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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

RANDY WILLIAM ALEXANDER,

APPELLANT

APPELLATE CASE NO. 2026-001289

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# INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

I.

Whether S.C. Code Ann. § 24-13-40(3), which was applied to deny 244 days of time-served credit to Appellant based solely on a subsequent arrest, is unconstitutional?

II.

Whether the plea court erred in applying S.C. Code Ann. § 24-13-40 to Appellant at all because Appellant did not commit a subsequent criminal offense nor was his bond revoked?

## STATEMENT OF THE CASE

On December 16, 2025, a Greenville County grand jury indicted Appellant for trafficking in methamphetamine. R.*(Indictment). On May 14, 2026, Appellant pleaded guilty to trafficking in methamphetamine, second offense, before the Honorable Patrick C. Fant, III. Tr. 1. Assistant public defender Anastasia L. Walker represented Appellant; Allen O. Fretwell represented the state. Tr. 1. Appellant was sentenced to six (6) years' incarceration and ordered to pay a $50,000 fine, with no credit for time served. Tr. 13, ll. 20-25. Appellant noted a timely appeal and explained, pursuant to Rule 203(d)(1)(B), SCACR, that he was appealing the plea courts' denial of time-served credit on the grounds that S.C. Code Ann. § 24-13-40(3) was unconstitutional. R.*(Rule 203 Explanation). On June 10, 2026, this Court permitted the appeal to proceed. R.*(Allowed to Proceed Letter).

This appeal follows.

## STATEMENT OF FACTS

On November 21, 2024, during a traffic stop, less than twelve grams—approximately the weight of one AAA battery—of methamphetamine fell from Appellant's pocket. Tr. 8, ll. 3-10. Appellant admitted ownership of the drugs to police, and he was arrested and charged with trafficking in methamphetamine. Tr. 8, ll. 11-14. He pleaded guilty to trafficking in methamphetamine, second offense, in exchange for a recommendation of seven years' imprisonment by the solicitor. Tr. 3, l. 13. At the time of the plea, Appellant had spent 244 days in pre-trial detention: 203 days before posting bond at all, and 41 more days after being re-arrested. Tr. 9, ll. 16-19; 12, ll. 17-18.

When he was first arrested, Appellant's bond for this offense, as well as two other misdemeanor offenses that were dismissed, was a $57,000 cash bond. R.*(Order Amending Bond). Appellant moved to reduce his bond on February 27, 2025. R.*(Motion for Bail). On June 6, 2025, the Honorable Brian M. Gibbons granted Appellant's motion. R.*(Order Amending Bond). The conditions of the amended bond order required Appellant to post a $2,500 cash bond and be subject to participation in the Home Incarceration Program (HIP). *Id.* On March 31, 2026, a bench warrant was issued for Appellant, alleging that Appellant "failed to charge and maintain the electronic monitoring device...," and "failed to comply with the conditions of house arrest." R.*(Affidavit in Support of Electronic Monitoring Bench Warrant).[1] On April 10, 2026, the Honorable Vernon F. Dunbar ordered that Appellant be reinstated to the HIP but was first required to pay any outstanding fees. R.*(Termination Order).

During his plea hearing, defense counsel told the plea court that Appellant had spent 203 days in pre-trial detention prior to a bond being set. Tr. 9, ll. 16-19. He was granted bond on June

[1] From context, the allegation that Appellant "failed to comply with the conditions of house arrest" appears to mean that Appellant was unable to pay the related fees. *See infra.*

21, 2025, and placed on monitored house arrest. Tr. 9, ll. 20-22. Appellant lived with his mother while on house arrest. Tr. 10, l. 4. One night, the house Appellant and his mother lived in caught fire. Tr. 10, l. 4. Upon realizing his mother was still inside, Appellant ran into the burning home and found her; his mother did not survive. Tr. 10, ll. 7-8; 10, ll. 14-15. Appellant's injuries were so severe that he was comatose for some period of time, and he ultimately spent one month in the Augusta Burn Center. Tr. 10, ll. 20-24. He now suffers from resultant skin cancer and respiratory problems. Tr. 10, l. 24 – 11, l. 1.

When Appellant left the Burn Center, he was essentially homeless. His son helped him obtain a camper, which he parked on his late mother's property and lived in. Tr. 12, ll. 18-22. He later received a violation of his home detention because of a financial arrearage and difficulty charging the ankle monitor, which was brought about by his difficult circumstances. Tr. 12, ll. 19-25. Thus, he was returned to pre-trial detention. Including the days spent on monitored house arrest, Appellant was incarcerated for 541 days prior to his plea. Tr. 13, ll. 4-5. He spent 244 of those days in the county jail. Tr. 9, ll. 16-19; 12, ll. 17-18. After Appellant's arrest, he was unable to pay the financial arrearage necessary to re-enter the HIP program. Tr. 13, ll. 1-3.

The state took the position that Appellant was not entitled to time-served credit at all "because of a re-arrest." Tr. 8, l. 18. Appellant asserted that S.C. Code Ann. § 24-13-40(3) was unconstitutional. Tr. 11, l. 18. First, Appellant asserted that the statute violated the Equal Protection Clause because it disproportionately impacted low income individuals. Tr. 11, ll. 19-25. Second, Appellant asserted that the statute violated the Due Process Clause because it implicated a fundamental liberty interest and did not survive strict scrutiny. Tr. 12, ll. 1-16.

