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Apr 23 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

VS.

LINTEL LAZZIL KIRKLAND,

APPELLANT

APPELLATE CASE NO. 2025-000620

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the denial of Appellant's time-served credit pursuant to S.C. Code Ann. § 24-13-40 violated Appellant's substantive due process rights?

STATEMENT OF THE CASE

Appellant was indicted by a Barnwell County grand jury during the July 2024 term for one count of criminal sexual conduct with a minor, second degree. R. 309-10. The state, represented by David W. Miller and Leigh B. Staggs, called the case to trial on March 25, 2025, before the Honorable Walton J. McLeod, IV, and a jury. Appellant was represented by C. David Hayes and A. Wallis Alves. R. 1. After a three-day trial, Appellant was found guilty as indicted. R. 286, ll. 5-14. Judge McLeod sentenced Appellant to eight years' incarceration. R. 301, ll. 16-19. An order clarifying Appellant's sentence was filed on May 28, 2025. R. 312-13. Appellant timely filed a notice of appeal from his conviction and sentence.

This brief follows.

STANDARD OF REVIEW

“In criminal cases, appellate courts sit to review errors of law only.” State v. Robinson, 426 S.C. 579, 591, 828 S.E.2d 203, 209 (2019) (citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). “A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law.” In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). A statute is presumed constitutional, and the validity will be upheld, unless its repugnance to the constitution is clear beyond a reasonable doubt. State v. McSwain, 445 S.C. 276, 282-83, 914 S.E.2d 124, 127 (2025). This general presumption of validity can be overcome only by a clear showing the act violates some provision of the constitution. Doe v State, 421 S.C. 490, 501, 808 S.E.2d 807, 813 (2017).

ARGUMENT

The denial of Appellant's time-served credit pursuant to S.C. Code Ann. § 24-13-40 violated Appellant's substantive due process rights.

Relevant Facts

Prior to Appellant being sentenced, the state informed the court that, pursuant to S.C. Code Ann. § 24-13-40, Appellant was not entitled to any pre-trial credit because he was on bond for charges out of Aiken County at the time he was arrested and charged with CSCM in Barnwell County. R. 292, ll. 2-16. Defense counsel objected to the denial of pre-trial credit, arguing "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." R. 293, ll. 8-14. He maintained that while Appellant would not get credit on the Aiken charges for the 618 days he had spent in pre-trial lock-up in Barnwell, he was entitled to that credit in the Barnwell case. He requested that Appellant be given 618 days' credit because the statute was unconstitutional and outside the limits of what our law allows in sentencing. R. 293, l. 9 – 296, l. 20. The state maintained that the statute was clear; Appellant was on bond in Aiken when he committed subsequent crimes in Barnwell, and he was therefore not entitled to any credit. R. 295, ll. 13-22.

The trial court stated that this is "an issue on sentencing sheets outside of this courthouse. It's an appellate issue that will have to get flushed out unfortunately." R. 296, ll. 5-8. He further stated that he was checking the box to follow the statute on the time served issued and had notated on the sentencing sheet that Appellant's bond had been revoked as of July 27, 2023, and he had 618 days in the Barnwell County Detention Center. R. 301, ll. 13-19; R. 311. On May 28, 2025, an order clarifying sentence was filed which read:

It was the intent of this Court to allow the Department of Corrections to apply §24-13-40 and to give the Defendant 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 the Defendant's bond was revoked and the amount of time Defendant had been incarcerated in the Barnwell County jail was provided for the convenience of SCDC, but only if they determined that the information was needed to compute the Defendant's credit in accordance with the statute.

R. 312-13. (emphasis in original). An email sent by the solicitor to defense counsel indicated that Appellant would be entitled to eight days' credit on the Barnwell County charges as that was the time he was in jail prior to his bond being revoked. R. 303-04.

