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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2025-001200

The State, ... Respondent,

v.

Brandon Kevon White, ... Appellant.

INITIAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the plea court properly rejected Appellant's request for time served credit for the time he spent in presentence detention and instead followed the unambiguous terms of Sections 24-13-40(3) and 24-13-40(4) of the South Carolina Code to deny credit where: (1) Appellant pled guilty to the subsequent crimes that triggered the prohibitions in the statute; (2) the plea court sentenced Appellant within statutory limits for his crimes; and (3) Appellant does not have a fundamental right to credit for presentence jail time because it is not part of the punishment imposed and the statutory denial of the desired credit did not infringe upon substantive due process.

STATEMENT OF THE CASE

Brandon Kevon White (Appellant) was indicted at the June 2024 term of the grand jury for Spartanburg County for discharging a firearm at or into a vehicle (2024-GS-42-1854) and breach of peace - aggravated in nature (2024-GS-42-2622). He was subsequently indicted at the August 2024 term for first-degree burglary (2024-GS-42-3679) and petit larceny (2024-GS-42-3680). He was represented by Assistant Public Defender Christopher Lee Allen of the Seventh Circuit Public Defender's Office. Respondent (the State) was represented by Assistant Solicitor Spenser Holloran Smith of the Seventh Circuit Solicitor's Office. On May 23, 2025, Appellant appeared in the Spartanburg County Courthouse before the Honorable J. Mark Hayes, II, and entered a guilty plea to: second-degree burglary as a lesser included offense of first-degree burglary; discharging a firearm into a vehicle; high and aggravated breach of peace; and petty larceny - enhanced. He was sentenced to fifteen years' imprisonment for second-degree burglary; ten years' concurrent imprisonment for discharging a firearm into a vehicle; ten years' concurrent imprisonment for aggravated breach of peace; and five years' consecutive imprisonment for enhanced petty larceny; for an aggregate sentence of twenty years' imprisonment. (Indictments and Sentence Orders; Tr.p.1-p.5; p.16-p.17). A brief was subsequently submitted in support of Appellant's appeal by Chief Appellate Defender Wanda H. Carter of the South Carolina Commission on Indigent Defense. This Brief of Respondent on behalf of the State now follows.

STATEMENT OF FACTS

Arrest, Bond and Release Proceedings

For purposes of the credit issue raised in this appeal, Appellant was arrested for the first time on November 16, 2023, for discharging a firearm into a vehicle. (Arrest Warrant No. 2023A4210101506), unlawful carrying of a pistol (Arrest Warrant No. 2023A4210101507), and breach of peace – aggravated in nature (Arrest Warrant No. 2023A4210101508).[1] The same day, a magistrate judge set a $25,000 ($10,000 + $10,000 + $5,000) surety bond on this first set of charges, which included a bond condition that Appellant "be of good behavior." (Order Specifying Methods and Conditions of Release dated November 16, 2023). On November 22, 2023, **7 days** after his first arrest, Appellant posted bond and was released. (November 16, 2023 Order; Motion of Bond Revocation dated May 28, 2024). On May 1, 2024, Appellant was arrested a second time and was charged with use of a vehicle without consent (Arrest Warrant No. 2024A4210202317)[2] and a probation violation (Probation Arrest Warrant No. W-42-24-0295).[3] (May 28, 2024 Motion). A magistrate set a $2,500 ($2,000 + $500) surety bond; however, Appellant did not post bond and remained incarcerated. On May 14, 2024, Appellant was arrested a third time and was charged with first-degree burglary (Arrest Warrant No. 2024A4210202525) and petit/simple larceny - $2,000 or less (Arrest Warrant No. 2024A4210202527). Bond was denied on the third arrest. On May 28, 2024, the State moved to revoke Appellant's bond due to his violation of the good behavior provision. (May 28, 2024 Motion). Appellant's bond on his first arrest was subsequently revoked by order of the Honorable J. Derham Cole on May 31, 2024. (Order Granting Motion for Revocation dated May

[1] The unlawfully carrying of a pistol charge was later dismissed by the State.
[2] This use of a vehicle without consent charge was later nol prossed by the State.
[3] At the time of his arrests, Appellant was on probation for several 2019 shoplifting convictions.

31, 2024, and filed June 10, 2024). Appellant remained in pretrial detention until the date of his guilty plea on May 23, 2025, **373 days** after his third arrest and **387 days** after his second arrest.[4]

Plea Proceedings

Appellant appeared in the Spartanburg County Courthouse before the Honorable J. Mark Hayes, II, on May 23, 2025. (Tr.p.1). At the call of the case, after Appellant was sworn-in, the solicitor listed the four indictments and the terms of a negotiated plea. He noted Appellant had been in pretrial detention but argued Appellant would not be entitled to credit for time served pursuant to Section 24-13-40 of the Code both: (1) because he was arrested for committing an additional offense while out on bond on the first set of charges, and (2) because his bond on the first set of charges was revoked. The solicitor said Appellant had served **35 days** in jail prior to his initial release on bond from the first set of charges, and **373 additional days** in jail following his arrest on the second set of charges. (Tr.p.4-p.6).