Due to the "re-arrest," the plea court did not award Appellant any time-served credit. Tr. 13, ll. 24-25; R.*(Sentencing Sheet). Regarding the time Appellant spent on monitored house

arrest, the plea court asserted that awarding such credit was discretionary and would not be awarded; however, the plea court asserted that it took that time into consideration when giving his sentence. Tr. 14, ll. 6-9, 12.

## 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).

Questions of statutory interpretation are reviewed *de novo*. *State v. Alexander*, 424 S.C. 270, 274-75, 818 S.E.2d 455, 457 (2018).

## ARGUMENTS

### I.

S.C. Code Ann. § 24-13-40(3), which was applied to deny 244 days of time-served credit to Appellant based solely on a subsequent arrest, is unconstitutional.

While on bond, Appellant was not convicted of any crime, and as far as can be gleaned from the record, was only re-arrested due to a violation of electronic monitoring conditions. As a result, the trial court retroactively revoked 203 days of time-served credit that Appellant had served prior to the bond order being entered at all and denied a further 41 days of time-served credit acquired after Appellant's apparently violation of his bond conditions. The primary cause of both Appellant's delayed bond posting and his technical violation was poverty. Thus, the statute violates the Equal Protection Clauses of the Fourteenth Amendment and Article I, § 3 of the South Carolina Constitution. Additionally, because the statute violated Appellant's right to liberty and is not narrowly tailored to a compelling government interest, the statute further violates the Due Process Clause of the Fourteenth Amendment and Article I, § 3 of the South Carolina Constitution. This Court must reverse.

Prior to 2023, as a general rule, all defendants who spent any time in pre-trial detention were entitled to credit for that time against their eventual sentence. S.C. Code Ann. § 24-13-40 (West 2013). There were only two exceptions to this general rule: (1) the defendant was an escapee; and (2) the defendant was serving a sentence for one offense while in pre-trial detention for another. *Id.* However, on June 20, 2023, the General Assembly passed and Governor McMaster signed the Bond Reform Act. *Bond Reform*, S.C. Acts No. 83 (2023). The Act made several changes to various statutes affecting bonds. Relevant here, the statute added two new

exceptions to the general rule that every defendant receives every day of time-served credit. *Id.* § 8.

In its present form, S.C. Code Ann. § 24-13-40 (hereinafter "the Statute"), reads as follows:

> 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.

*Id.* The two new exceptions are sections (3) and (4) of the Statute; time-served credit must now be denied to a defendant who "commits a subsequent crime while out on bond;" or "has bond revoked on any charge prior to trial or plea." *Id.* The purpose of the amendments, as well as the other sections of the Bond Reform Act, are to deter the commission of additional crimes while out on bond. *See* Henry McMaster, *Signing Statement*, H. 3532 (Bond Reform) (June 20, 2023) ("urgent need for the General Assembly to close the 'revolving door' for repeat offenders and

career criminals").[2] 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).

**A. As applied to Appellant, the Statute violates the Equal Protection Clause.**

But for Appellant's indigency, he would be released from prison 244 days sooner. Because a wealthier individual under identical circumstances would have been able to post bond and be released, the Statute violates the Equal Protection Clauses of the federal and state Constitutions as applied to Appellant.

The Fourteenth Amendment to the United States Constitution provides, "No State shall…deny to any person within its jurisdiction the equal protection of the laws." § 1. The South Carolina Constitution similarly provides, "nor shall any person be denied the equal protection of the laws." S.C. Const. art. I, § 3. The purpose of these Clauses is to represent "a 'foundation[al] principle' – 'the absolute equality of all citizens of the United States politically and civilly before their own laws.'" *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181, 201 (2023) (*quoting* Cong. Globe, 39th Cong., 1st Sess., 431 (1866) (statement of Rep. Bingham)). To that end, the Clauses require "that all persons be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed." *League of Women Voters of S.C. v. Alexander*, 446 S.C. 591, 611, 921 S.E.2d 660, 671-72 (2025). And, in the context of the criminal justice system, the Clauses provide a "basic command that justice be applied equally to all persons." *Williams v. Illinois*, 399 U.S. 235, 241 (1970). "There can be no

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[2] At the time of the law's passage, the Speaker of the House stated: "Today, the House loudly spoke with an overwhelming majority that we are going to crack down on those who continue to terrorize our citizens, especially when they are out on bond." Mary Green, *SC House Passes Bond-Reform Bill*, Live 5 WCSC (Mar. 1, 2023), https://www.live5news.com/2023/03/02/sc-house-passes-bond-reform-bill-vowing-close-revolving-door-repeat-violent-offenders/ (last accessed Jul. 28, 2026).

equal justice where the kind of trial a man gets depends on the amount of money he has." *Griffin v. Illinois*, 351 U.S. 12, 19 (1956).

