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**May 22 2026**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable Jessica A Salvini, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MONTECIO ALVENA MCKINNEY,

APPELLANT

APPELLATE CASE NO. 2025-001825

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INITIAL BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

The trial judge erred in failing to grant time served credit to appellant per his detainment in jail on a latter offense that was ultimately dismissed as part of a negotiated plea bargain on the instant charges to which he pled guilty in this case.

## **STATEMENT OF THE CASE**

Appellant Montecio McKinney pled guilty to trafficking in fentanyl and trafficking in methamphetamine during the September, 2025 term of the Greenville County General Sessions Court before Judge Jessica Ann Salvini, who sentenced him to imprisonment for a period of twelve years. Attorney Linda Vallar Whisenhunt represented appellant at the guilty plea proceeding, and Assistant Solicitors Peyton Christopher Swancy, Nicholas Francis Alvarez O'Neill, and Richard Christian Capps prosecuted the case.

Appellant appealed. This brief follows.

## **STANDARD OF REVIEW**

In criminal cases, the appellate court sits to review error of law only. State v. Nesbitt, 411 S.C. 194, 768 S.E.2d 67 (2015), quoting State v. Jacob, 393 S.C. 584, 713 S.E.2d 621 (2011).

## ARGUMENT

The trial judge erred in failing to grant time served credit to appellant per his detainment in jail on a latter offense that was ultimately dismissed as part of a negotiated plea bargain on the instant charges to which he pled guilty in this case.

Drugs were found at appellant's residence pursuant to a search warrant executed therein. Tr. 10, l.17-p. 11, l.16. At the plea proceeding, the solicitor summarized the sentencing issue as follows:

[Appellant] has one day of jail credit. He's been serving "dead time" on a subsequent trafficking for 589 days. As part of the plea deal here, we are going to be dismissing that charge. Tr. 11, lines 7-10.

Thereafter, defense counsel addressed the time served request/issue, particularly in connection with the solicitor's reference to "dead time" as follows:

I assert that he's entitled to credit for time served at 590 days: the one day that he served after the first arrest and the 589 days since his subsequent arrest.

The language of Section 24-13-40 provides, and I quote: credit for time served prior to trial or sentencing shall not be given, and according to Subsection 3, when the prisoner commits a subsequent crime while out on bond. Note that the language says "commits," not charged with a subsequent crime or accused of a subsequent crime.

The statute is not applicable to Mr. McKinney because the subsequent charges are being dismissed as part of this plea. Admittedly, the arrest on the allegations of the subsequent crime is what caused the defendant to have his bond revoked and potentially triggered the draconian denial of credit for time served. However, the statute is no longer implicated because of the dismissal of the subsequent charges. If they are dismissed, Mr. McKinney cannot be deemed to have committed them. So, the statute is no longer applicable and Mr. McKinney is entitled to credit for time served, for the one day plus the 589 days.

If the Court is inclined to give him credit based on this argument, we have nothing further on this issue. However, if the Court is not inclined to give him credit, we have additional arguments to preserve the record. Tr. 18, l.17-p. 19, l.18.

Defense counsel's argument also included the position that the dismissal of the latter offense was part of the plea bargain on the prior offenses primarily because there was insufficient proof of evidence on the latter offense. Tr. 21, lines 8-16. Defense counsel's argument continued as follows:

MS. WHISENHUNT: Section 24-13-40 also violates due process and equal protection of both the U.S. and South Carolina Constitution. Due process is a fundamental right. A statute that infringes on a fundamental right such as the one at issue must satisfy strict scrutiny. Strict scrutiny requires the statute to be narrowly tailored to achieve a compelling State interest. It could be argued the State is attempting to keep individuals incarcerated so they don't reoffend and that is their compelling interest. However, the State does not need to deprive individuals like Mr. McKinney time served credit to achieve that interest.

The statute is certainly not narrowly tailored to achieve the goal of deterrence. Other means to deter an individual from offending do exist. The most obvious one is the denial of bond on subsequent arrest. It is baffling to even try to understand what purpose the legislature has in depriving individuals credit for time served after robbing them of their freedom.

Granting Mr. McKinney credit for time served does not undermine the State's interest in deterrence. Denying him credit for time served of 590 days—589 days violates his constitutional rights.

Section 24-13-14 also violates the separation of powers. The penalty may be a legislative function, but sentencing is a judicial one. And it requires discretion, discretion in the amount of time, discretion in whether it's consecutive or concurrent, discretion in whether it's suspended. The Statute at issue removes judicial sentencing discretion by blanketly denying credit for time served. It essentially gives the legislature the role of sentencing. Under this law the legislature has taken the Court's power and

sentenced Mr. McKinney to an additional 589 days. Tr. 22, l.11-p. 23, l.19.

In the case at bar, the plea judge erred in not giving appellant credit for time served. The computation of time served credit statute reads as follows:

[F]rom 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.

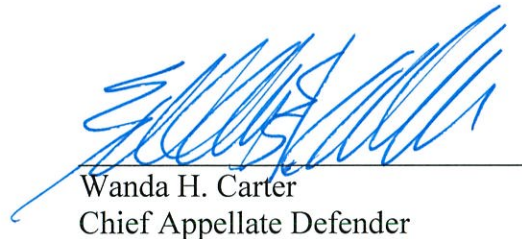
S.C. Code Ann. § 24-13-40 allows for time served credit, but with several prohibitions; one of which would include no time served credit if one “commits a subsequent crime while out on bond.” In the case at bar, appellant was not convicted of committing subsequent crimes while out on bond. Appellant was merely detained on another offense, but the charge on that offense was dismissed and never became a conviction. Therefore, section 3 of the time served statute was inapplicable as a bar on time served credit being given to appellant in this case.

The requirements of procedural due process apply to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property; and therefore, the statutory right to sentence related credits would be a protected “liberty” interest under the Fourteenth Amendment entitling an inmate to due process to ensure that such state created rights are not arbitrarily abrogated. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), citing to Board of Regents of State College v. Roth, 408 U.S. 564 (1972). The length of an inmate’s

incarceration implicates a constitutional liberty interest. Tant v. S.C. Dept. of Corrections, 408 S.C. 334, 759 S.E.2d 398 (2014), citing to Greenholtz v. Inmates of Neb Penal and Correctional Complex, 442 U.S. 1 (1979). The plea judge erred in denying appellant time served credit on the ground that “new crimes” were committed by appellant while he was out on bond because the alleged “new crimes” did not result in convictions, and because the “new charges” were dismissed.

**CONCLUSION**

Based on the foregoing argument, counsel for appellant would request that appellant’s case be remanded for a new sentencing hearing.

  
Wanda H. Carter  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of May, 2026.