The plea court then engaged Appellant in a standard plea colloquy to ensure he was entering the plea freely, knowingly, and voluntarily. Appellant confirmed it was his intent to enter a plea to the charges announced by the solicitor. He testified he had not consumed any substance in the last 24 hours that would adversely or negatively affect his ability to understand what he was doing. Appellant testified he was satisfied with the work of his lawyer and that no

[4] As described below, the parties agreed at the plea proceeding that Appellant had spent **35 days** in jail before his initial release to bond and an additional **373 days** in jail following his third arrest; however there was some ongoing confusion about the total number of days Appellant spent in presentence detention before his plea. Appellant's counsel agreed with these two stated amounts but claimed they added up to **422 days**; however, even if the stated amounts were accurate, they would only add up to **408 days**. Whatever the case, based on the bond paperwork, it appears the stated amounts were not accurate. Appellant actually spent only **7 days** in jail prior to his initial release on bond from the first set of charges rather than 35 days. He then spent an additional **387 days** in jail following his arrest on the second set of charges, which would total **394 days** [7 + 387] or he spent an additional **373 days** in jail following his arrest on the third set of charges, which would total **380 days** [7 + 373]. Under either scenario, the total number of days Appellant spent in presentence detention [394 days or 380 days] is less than the 422 days cited by counsel. Ultimately, the specific number of days of credit Appellant sought is of no moment because, as argued below, the plea court properly denied Appellant's request for any of the presentence credit he requested.

one had threatened him in any way or promised him anything to get him to plead guilty. He agreed it was his decision to enter the plea and that it was a free and voluntary decision. (Tr.p.6-p.8).

The court next explained that, under the law, Appellant was presumed innocent and was entitled to a jury trial on any or all of the charges, a trial at which the State would have the burden of proving to all 12 members of a jury that he was guilty beyond a reasonable doubt. Appellant testified he understood that by pleading guilty he was giving up his right to a jury trial. Next, the court explained that by entering a guilty plea Appellant was giving up other important constitutional rights, including the right to confront and cross-examine the State's witnesses, the right to present evidence in support of a defense, the right to subpoena witnesses to testify on his behalf, and the right to remain silent. Appellant testified he understood his rights, did not need any more time to talk to his attorneys about those rights and wanted to go forward with the plea. (Tr.p.8-p.9).

The court then asked Appellant to listen to the solicitor as he recited the facts behind the charges. The solicitor described the facts of each offense, including Appellant's initial claim that he fired a weapon into the vehicle in self-defense. Appellant testified he agreed that the facts recited by the State were substantially correct. (Tr.p.9-p.12). The court reminded Appellant that the sentences described by the solicitor at the start of the plea would be the ones imposed if the plea was accepted, and Appellant confirmed this was what he wanted the court to do. The court advised Appellant the second-degree burglary was classified as both a violent and serious offense. Appellant testified he had been able to talk to his attorney about the consequences of these classifications and still wanted to enter a plea. (Tr.p.12-p.13). Ultimately, Appellant testified he *was in fact guilty* of each of the four charges to which he was entering a plea, and

that all of his answers to the court's questions had been truthful and honest. (Tr.p.13, lines 18). The solicitor said the State's discovery had been shared with the defense and described Appellant's criminal history. (Tr.p.13-p.14).

The plea court then proceeded with sentencing, first hearing from Appellant's counsel in mitigation. After providing background information about Appellant's family and employment, counsel made a request for credit for pretrial detention time. (Tr.p.14-p.16). He argued:

> I'd like to first take up the matter of the pretrial credit, which is actually a total of 422 [373 + 35] days, I believe me - - me and Mr. Smith were in agreement on that being the time that he's been incarcerated. We're in disagreement, however, on how much credit of that time that - - that he would have. It's our position that he's been incarcerated for 422 days.
>
> And so, certainly, *pursuant to his constitutional rights*, I - - I believe that he would be entitled to - - to that credit. He hadn't been free, so he's been in custody of the State for 422 days prior to today's hearing.
>
> . . . .
>
> But once again, your Honor, the - - the - - pretrial credit, we would like to request a full 422 days that - - that he was incarcerated. Thank you.