In *Williams*, the United States Supreme Court analyzed a case where a defendant was sentenced to one year imprisonment, the statutory maximum sentence for his offense, and a $500 fine. 399 U.S. at 236. However, the defendant was unable to pay the fine, so he was required to remain in prison for an additional 101 days beyond the statutory maximum. *Id.* at 236-37. The Supreme Court held that "when the aggregate imprisonment exceeds the maximum period fixed by the statute and results directly from an involuntary nonpayment of a fine or court costs," the sentence is impermissibly discriminatory under the Equal Protection Clause. *Id.* at 240-41. Applying *Williams*, the Supreme Court held the following year that it was unconstitutional to imprison a defendant for an offense punishable only by a fine on the basis of that defendant's inability to pay the fine. *See generally, Tate v. Short*, 401 U.S. 395, 397-98 (1971).

The state is likely to assert that there is no constitutional right to time-served credit in criminal cases. Appellant disagrees with that argument, but it is ultimately beside the point. It does not matter whether time-served credit is a right or a mere benefit, the state must grant or deny it even-handedly. The federal Constitution also does not, for example, grant a constitutional right to appellate review, but once a state creates that right, its effective denial on the basis of indigency does violate the federal Constitution. *Griffin*, 351 U.S. at 18 ("It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty." (internal citations omitted)). Similarly, there is no constitutional right to be sentenced to probation, but a court cannot revoke a probationer's probation based on failure to pay fines and restitution because that

would treat the indigent unequally. *Bearden v. Georgia*, 461 U.S. 660, 665-66 (1983). The United States Supreme Court has demonstrated this "sensitiv[ity] to the treatment of indigents in our criminal justice system," *id.* at 664, in myriad other cases as well. *See, e.g., Burns v. Ohio*, 360 U.S. 252 (1959) (requiring an indigent prisoner to pay a filing fee prior to filing an appeal violated equal protection and due process); *Douglas v. California*, 372 U.S. 353 (1963) (indigent entitled to counsel on first direct appeal); *Mayer v. Chicago*, 404 U.S. 189 (1971) (indigent cannot be denied an adequate record to appeal a conviction even under a fine-only statute).[3]

After *Williams*, several courts began applying this logic to time-served credit cases as well. *See, e.g., Workman v. Cardwell*, 338 F. Supp. 893, 900 (N.D. Ohio 1972) (extending *Williams* to a time-served credit case is a "logical extension"), *vacated as not ripe,* 471 F.2d 909, 911 (6th Cir. 1972); *State v. Salazar*, 539 P.2d 946, 950 (Ariz. Ct. App. 1975) ("The rationale behind giving credit for pre-sentence incarceration is the denial of equal protection that flows to the poor not able to make bail."). According to one court, "if the Equal Protection Clause blocks unequal treatment of criminal defendants based on indigency, as clearly settled in [*Tate*] and [*Williams*] then we can hardly imagine a more compelling example than the indigent criminal defendant who remains in jail because he cannot make bond and receives no credit for this time." *Martin v. Leverette*, 244 S.E.2d 39, 41 (W.Va. 1978). Several other courts held similarly; that if a defendant was unable to post a bond due to indigency, he was constitutionally entitled to pretrial time-served credit under the Equal Protection Clause. *See, e.g., Ham v. North Carolina*, 471 F.2d 406, 408 (4th Cir. 1973); *United States v. Gaines*, 449 F.2d 143, 144 (2d Cir. 1971); *White v. Gilligan*, 351 F. Supp. 1012, 1014 (S.D. Ohio 1972) (three judge panel) ("This Court finds no substantive difference between a prisoner who is forced to remain in jail after completion of his

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[3] *Cf.* S.C. Const. art. I, § 19 ("No person shall be imprisoned for debt except in cases of fraud.").

sentence because of his inability to pay a fine and an indigent defendant who must remain in jail prior to his trial because of his inability to post bond."); *Geils v. State*, 287 So.2d 368 (Fla. Dist. Ct. App. 1973).

Even when a defendant is sentenced to less than the statutory maximum penalty for an offense, if that defendant was unable to post bond because of indigency, "[h]e still must serve a longer term in connection with the offense than would a wealthier person who is sentenced to the same term but who is able to meet bail to avoid incarceration before trial and sentencing." *King v. Wyrick*, 516 F.2d 321, 323 (8th Cir. 1975); *Morris v. Schoonfield*, 399 U.S. 508, 509 (1970) (White, J., joined by Douglas, Brennan, and Marshall, JJ., concurring) (the constitutional defect in *Williams* "inheres...whether or not the jail term of the indigent extends beyond the maximum term....").[4]

Here, Appellant will spend more time in prison than he otherwise would have because of his indigency. The record establishes that Appellant's subsequent arrest was for failing to charge his electronic monitoring device and failure to pay the electronic monitoring dues. Appellant was then confined to pre-trial detention because he was unable to pay the financial arrearage that the circuit court ordered him to pay as a condition of Appellant's resumption of his bond. If

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[4] Some courts have recognized a presumption that, if a sentencing court sentences a defendant to less than the statutory maximum, that must mean they have considered a defendant's time-served credit and reduced the sentence accordingly. *See King*, 516 F.2d at 324 (collecting cases). That presumption expressly does not exist in the Fourth Circuit. *See Padgett v. United States*, 387 F.2d 649 (4th Cir. 1967). Further, the presumption was created out of judicial convenience, with considerations that are no longer present. At the time, it was not always clear whether the sentencing judge had credited the defendant for his time served or not, so the presumption existed to save appellate courts from the inconvenience of calculating unclear time-served credit. F. Thomas Schorhorst, *Presentence Confinement and the Constitution: The Burial of Dead Time*, 23 HASTINGS L. J. 1041, 1063 (1972); *accord, Stapf v. United States*, 367 F.2d 326, 330 (D.C. Cir. 1966). Today, however, time-served credit is confirmed on the record during every sentencing, and forms part of the sentencing sheet that the general sessions court must enter in all cases. The holes in the record that justified the *Stapf* presumption in the first place are simply no longer problematic.