Discussion

S.C. Code Ann. § 24-13-40 was amended as part of the 2023 Bond Reform law passed by the General Assembly and signed by Governor McMaster on June 20, 2023. *Bond Reform*, S.C. Acts No. 83, § 8 (2023). Prior to the passage of this act, there were only two exceptions to the general rule that all persons must be given full credit for time served: (1) the prisoner who was incarcerated pre-trial was an escapee; and (2) the prisoner was serving a sentence for one offense while awaiting trial on another. S.C. Code Ann. § 24-13-40 (West 2013). The Bond Reform law added two new exceptions which act to deny pre-trial credit: when the prisoner commits a subsequent crime while out on bond or when the defendant's bond was revoked prior to the resolution of the case. S.C. Code Ann. § 24-13-40(3, 4) (current). The current law now reads:

The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence,

the computation of the time served must be calculated from the date of the commencement of the service of the sentence. In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense; (3) *when the prisoner commits a subsequent crime while out on bond; or* (4) *has bond revoked on any charge prior to trial or plea.*

S.C. Code Ann. § 24-13-40 (emphasis added). South Carolina appears to be the only state with a similar sentencing regime. *See* Kimberly Ferzan, *The Trouble with Time Served*, 48 B.Y.U. L. Rev. 2001, 2005-06 & n.11 (2023) (collecting statutes).

“No State shall... deprive any person of life, liberty, or property, without due process of law...” U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3 (similar). “Nor [shall any state] deny to any person within its jurisdiction the equal protection of the laws.” *Id.* The Due Process Clause contains both procedural and substantive due process protections. Procedural due process protects against the deprivation of a constitutionally protected interest unless the government provides the person with, at minimum, “notice, an opportunity to be heard in a meaningful way, and judicial review.” *State v. Binnarr*, 400 S.C. 156, 165, 733 S.E.2d 890, 895 (2012) (quoting *Kurschner v. City of Camden Planning Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008)). But due process “guarantees more than fair process,” it also “provides heightened protection against government interference with certain fundamental rights and liberty interests.” *Washington v. Glucksberg*, 521 U.S. 701, 719-20 (1997). Substantive due process is used to protect freedoms that are not specifically enumerated in the Constitution but are “deeply rooted

in this Nation's history and tradition." *Id.* at 721; see also, e.g., Loving v. Virginia, 388 U.S. 1 (1967) (right to marry); Griswold v. Connecticut, 381 U.S. 479 (1965) (marital privacy). The main purpose of substantive due process is to prevent the government from engaging in conduct that "shocks the conscience," or "interferes with rights implicit in the concept of ordered liberty." United States v. Salerno, 481 U.S. 739, 746 (1987) (*citing, inter alia*, Rochin v. California, 342 U.S. 165, 172 (1952)).

Determining whether a due process violation has occurred involves a two-step inquiry; first, the court must determine whether the interest involved is a protected legal interest, and second, the court must determine "what process is due under those circumstances." Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 571-73 (1972). Courts typically do this by reviewing the challenged law under differing levels of constitutional scrutiny. In re Treatment and Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 346-47 (2002). A statute that infringes upon a fundamental right must satisfy strict scrutiny, the most exacting scrutiny available. *Id.* at 140-41, 568 S.E.2d at 347. To satisfy strict scrutiny, the state must show that its statute is narrowly tailored to serve a compelling state interest. *Id.*

Unquestionably, § 24-13-40 infringes upon a fundamental right, if not *the* most fundamental right – the right to liberty. "Without question, imprisonment is recognized as one of the greatest deprivations of liberty." Binnarr, 400 S.C. at 165, 733 S.E.2d at 895. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action. It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Foucha v. Louisiana, 504 U.S. 71, 80 (1992) (collecting cases; internal citations omitted). "There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest." Tant v.

South Carolina Dept. of Corr., 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014). It therefore follows that strict scrutiny must be applied to the statute at issue such that it must be narrowly tailored to serve a compelling state interest.

There is nothing in the code section, such as a preamble or prefatory language, to indicate the “compelling state interest” that requires denying all credit to individuals who are accused of committing subsequent crimes. It can be assumed that the interest was to protect the public from repeat violent offenders and to further deter the commission of further crime while on bond, but those interests are not set down in any official manner. Ultimately, this Court is left to speculate as to the specific “compelling state interest” being used to circumscribe a fundamental right of a defendant.

Presuming, without conceding, that a compelling state interest exists – such as the government’s interest in deterring criminal behavior or protecting society from criminal behavior – the statute fails because it is not narrowly tailored. To be narrowly tailored to a compelling government interest, the law must be “necessary” to achieve that interest. See Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181, 207 (2023).

In United States v. Salerno, 481 U.S. 739, the United States Supreme Court analyzed, a substantive due process challenge to the Bail Reform Act. Id. The Act provided that “[i]f, after a hearing...the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, he shall order the detention of the person prior to trial.” Id. at 742 (*quoting* 18 U.S.C. § 3142(f)). The Court recognized a general constitutional rule that substantive due process prohibits the government from detaining a person prior to a judgment of guilt in a criminal trial. Id. at 749. However, there were certain exceptions to this general rule. Id. at 749.

