on bond or had it revoked in Barnwell County is going to apply to the Aiken County charge.

I understand that, but if we give no credit for the time that he's been in Barnwell County, he could end up getting two years -- I believe about 20 months. Two years and 20 months or *20 years and 20 months which is more than what is statutorily allowed.*

THE COURT: Are you telling me that, if I understand you correctly, that the statute allows for him not to get further credit in Aiken, but –

MR. HAYES: That's the way I -- that's what I believe they were intending to do at the legislature. But the way it is written it says, when the prisoner is serving, serving a sentence on one offense and awaiting trial and sentence for a second offense in which he shall

> not receive credit for time served prior to trial in a reduction of his sentence for the second offense.
>
> And then Section 3 says, when the prisoner commits a subsequent crime while out on bond for, has his bond revoked on any charge prior to trial or plea. I believe that in this situation, he's having his bond revoked and that he would be entitled to zero credit for the time that he has been in Barnwell toward his Aiken charges. However, his charges for Barnwell, *I argue that he gets credit for that time because if he's not given the credit for that time, he could actually get a sentence that's larger than what we allow.*
>
> THE COURT: Okay.

(R.p.293, line 8-p.295, line 12) (emphasis added).

Deputy Solicitor Miller argued: "I have a copy of the statute if the Court would like it. But this is exactly what is contemplated by that third subsection. As Mr. Hayes says, provided however, credit for time served prior to trial and sentencing shall not be given when the prisoner commits a subsequent crime while out on bond. He was out on bond in Aiken, he committed the subsequent crime in Barnwell, he gets no credit for time served." (R.p.295, lines 13-22).[2] Appellant's counsel responded: "And *I believe that is unconstitutional* and is outside the limits of what our law allows with him being able to only receive 20 years for this charge. *In effect, that would create a sentence that where he could receive 20 years plus whatever the additional time is that they sat in jail.*" (R.p.295, line 23-p.296, line 4) (emphasis added).

The trial court commented: "This is becoming an issue on sentencing sheets outside of this courthouse. It's an appellate issue that will have to get flushed out unfortunately." (R.p.296, lines 5-8). Counsel wrapped up his argument by saying: "Judge, I think the argument could be

[2] Although the solicitor referenced 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"], it appears, as ultimately recognized by the trial court, that the operative provision was actually 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"]. In this case, the bond was revoked in part because Appellant committed a subsequent crime while out on bond, but it was the bond revocation itself that triggered section 24-13-40.

too that after being sentenced today, because of this statute, he goes to SCDC, it might be a year or two years that he's serving this time, but zero of that time will count toward the Aiken charge. But I don't think their intent was to say he gets no credit here [in Barnwell] and you can actually give him more time than what the statute allows." (R.p.296, lines 13-20).

After hearing from Appellant in mitigation, counsel stated: "Judge, as we were just arguing about, he's got 618 days that he has served in Barnwell County on this charge, I'd ask the Court to consider giving him credit for those charges." (R.p.299, lines 5-9). Judge McLeod ruled: "As far as the credit for time served, I'm just checking the box to follow the statute. I noted that he had to the side he had a time in Barnwell County, but his bond was revoked." (R.p.301, lines 13-16). The court then sentenced Appellant to eight years' imprisonment and checked the box ordering that: "The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDC." The trial court also placed a handwritten note on the sentence order as follows: "BOND REVOKED 7/27/2023 618 days at Barnwell County DET. CTR." (R.p.300-p.301; p.311).

The following day, on March 28, 2025, Judge McLeod issued a two-page "Order to Clarify Sentence" which set-out the procedural history of the relevant arrests, bonds, and revocations for the Barnwell County conviction at issue in this case, as well as several Aiken County charges that triggered the credit-denial provisions of Section 24-13-40 of the Code. In that order, Judge McLeod first explained that even though the Aiken County bonds were revoked as a matter of law at the time of Appellant's arrest on the Barnwell County charge pursuant to § 17-15-55(C)(1), the revocation of those bonds was also officially confirmed by Judge Clyburn Pope in a formal order dated July 27, 2023, and that Appellant remained incarcerated from his

July 18, 2023 arrest until his sentencing in Barnwell County on March 27, 2025. [618 days].

(R.p.312-p.313).