Appellant were slightly better situated, he would not have been required to live in a camper van that made charging his electronic monitoring device substantially more difficult. Nor would he have been subjected to pre-trial detention at all; he could have simply paid the arrearage (or never fallen behind on his payments to begin with). The punitive outcome imposed on Appellant versus an identically situated, wealthier individual is unconstitutional. *See, e.g., White*, 351 F. Supp. at 1014 ("The inability of an indigent defendant to post bond should not determine the duration of his confinement."). The sole reason why Appellant was in pre-trial detention was indigency. The reason he was denied credit for that time served prior to his plea is due to indigency. That violates the "basic command that justice be applied equally to all persons." *Williams*, 399 U.S. at 241. Therefore, "fundamental fairness...require[s] this Court's intervention." *Workman*, 338 F. Supp. at 900. For these reasons, the Statute is unconstitutional as it was applied to Appellant in this case. This Court should reverse.

**B. The Statute violates the Due Process Clause.**

Further, the Statute violates the Due Process Clause for two independent reasons. First, the Statute is punitive in nature and therefore punishes a defendant prior to conviction. Second, the Statute implicates the fundamental right to freedom from incarceration and does not survive strict scrutiny review. Accordingly, the Statute violates the Due Process Clause. This Court should reverse.

***1. The denial of time-served credit, and especially the revocation of time-served credit earned prior to the purported bond violation, is punitive.***

At the outset, the question of whether the denial of time-served credit is punitive in nature makes a significant difference to the analysis this Court must perform. If the conditions and restrictions of pre-trial detention are punitive, they are unconstitutional on that ground alone. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) ("[U]nder the Due Process Clause, a detainee may not be

punished prior to an adjudication of guilt in accordance with due process of law."). For the following reasons, the denial of time-served credit in *all* cases, but especially under the particular facts of this case, is punitive.

The Statute was passed for the specific purpose of deterring the commission of additional crimes while out on bond. Henry McMaster, *Signing Statement, supra.* "Deterrence" constitutes two of the "three purposes of *punishment.*" *Owens v. Stirling*, 443 S.C. 246, 268, 904 S.E.2d 580, 591 (2024) (emphasis added) (the "three purposes of punishment" are "(1) reform or rehabilitation, (2) general deterrence, and (3) specific deterrence"). The fact that the Statute exists almost entirely for the purpose of deterrence is near dispositive evidence that the Statute is punitive. *See Kansas v. Crane*, 534 U.S. 407, 412 (2002) (holding that civil sexually violent predatory commitment was only civil in nature because it required a "lack-of-control" determination; because, in the absence of such a determination, the commitment would "because a mechanism for retribution or general deterrence—functions properly those of criminal law...." (internal quotation marks omitted)). The Statute is thus "chiefly intended for the prevention of future crimes." 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 16 (1769); *see also id.* at 8 (defining criminal punishment broadly, as "coercive penalties for...transgressions" "[a]s to...offenses...against the laws of society").

Further, the general rule in South Carolina is that a defendant is entitled to all time-served credit. S.C. Code Ann. § 24-13-40; *see generally, State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) ("Because the language of [the Statute] is mandatory, a judge cannot deny a defendant credit for time served prior to trial unless one of the [four] exceptions applies."). Therefore, the Statute operates to deny a benefit to which a defendant would otherwise be entitled, as retribution for "commit[ting] a subsequent crime." § 24-13-40(4). By

definition, this is punishment. *Punishment*, *Black's Law Dictionary* (12th ed. 2024) ("A sanction—such as a fine, penalty, confinement, or *loss of* property, right, or *privilege*—assessed against a person who has violated the law." (emphasis added)). As historically understood, the revocation of time-served credit is a "coercive penalt[y]" for a "transgression" "against the laws of society." 4 BLACKSTONE, *supra*, at 8. Therefore, the purpose and Legislative history of the Statute "conclusively show[s] that the measure [is] intended to be punitive." *Bell*, 441 U.S. at 538 (internal quotation marks omitted). The Bond Reform Act both punishes and deters; it serves as a pre-conviction punishment that does not survive the Due Process Clause. Because the "text and structure of the Act demonstrate that [the General Assembly] intended at least 'to impose punishment,' that 'ends the inquiry.'" *Ellingburg v. United States*, 607 U.S. 163, 168 (2026) (*quoting Smith v. Doe*, 538 U.S. 84, 92 (2003)).

Even if the General Assembly did not intend to pass a punitive statute, the Statute must still be construed as punitive. "[T]he punitive/regulatory distinction turns on 'whether an alternative purpose to which [the Statute] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned to it.'" *United States v. Salerno*, 481 U.S. 739, 747 (1987) (alteration in original). In other words, a statute would not be punitive if there is some purpose, other than punishment, for the regulation that is not excessive in relation to the alternate purpose. *Id.* The Court may also consider factors such as whether the regulation has historically been regarded as punitive, whether it is imposed only after a finding of intent, whether its operation promotes the traditional aims of punishment, and whether the behavior to which it applies is already a crime. *Bell*, 441 U.S. at 537-38 (*quoting Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963)).