(Tr.p. 14, line 23-p.16, line 3) (emphasis added). Appellant testified he agreed with the statements made by counsel, apologized for his actions, and said it would not happen again. (Tr.p.16). Based on Appellant's testimony, the court: (1) found there was a substantial factual basis for the plea; (2) found the plea was made freely, voluntarily, knowingly, and intellectually; (3) accepted the plea; and (4) imposed the sentencing terms described in the negotiations. (Tr.p.16). In regard to credit for time served, the plea court stated: "I will take a look at the issue of credit, and - - and let you know about that. I got to review the statute and stuff." (Tr.p.16, line24-p.17, line 1).

In a written "Order Denying Credit" dated and filed June 12, 2025, the plea court briefly described the plea and the sentence imposed and ruled as follows:

> The remaining unresolved issue was the amount of credit. The State contended that §24-12-40 (3) and (4) [sic – 24-13-40] applied and that he was entitled to no credit. The defense asserted this section was unconstitutional and [Appellant] should be entitled to all of his time spent in the Spartanburg County Detention Center. Based on a review of the statute and information available, this Court cannot rule that the statute is unconstitutional. Therefore, defendant will not receive credit against his sentence for the time he has been in custody of the Spartanburg County Detention Center.

(June 12, 2025 Order Denying Credit).

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.

The plea court properly rejected Appellant's request for time served credit for the time he spent in presentence detention and instead followed the unambiguous terms of Sections 24-13-40(3) and 24-13-40(4) of the South Carolina Code to deny credit because: (1) Appellant pled guilty to the subsequent crimes that triggered the prohibitions in the statute; (2) the plea court sentenced Appellant within statutory limits for his crimes; and (3) Appellant does not have a fundamental right to credit for presentence jail time where it is not part of the punishment imposed and the statutory denial of the desired credit did not infringe upon substantive due process.

Appellant argues the trial court erred in denying his request for time served credit while he was detained prior to his guilty plea—a denial which was based both on his (1) committing subsequent crimes while out on bond [§ 24-13-40(3)] and (2) having his bond revoked on some of his pending charges prior to his plea [§ 24-13-40(4)]—because there were no convictions or adjudications of guilt for the new offenses, merely arrests. He contends that the length of an inmate's incarceration implicates a constitutional liberty interest under the Fourteenth Amendment and therefore, where he was never convicted of committing a subsequent crime, the plea court violated his constitutional right to procedural due process by denying the requested credit for time served. (Brief of Appellant, p.4-p.6). The State disagrees and submits this argument should be denied and dismissed for a host of reasons.[5]

[5] Arguably, 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

First, despite his claim to the contrary, Appellant *was in fact convicted* of the "new" or "subsequent" crimes—second-degree burglary and enhanced petit larceny—at the time he was sentenced because he had entered a free, voluntary, knowing, and intelligent guilty plea to those crimes at the same proceeding. By entering the plea, Appellant admitted he committed all four crimes. He was not contesting his guilt, therefore, as explained to him by the plea judge, many of his procedural rights were being waived. Indeed, where there were actual convictions in place at the time the pretrial detention credit was denied, it could not have been a procedural due process violation for the sentencing court to base that denial on Appellant's commission of the subsequent crimes, or for the bond revocation which occurred because of Appellant's bad behavior, which included his commission of those new crimes. *See Dangerfield v. State*, 376 S.C. 176, 179, 656 S.E.2d 352, 353–54 (2008) ("Due process considerations apply in *contested*

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). Here, Counsel said he believed Appellant would be entitled to the credit: "pursuant to his constitutional rights" but never articulated *how* or *why* the statute was allegedly unconstitutional. He certainly did not mention due process, the Fourteenth Amendment, or that it infringed upon a protected liberty interest. (Tr.p.14, line 23-p.16, line 3). Even though the plea judge issued a post-sentencing order that stated: "Based on a review of the statute and information available, this Court cannot rule that the statute is unconstitutional," the court *also* failed to reference due process or any constitutional provisions. (June 12, 2025 Order Denying Credit). Thus, regardless of whether there is any merit to the questions of whether the statute at issue violates procedural or substantive due process (which the State strongly contends it does not), Appellant was obligated to specifically bring that issue and his arguments to the attention of Judge Hayes before or during the plea proceeding and to obtain a ruling. Because Appellant failed to do so, this entire issue should not be addressed on appeal and the lower court's order could simply be affirmed without further discussion.

Appellant's argument may also be 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 commit a new crime while out on bond, 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).

cases or hearings which affect an individual's property or liberty interests as contemplated by the federal and state constitutions."). Thus, the plea court's order denying credit was entirely appropriate and should be affirmed.

Second, Appellant's argument is without merit because: (1) the plea 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 prohibition on awarding credit for presentence jail time did not infringe upon substantive due process.