In regard to credit for time served, Judge McLeod went on to explain:

> At sentencing, counsel for the State argued [Appellant] was not entitled to any credit for the time he spent awaiting trial following his arrest on the Barnwell County charge pursuant to §24-13-40 (...credit 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.). Counsel for [Appellant] objected to the application of §24-13-40 proposed by the State. This Court noted the statute appeared clear on its face, and indicated the computation of the credit for time served would be properly handled by the South Carolina Department of Corrections (SCDC). This was noted on the sentence sheet, along with the additional information requested by Defense counsel, including the date [Appellant's] Aiken County bond was revoked (July 27, 2023) and the number of days [Appellant] has been incarcerated on the Barnwell County charge (618 days).
>
> It was the intent of this Court to allow the Department of Correction to apply §24-13-40 and to give [Appellant] any time he is authorized by the statute to receive. If, as alleged by the State, he is not entitled to any time served following his arrest on the Barnwell County charge, the Defendant's eight (8) year sentence should commence from March 27, 2025. The additional information regarding the date [Appellant] bond was revoked and the amount of time [Appellant] had been incarcerated in the Barnwell County jail was provided for the convenience of SCDC, but only if they determined that information was needed to compute [Appellant's] credit in accordance with the statute.

(R.p.312-p.313).

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 argument—that the trial court's denial, in compliance with section 24-13-40 of the South Carolina Code, of time-served credit for the time he spent in jail awaiting trial and sentencing on the crime for which he was convicted, violated his substantive due process rights—is not preserved for appellate review because it was 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, and (2) 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 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 the application of S.C. Code § 24-13-40(3) violated his substantive due process rights, resulting in 618 days served but not credited.[3] He 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—the right to liberty. Appellant claims the statute also fails substantive due process review because there are less restrictive measures the State could use, and does use, to achieve any purported interest it has in deterring additional crime which might be committed by those out on bond. Finally, Appellant contends that even if not facially invalid, the statute is nevertheless "unconstitutional as applied," because it resulted in the service of an additional 618 days in pre-trial punishment in violation of his right to due process. (Brief of Appellant, p.5-p.10). The State

[3] Appellant's argument appears to be grounded in the assumption that the plea court's refusal to award credit for presentence detention time was 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"]. However, as explained above, the operative provision was actually 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 applicable, the lack of any specific reference to a particular constitutional provision and any confusion about which subsection of the statute the trial court applied only serves to highlight the significant issue preservation problem discussed below.

disagrees and submits Appellant's argument, and his associated sub-arguments, should all be denied and dismissed on several grounds.

A. Issue Not Preserved for Appeal

First and foremost, the argument raised in Appellant's brief is not preserved for appellate review because it was 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 agreed it would be appropriate to deny Appellant credit against any Aiken County sentence for the time he served in Barnwell County detention per subsection (3) because Appellant would have committed "a subsequent crime [in Barnwell] while out on bond [from Aiken]." Counsel, however, objected to any denial of credit for the time served against the

Barnwell sentence, arguing subsection (4), which would be implicated because Appellant had "his bond revoked on any charge prior to trial or plea," "unfairly creates a situation where a defendant can get more time than what the statute constitutionally allows." In other words, Appellant took the position that the statute was unconstitutional because it could result in a defendant serving more time incarcerated than the maximum sentence that is statutorily allowed for his crime, but Counsel *never* articulated how this assertion, even if true, violated the United States or South Carolina Constitutions. He never argued the statute was unconstitutional in violation of substantive due process, either facially or as applied. (R.p.293, line 8-p.295, line 12). Indeed, Counsel did not mention substantive due process at all, never claimed the statute infringes upon a fundamental right, and never asked the trial court to evaluate it under strict scrutiny or rational basis review. Even though the trial judge commented this [credit for time served under § 24-13-40 issue] was "becoming an issue on sentencing sheets outside of this courthouse" and was only likely to be resolved as an "appellate issue," the court *also* failed to reference due process or any other constitutional provisions in simply applying the terms of the statute. (R.p.296, lines 5-8). Indeed, even in the subsequent written order clarifying the sentence, whereby Judge McLeod noted the statute was "clear on its face" and that his intent was "to allow the Department of Corrections to apply §24-13-40 and to give [Appellant] any time he is authorized by the statute to receive," the trial court did not make a direct determination about any constitutional issues. (R.p.312-p.313). Thus, regardless of whether there is any merit to the question of whether the statute at issue violates substantive due process (which the State strongly contends it does not), Appellant was obligated to specifically bring that issue and his argument to the attention of Judge McLeod during sentencing and to obtain a ruling on the issue from the

lower court. 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.

B. Issue is Without Merit

If this Court determines Appellant's argument was sufficiently specific to be preserved for appellate review, it is nevertheless without merit because: (1) the trial judge acted well within his discretion by sentencing Appellant within statutory limits, and (2) 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 presentence jail time 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 trial court—eight years—fell well below the statutory maximum sentence for the offense—twenty years. S.C. Code Ann. § 16-3-655(D)(3) (2024). Even if 618 days of credit were added to the sentence imposed, the resulting sentence of ten (10)

years, one hundred and twelve (112) days would still fall substantially short of the maximum twenty-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 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 Counsel's on-the-record acknowledgement the trial court could impose a twenty-year sentence for the offense] (R.p.293, lines 8-22), there is simply no way the refusal to award 618 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.