To start, there is no rational alternative purpose for the Statute to deny time-served credit. The purpose of the Statute is purportedly to protect the public, but this is not an alternative purpose at all, because the Statute does so in a transparently punitive fashion. Further, that aim is already achieved by denying bond to dangerous individuals or revoking the bonds of individuals who commit further crimes. *See, e.g., Salerno*, 481 U.S. at 748. Artificially lengthening a person's sentence, however, does very little to protect the public. It is simply retributive. *See Trop v. Dulles*, 356 U.S. 86, 96 (1958) ("If the statute imposes a disability for the purposes of punishment—that is, to reprimand the wrongdoer, to deter others, etc., it has been considered penal."). Further, as demonstrated *supra*, the Statute "promotes the traditional aims of punishment." *Bell*, 441 U.S. at 537-38. Further still, the "behavior to which" the Statute applies is expressly "already a crime." *Id.*; S.C. Code Ann. § 24-13-40(3) ("when the prisoner *commits a subsequent crime* while out on bond" (emphasis added)); *id.* § 17-15-270 (felony offense for committing a violent crime while out on bond). And to the extent the Statute applies to those who "commit[] a crime," it is imposed only after a finding of intent, since essentially all crimes require some level of intent. And, by taking away a benefit to which Appellant was otherwise entitled, the Statute would have been historically understood as punishment. *Ellingburg*, 607 U.S. at 182 (Thomas, J., concurring) ("The power of punishing an offender was the power to harm the offender *in a way that was otherwise forbidden*...." (emphasis added)).[5]

[5] Had Appellant gone to trial, he likely would have been subjected to a far greater prison term, on top of receiving no credit for his time served in pre-trial detention. *See* Brian D. Johnson, *Trials and Tribulations: The Trial Tax and the Process of Punishment*, 48 CRIME & JUST. 313, 332 (2019) (one study reviewing South Carolina found that going to trial was associated with a nine-fold increase in the likelihood of incarceration). Out of all its faults, the Statute's most dubious practical effect is to encourage a defendant to plead guilty as quickly as possible since they will never regain the "dead time" they spend in pre-trial detention. In this way, the Statute represents just the newest mechanism to be employed by the state to replace "the jury trial" with

This is especially so under the facts of this case. Appellant spent 203 days in pre-trial detention *prior* to becoming subject to the bond conditions he purportedly violated. Therefore, the plea court's decision to credit him with no time-served credit had the effect of retroactively revoking credit that he had earned prior to becoming subject to the Statute. This is wholly divorced from the Statute's purported aim of protecting the public from repeat offenders. The retroactive revocation of a benefit that Appellant was otherwise entitled to, as a direct result of past conduct, can only be punitive. *See, e.g., Punishment, Black's Law Dictionary, supra*; *Ex Parte Garland*, 71 U.S. (4 Wall.) 333, 345 (1866) (statute barring attorneys from practicing in federal courts for the past conduct of participating in the Civil War on the side of the Confederacy was punitive); *Trop*, 356 U.S. at 97 (denationalization of convicted military deserter is punitive). Further still, Appellant was retroactively denied 203 days, almost seven months, of time-served credit based on technical violations of a bond order. The plea court's order therefore has the direct effect of lengthening Appellant's prison term by nearly seven months, even though Appellant *did not commit an additional crime*. Even if there were some alternative, non-punitive purpose of the Statute, its application to Appellant would be "excessive in relation to the alternative purpose" of the Statute. *Salerno*, 481 U.S. at 748. Essentially, Appellant was sentenced to seven months' imprisonment for acts that do not constitute a crime.

The denial of time-served credit, especially to Appellant, is punitive. The Statute therefore violates the Due Process Clause. Appellant's sentence must be reversed.

***2. The Statute implicates a fundamental right and does not survive strict scrutiny.***

Further, the Statute is unconstitutional for the independent reason that it infringes upon the fundamental right to be free of incarceration and is not narrowly tailored to achieve a

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"a conveyor belt of plea bargains." *Hunter v. United States*, 146 S.Ct. 1702, 1715 (2026) (Gorsuch, J., concurring).

compelling government interest. Accordingly, the Statute is unconstitutional, and this Court should reverse.

"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). The Due Process Clause contains two different types of 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." *Salerno*, 481 U.S. at 746 (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 if so, the court must determine "what process is due under the 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, meaning that the state bears the burden to demonstrate that the statute is narrowly tailored to further a compelling state interest. *Id.* at 140-41, 568 S.E.2d at 347. If a fundamental right is not implicated, the statute must be rationally related to a legitimate government purpose. *State v. McSwain*, 445 S.C. 276, 283-84, 914 S.E.2d 124, 127-28 (2025).

At the outset, therefore, the question is whether the Statute implicates a fundamental right. The Statute implicates the *most* fundamental right: the right of the citizenry to their personal 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); Note, *Sentence Crediting for the State Criminal Defendant – A Constitutional Requirement*, 34 OHIO ST. L. J. 586, 589 (1973) ("Sentence crediting by its very nature involves a question of denial of personal liberty; whether such crediting occurs will often determine the length of the convicted defendant's jail time.").