1. Sentences were 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, this 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 aggregate sentence imposed by the plea court (20 years) fell well below the statutory maximum aggregate sentence for the four offenses (45 years). Appellant faced a sentencing exposure of: zero (0) to fifteen (15) years for second-degree burglary (violent) [S.C. Code Ann. § 16-11-312 (2024)]; zero (0) to ten (10) years for discharging a firearm into a dwelling [S.C. Code Ann. § 16-23-440 (2024)]; zero (0) to ten (10) years for common law

aggravated breach of peace [*State v. Simms*, 412 S.C. 590, 774 S.E.2d 445 (2015); S.C. Code Ann. § 16-1-110 (2024)]; and zero (0) to ten (10) years for enhanced petit larceny [S.C. Code Ann. §§ 16-13-30 (2024) & 16-1-57 (2024)]; for an aggregate sentence exposure of forty-five (45) years. Even if 422 days of credit was added to the twenty (20) year sentence imposed, it would fall far short of the maximum penalty that could have been imposed for the four charges.

Although not without exception,[6] 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: (1) the much lower-than-maximum sentences imposed,[7] there is simply no way the refusal to award an

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

[7] The statute provides that: "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 . . . ." S.C. Code Ann. § 24-13-40 (2024) (emphasis added). Thus, even in a standard sentence calculation where none of the four disqualifying factors are present, the award of credit for each "sentence" imposed must be related to the "time served prior to trial and sentencing" on *that sentence*—not other sentences for which the defendant had not even yet been charged or arrested. *Cf. Blakeney v. State*, 339 S.C. 86, 529 S.E.2d 9 (2000) (holding that a defendant, who was jailed in another county on unrelated charges and had a "hold" placed on him for the current robbery charge, was entitled to credit for time served from

additional 422 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 sentencing decision. Therefore, the plea court's credit ruling should be affirmed.

2. No Fundamental Right to Credit for Presentence Jail Time

Even if this Court finds the application of § 24-13-40 somehow presents rare and unusual circumstances, the plea court's actions to refuse to award an additional 422 days of credit in defiance of the statute did not implicate substantive due process.

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).[8] South Carolina is one of a number of states[9] that long followed this tradition by

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the date on which sheriff's department issued the warrant for his arrest for the robbery). Whatever interest the statute may create in pretrial confinement credit does not extent to using them on a sentence that does not arise from the same act or arrest. *Cf. Wolff v. McDonnell*, 418 U.S. 539, 556-57 (1974); *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972).

[8] 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.

[9] *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

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). This 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 United States Supreme Court 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,

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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.").

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).[10] 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 . . . has bond revoked on any charge prior to trial or plea." S.C. Code Ann. §§ 24-13-40(3) & (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

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[10] 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.

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 (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 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 subsequent crimes. 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 seems to contend 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—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 length of 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. 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 appears to rely 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 "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 seems to believe the bond statute fails under even rational basis review because it is arbitrary and not reasonably related to any lawful purpose. He appears 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 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, sections 24-13-40(3) and 24-13-40(4) easily pass rational basis review. The statutes are 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. Here, that determination was not contested by Appellant because he pled guilty to the subsequent crimes.

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 aggregate sentence. 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.

For all of the above reasons, Appellant's argument should be denied and dismissed. The plea court's refusal to award credit was mandatory under the terms of Section 24-13-40 where Appellant was in fact *convicted* of committing subsequent crimes while out on bond when the credit was denied, which means he also agreed he was not on good behavior during his release. For these reasons, and our Supreme Court's previous holding that pretrial detention is *not* part of the punishment for the crime, *State v. Sanders*, 251 S.C. 431, 445-46, 163 S.E.2d 220, 228 (1968), Appellant's argument should be rejected.

CONCLUSION

For all of the foregoing reasons, the State submits this appeal should be denied and dismissed and the plea court's denial of credit for time served should be affirmed. To the extent this Court disagrees and finds there was a constitutional or other error in the circuit court applying section 24-13-40 and denying the requested 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,

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Columbia, South Carolina
April 24, 2026

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2025-001200

The State, ...Respondent,

v.

Brandon Kevon White, ...Appellant.

PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Initial Brief of Respondent* and *Designation of Matter*, both dated April 24, 2026, on Appellant by sending an electronic copy via email to Wanda H. Carter, counsel of record for Appellant, at the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served. This 24th day of April, 2026.

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Susan Spencer

From: Susan Spencer
Sent: Friday, April 24, 2026 2:35 PM
To: Carter, Wanda
Cc: Ben Aplin; Leverett, Scott
Subject: State v. Brandon White (2025-001200)
Attachments: WHITE Brandon - Initial Brief of Respondent.pdf

Good afternoon, Ms. Carter,

Please find attached the Initial Brief of Respondent and Designation of Matter in State v. Brandon White (2025-001200). This brief will be filed today with the Court of Appeals via the AIS OneDrive system. Please note the previous service email listed the incorrect case name.

Thank you.

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