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[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).

2. Statute Complies with Substantive Due Process

Appellant contends the 2023 amendments to section 24-13-40 are unconstitutional both facially and "as applied" to him because they violate the due process clauses in our federal and state constitutions. This argument, however, relies in whole or in part on an implied and 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 the amendments to section 24-13-40 are 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

[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). This appears to be the claim trial Counsel was attempting to make here. But, as explained below, 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

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). The 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). 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, 7 L.Ed.2d 9 (1961) (emphasis added).[7] Similarly, they comport with the United States Supreme

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prior to trial or sentence.").

[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)

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," S.C. Code Ann. § 24-13-40(3) (2024), or when the prisoner "has bond revoked on any charge prior to trial or plea." S.C. Code Ann. § 24-13-40(4) (2024). 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

("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.

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 (2024); *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 and had his bond revoked on his Aiken County charges. 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 (2024). 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 sections 24-13-40(3) and 24-13-40(4) are facially invalid because there can be no valid application where they infringe upon a constitutional liberty interest—the right to liberty—and where they are 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. Additionally, he conceded to the trial court

that he would have no problem, constitutional or otherwise, with the denial of credit for time served on the Aiken charges. Thus, Appellant seems to admit the statute is not unconstitutional in all of its applications. For these reasons, 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 results in the service of additional incarceration. (Brief of Appellant, p.10). As noted above, this argument hinges on the contention that presentence detention is punishment, and then pushes the argument 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.9-p.10). 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 a strict scrutiny or a 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 this 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 "the right to liberty" because incarceration compromises the right to be free from bodily restraint by the government. (Brief of Appellant, p.7-p.8). 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 statute 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 there are less restrictive measures the State could use, and does use, to achieve the interest in deterring additional crime by those out on bond. He suggests the amendments to Section 24-13-40 were not reasonably designed to accomplish the legislative purpose and that there is no rational basis to further restrict his liberty by denying him credit for time actually served, because the legislature has also: (1) created a felony offense for committing a violent crime while under a

bond order for a previous violent crime and (2) required that a defendant who is charged with a violent offense or felony involving a firearm must post a full cash bond, two provisions that already serve as a deterrent. (Brief of Appellant, p. 10). However, the possibility of losing the presentence credit that would otherwise have been awarded serves as its own, independent deterrent to continued criminal behavior, above and beyond the possibility of further conviction due to a subsequent conviction or the obligation to post a cash bond. Indeed, the existence of other methods to address a subsequent arrest or revocation of bond does not eliminate the rational basis for this legislation. It is up to the legislature to decide what it believes are the most appropriate deterrents for defendants who have been released on bail to encourage them to refrain from committing additional crimes. Simply because the General Assembly did not specifically articulate this purpose when passing the legislation does not mean the amendment does not have a rational basis. Here, the amendment appears to have been reasonably designed to accomplish the legislative purpose of deterring continuing criminal behavior in much the same way potential arrests, convictions, and sentences deter criminal behavior in the first place.

In making these arguments, Appellant 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, and

in regard to section 24-13-40(4) it operates only on individuals who have had their bond revoked, often as a matter of law due to the commission of a new offense. The government's interest in this realm could not be more legitimate and compelling.

In other words, subsections 24-13-40(3) & (4) easily pass 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. The consequences

are easily avoided by those who don't commit additional crimes while out on bond. 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 section 24-13-40(3) does 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 "unconstitutional as applied," because it resulted in the service of an additional 618 days in pre-trial punishment in violation of his right to due process. (Brief of Appellant, p.5-p.10). To the contrary, the plea court acted within the parameters of all relevant constitutional provisions when, in compliance with section 24-13-40(4), it refused to award the 618 days of credit requested by Appellant in this case.

As explained above, the maximum sentence on Appellant's conviction was twenty years. Where Appellant was given an eight-year sentence by the trial court, the addition of 618 days of credit to that sentence would result in his serving an aggregate period of time that falls well short of the twenty-year sentence exposure. Thus, there are no due process implications for Appellant in this case. Furthermore, the very behavior that triggered 24-13-40(4) was entirely within Appellant's control. He caused his Aiken bonds to be revoked as a matter of law by choosing to commit a new crime in Barnwell *after* his release on bond and due to his noncompliance with his bond conditions. Appellant could have eliminated the possible "loss" of time served credit by following his original bond conditions, which necessarily included the requirement that he "be of good behavior toward all the citizens of the State." S.C. Code Ann. § 17-15-20(A) (2023). His behavior was not good. For these reasons, 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 618 days of credit sought, 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,

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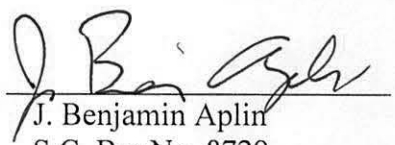
BY: 
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