Generally, a person may not be committed to imprisonment without being convicted and sentenced by a court; a person may not be detained pre-trial unless it is required to ensure his presence in court. *State v. Ellefson*, 266 S.C. 494, 500, 224 S.E.2d 666, 669 (1976) (*citing Stack*

*v. Boyle*, 342 U.S. 1 (1951)). "The state's interests in bail or pretrial incarceration are to insure [sic] the presence of the accused at trial and to protect the public from a potentially dangerous recidivist." Note, *Credit for Time Served Between Arrest and Sentencing*, 121 U. PENN. L. REV. 1148, 1154 (1973). And the Due Process Clause forbids punishment prior to conviction and sentencing. *e, e.g., Bell*, 441 U.S. at 534 (1979); *Salerno*, 481 U.S. at 747; *see also, e.g., State v. Cook*, 679 P.2d 413, 415 (Wash. App. 1984) ("The restrictions on a person's liberties suffered by pretrial detention is no less 'punishment' than that imposed by the disposition order"); *cf. also, North Carolina v. Pearce*, 395 U.S. 711, 718-19 (1969) (the constitutional guarantee against multiple punishments for the same offense absolutely requires that punishment already exacted must be fully 'credited' in imposing sentence upon a new conviction for the same offense"), *overruled in part on other grounds by Alabama v. Smith*, 490 U.S. 794 (1989).

Because the Statute implicates the fundamental right to liberty itself, strict scrutiny must apply. *Luckabaugh*, 351 S.C. at 140, 568 S.E.2d at 347 (applying strict scrutiny to substantive due process challenge to Sexually Violent Predator Act because it implicated the fundamental right of "freedom from bodily restraint"). Therefore, the Statute must be narrowly tailored to serve a compelling state interest. *Id.*

Appellant concedes that deterring criminal behavior or protecting society from the same is a compelling government interest. *See Salerno*, 481 U.S. at 747. However, the Statute is not at all narrowly tailored to further that interest. To be narrowly tailored, a statute must be "necessary" to achieve the compelling interest. *See Students for Fair Admissions,* 600 U.S. at 207. An instructive example is the South Carolina Supreme Court's treatment of the Sexually Violent Predator Act ("SVP Act"). Facing a substantive due process challenge to the SVP Act, that court determined that strict scrutiny applied. *Luckabaugh*, 351 S.C. at 140, 568 S.E.2d at

347. The SVP Act was found to satisfy 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 (*citing Crane*, 534 U.S. at 412). The SVP Act would not, however, be constitutional if it permitted the state to civilly commit any individual convicted of a sex crime without any determination that he had some disorder preventing him from controlling his behavior. *Crane*, 534 U.S. at 412 ("We do not agree with the State...as it seeks to claim that the Constitution permits commitment of the type of dangerous offender...without any lack-of-control determination" (emphasis deleted)).

Another instructive example of how a law may be narrowly tailored is *Salerno*, 481 U.S. 739. In that case, the United States Supreme Court analyzed, *inter alia*, a substantive due process challenge to the Bail Reform Act. *Id.* That 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. *Id.* at 750. For example, the Bail Reform Act provided that bail could only be denied for a "specific category of extremely serious offenses,"[6] after an evidentiary hearing wherein the

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[6] Currently, crimes of violence carrying maximum terms of imprisonment exceeding ten years, capital offenses, offenses punishable by life imprisonment, Controlled Substances Act violations carrying maximum sentences of greater than ten years, any felony if committed by a person convicted of two or more of the previous offenses, or any felony involving a minor victim and involving the use of a firearm. 18 U.S.C. § 3142(f)(1)(A-E).

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, and the provisions of the strict federal Speedy Trial Act[7] still apply. *Id.*

By contrast, especially when compared to the SVP Act and the federal Bond Reform Act, the Statute here is not narrowly tailored at all. The two statutory provisions at issue here deny time-served credit to anyone who "commits a subsequent crime while out on bond" or has their bond revoked. S.C. Code Ann. §§ 24-13-40(3 & 4). Therefore, as far as the Statute is concerned, it does not matter what crime the original bond was for, how long ago that bond was set, the severity of the subsequent crime, whether the prisoner is even guilty of the first crime, or how long the prisoner was required to remain in pre-trial detention before finally being brought to court. Importantly, in cases where a detainee's bond was revoked, the circumstances under which it was revoked become irrelevant. The law may have been aimed at those twice arrested for violent crimes, but there is no limiting language to that effect. A person out on bond for armed robbery who commits murder is to be treated the same way as a person out on bond for petit larceny who commits disorderly conduct. Adding to this absurdity is the fact that the Statute's language is indifferent as to whether the person is even guilty of either offense. If a person's bond is revoked for an arrest that leads to no conviction, that person loses time-served credit all the same. Even worse, similar to this case, if a person's bond is revoked for failure to meet purely financial obligations, they too lose potentially months or years of time-served credit that the law otherwise entitled them to.

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[7] That act requires that a criminal defendant be indicted within thirty days of arrest and tried within seventy days of indictment with certain excepted days not counting toward the time limit. 18 U.S.C. § 3161. If the government fails to do so, the district court must dismiss the case. *Id.* § 3162(a).