Finding that the Bail Reform Act was constitutional, the Court pointed out that it was exceptionally narrowly tailored in that the Bail Reform Act provided that bail could only be denied for a “specific category of extremely serious offenses,” after an evidentiary hearing wherein the government must establish both probable cause that the crime has been committed by the arrestee and clear and convincing evidence that no set of bond conditions would protect the community. Id. at 750.

Similarly, the South Carolina Supreme Court considered the constitutionality of the Sexually Violent Predator Act (SVP Act) under a strict scrutiny test in Luckabaugh, 351 S.C. at 140, 568 S.E.2s at 347. Our Court found that the SVP Act survived strict scrutiny because it was narrowly tailored to apply only to “a limited subclass of dangerous persons” who by reason of mental illness were “likely to commit a dangerous act.” *Id.* at 144. 568 S.E.2d at 349 (internal citations removed). Importantly, the SVP Act would not have been constitutional if it allowed the state to civilly commit any individual convicted of a sex crime without any determination that the individual suffers a mental illness that prevents them from conforming their behavior to the law.

The extremely broad language of the statute encompasses every individual charged with any type of crime in South Carolina regardless of the nature of offense or the offender. The statute does not require any information about the initial offense or bond, nor does it require any level of proof outside of the second arrest to trigger the penalty. Further, the statute does not require a conviction be in place before it imposes a punishment – it requires the forfeiture of any pre-trial detention time on the basis of simply being re-arrested. Compared to the statutes at issue in Salerno, which only applied to *violent* offenders, and Luckabaugh, *supra*, which applied only to a narrow subset of sex offenders, the specific provision of the Bond Reform Act, which

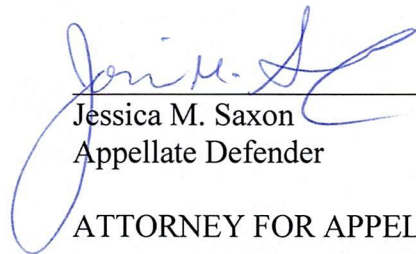
applies to any and all criminal offenses, is not at all narrowly tailored. Because the statute denies time served credit to any person who is arrested for a second time, regardless of their offense, it “is not tied to the relative public safety risk presented...and is excessive with respect to the purpose for which it was enacted.” *Cf.*, Powell v. Keel, 433 S.C. 457, 467, 860 S.E.2d 344, 349 (2021) (*quoting* State v. Latalien, 985 A.2d 4, 30 (Me. 2009) (Silver, J., concurring)).

The statute also fails because there are less restrictive measures the state could use, *Cf.*, United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 809 (2000) (striking down statute where there were plausible, less restrictive means of accomplishing the government’s aims) and does use, to achieve any interest in deterring additionally crime by those out on bond. See S.C. Code Ann. § 17-15-270 (creating felony offense for committing violent crime while under a bond order for a previous violent crime); §17-15-55(5)(D) (defendant who is charged with a violent offense or felony involving a firearm must post a full cash bond).

Because the statute deprives any person credit for the time that they have spent incarcerated pending trial and sentencing due to the commission of any subsequent crime while on bond, there is no valid application of the statute – the statute is facially unconstitutionally. State v. German, 439 S.C. at 466, 887 S.E.2d at 920. Likewise, the statute is unconstitutional as-applied because the application of the statute to Appellant resulted in the service of an additional 618 days in pre-trial punishment in violation of Appellant’s right to due process. Id.

CONCLUSION

Based upon the foregoing argument, Appellant respectfully requests that this Court remand the matter back to the lower court to credit Appellant with 618 days' time-served credit.



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This 23rd day of April, 2026.

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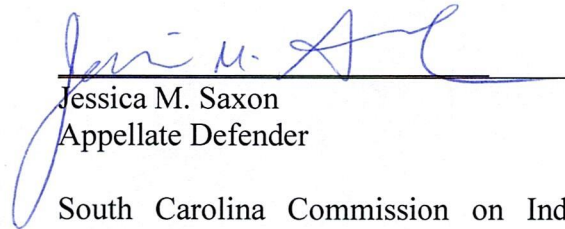
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SC Court of Appeals

CERTIFICATE OF COUNSEL

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

This 23rd day of April, 2026.



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