Compared with the SVP Act, which expressly applies only to a narrow subset of sex offenders whom the government can prove dangerous beyond a reasonable doubt, the Statute at issue here, which applies to any and all criminal offenses or any and all reasons why a bond might be revoked, is not at all narrowly tailored. Compared to the federal Bail Reform Act, which Congress passed to address the *exact same problem*, the Statute's problems are even more stark. Unlike federal law, South Carolina has no speedy trial act, a person arrested for a crime has no right to an evidentiary hearing prior to the setting of bond, and the state certainly has no duty to prove by clear and convincing evidence that the arrestee poses a threat to the community. None of this is to mention the fact that federal law *requires* time-served credit. *See* 18 U.S.C. § 3585(b)(2) (a "defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in...detention...as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed.").

Further, the state has numerous less restrictive avenues available for accomplishing the same interest of deterring crime by those out on bond. *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). For example, the state could create a new felony offense which may add consecutive prison time onto the sentences of those who commit certain crimes while already 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). The state could pass a law that makes bond more difficult to obtain or to post if a person is re-arrested. *See id.* § 15(D) (defendant who is charged with a violent offense or felony involving firearm must post a full cash bond). Perhaps the state could impose more streamlined procedures for the state to attempt to revoke the bonds of subsequent arrestees. *Id.* §§ 55(B),

55(C) (doing that). Or the state could rely upon the wisdom of circuit court judges, who may well punish offenders more harshly in sentencing when the fact of a defendant's re-arrest is brought to the judge's attention. And 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)). To the extent that the statute was enacted to close the "revolving door of repeat offenders," *see* Henry McMaster, *Signing Statement, supra*, its goals are not furthered by denying time-served credit to every single defendant who is arrested twice. Simply put, "the ever-growing list of" re-arrestees "dilutes [the statute's] utility." *Powell*, 433 S.C. at 465, 860 S.E.2d at 349 (quoting *Latalien*, 985 A.2d at 30 (Silver, J., concurring)).

For these reasons, the Statute implicates a fundamental right and does not pass strict scrutiny review. Accordingly, the Statute is unconstitutional as violative of the Due Process Clauses of the Fourteenth Amendment and Article I, § 3 of the South Carolina Constitution. This Court should reverse and remand for resentencing.

II.

The plea court erred in applying S.C. Code Ann. § 24-13-40 to Appellant at all because Appellant did not commit a subsequent criminal offense, nor was his bond revoked.

The plea court applied the Statute to Appellant because of a "re-arrest." However, the Statute does not deny time-served credit to anyone re-arrested, it denies time-served credit to anyone who commits a subsequent crime. Because there is no indication in the record that Appellant committed a subsequent *crime*, subsection 3 of the Statute does not apply to him. Further, Appellant's bond was never formally revoked, so subsection 4 of the Statute cannot apply to him either. Accordingly, Appellant is entitled to time-served credit under the Statute, and the plea court erred in failing to award it to him.

To reiterate, as a general rule, a defendant is entitled to credit against his sentence for any amount of time spent in pre-trial detention. S.C. Code Ann. § 24-13-40. There are four exceptions to this rule; the two relevant here are: "(3) the prisoner commits a subsequent *crime* while out on bond; or (4) has bond *revoked* on any charge prior to trial or plea." *Id.* §§ 40(3, 4) (emphasis added).

When interpreting a statute, a court must construe its terms in context "and their meaning determined by looking at other terms used in the statute." *Hinton v. S.C. Dept. of Probation, Parole, and Pardon Svs.*, 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004). A word and its meaning must be construed in conjunction with the purpose of the entire statute and the policy behind the law. *Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997). When a statute is "complete, plain, and unambiguous, legislative intent must be determined from the language of the statute itself." *Id.* "Works must be given their plan and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation." *Hinton*, 357 S.C.

at 333, 592 S.E.2d at 338 (*citing, inter alia, Rowe v. Hyatt*, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996)). However, if a statute is ambiguous, the court may look elsewhere, beyond the plain text of the statute for clues as to legislative intent. *Id.* However, a statute that is penal in nature must be "strictly construed against the state and any doubt must be resolved in favor of the defendant...." *State v. Germany*, 216 S.C. 182, 188, 57 S.E.2d 165, 168 (1949); *State v. DeAngelis*, 257 S.C. 44, 50, 183 S.E.2d 906, 909 (1971) ("Ambiguity or doubts relative to a sentence should be resolved in favor of the accused.").

Here, Appellant was arrested while he was out on bond. But he was arrested for failing to charge his electronic monitoring device and failing to pay for the costs associated with that device. Neither the plain text of the Statute nor the legislative intent behind it supports applying the Statute to Appellant.

Start with the text. Subsection 3 of the Statute denies time-served credit when "the prisoner commits a subsequent *crime* while out on bond." S.C. Code Ann. § 24-13-40(3) (emphasis added). A "crime" is an "act that the law makes punishable; the breach of a legal duty treated as the subject-matter of a criminal proceeding." *Crime, Black's Law Dictionary* (12th ed. 2024); *see also* MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 393 (12th ed. 2026) (defining "crime" as "an illegal act for which someone can be punished by the government."). In other words, a "crime" is an action prohibited by the General Assembly for which the General Assembly has authorized a punishment. *See Beachfront Entertainment, Inc. v. Town of Sullivan's Island*, 379 S.C. 602, 606, 666 S.E.2d 912, 914 (2008).

Appellant's conduct here was failing to charge his electronic monitoring device and failing to keep current on his related financial obligations. However, neither of those actions are

crimes; neither action is the subject of a penal statute passed by the General Assembly.[8] The mere fact of Appellant's arrest, alone, does not mean that Appellant has committed a *criminal* act, and an arrest alone is not sufficient to subject Appellant to Subsection 3 of the Statute.[9] Accordingly, to the extent that the plea court relied on Subsection 3 to deny time-served credit to Appellant, its order is erroneous as a matter of law.

Subsection 4 denies time-served credit when a defendant "has bond *revoked* on any charge prior to trial or plea." S.C. Code Ann. § 24-13-40(4). "[W]here a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense." *State v. Bridgers*, 329 S.C. 11, 14, 495 S.E.2d 196, 197-98 (1997). "Bond revo[cation]" has a specific meaning in the law; it is when a previously set bond is revoked because the defendant violated one of its conditions. *See generally, e.g., State v. Workman*, 274 S.C. 341, 343, 263 S.E.2d 865, 865-66 (1980) (bond properly revoked because defendant "failed to live up to [a] condition of his bond"). When a bond is sought to be revoked, the state must file a written motion meeting statutory particularity requirements. S.C. Code Ann. § 17-15-55(B)(1). After the state's motion, the defendant is entitled to a hearing. *Id.*[10]

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[8] It *is* a criminal offense to "knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device." S.C. Code Ann. § 24-13-425(B). However, Appellant was not charged with this offense, the circuit court's order permitting him to remain on bond did not mention this offense, and the state did not argue when asserting that Appellant was not entitled to time-served credit that Appellant had committed this offense. Accordingly, the mere existence of this offense does not bear on Appellant's case.

[9] In fact, the state has taken this very position in several cases concerning the constitutionality of § 24-13-40(3). *See, e.g.,* Final Reply Brief of Appellant at 11-12, in *State v. Ri'Shon Keltarian Gilliam*, App. Case No. 2024-001400 (Ct. App.).

[10] These conditions were adopted as part of the same Act that created the Statute at issue in this appeal. *See Bond Reform*, S.C. Acts No. 83 § 6. Since these sections are part of the same Act, their references to bond revocations must be presumed to mean the same thing. *See Higgins v.*

Here, however, Appellant's bond was not revoked. Rather, the circuit court permitted him to remain on bond, provided he brought his financial arrearage current. R.*(Termination Order). This is expressly not a revocation of Appellant's bond. Simply, if Appellant's bond were revoked, he would not be able to continue being released thereunder. Accordingly, to the extent that the plea court relied on Subsection 4 of the Statute, its order was erroneous as a matter of law.

These conclusions are consistent with the legislative intent behind the Bond Reform Act. To start, the Statute is unambiguous in this situation. Appellant did not commit a "crime," nor did he have his bond revoked. Since the Statute is unambiguous, the plain text of the Statute is "the best evidence of the legislative intent or will." *Bessinger v. R-N-M Builders & Associates, LLC*, 421 S.C. 349, 358, 806 S.E.2d 731, 736 (Ct. App. 2017); *see also, Hodges v. Rainey*, 341 S.C. 79, 87, 553 S.E.2d 578, 582 (2000) ("While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that this Court can completely rewrite a plain statute."). Beyond that, however, the legislative intent of the Statute is transparently to protect society from "repeat offenders and career criminals" and "those who continue to terrorize our citizens, especially when they are out on bond." *See* Mary Green, Live 5 WCSC, *supra*; Henry McMaster, *Signing Statement*, *supra*. Even beyond the statements of the Statute's supporters, however, the actions taken by the General Assembly in the remainder of the Bond Reform Act demonstrate this intent. The General Assembly also created more streamlined procedures for revoking bonds, *see Bond Reform*, S.C. Acts No. 83, § 6, provided for the automatic revocation of bond if a defendant is charged with certain offenses, *id.*, and made it substantially more difficult for a defendant to post a subsequently set bond after committing

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*State*, 307 S.C. 446, 449, 415 S.E.2d 779, 801 (1992) (sections of a statute that are part of the same legislative scheme must be construed together and each given effect).

subsequent offenses, by providing that any subsequent bond must be deposited in cash, *id.* All of these sections of the Bond Reform Act point in the same direction: the General Assembly was concerned with individuals who commit further crimes after being released on bond. Someone in Appellant's position, however, who was imprisoned until he could become current on his electronic monitoring financial obligations, is decidedly not what the General Assembly had in mind. *See Bond Reform*, S.C. Acts No. 83, § 13 ("Nonpayment of premium fees alone is not sufficient cause to warrant immediate incarceration of the defendant.").

For these reasons, Appellant is not subject to the Statute at all. Because Appellant does not fall within one of the four statutory exceptions to the general rule that all pre-trial detainees must be credited for their time-served, it was legal error for the plea court to refuse to award such credit. *Boggs*, 388 S.C. at 316, 696 S.E.2d at 598. Accordingly, this Court should reverse Appellant's sentence and remand with instructions to credit Appellant for his time served.

## CONCLUSION

For the foregoing reasons, this Court should reverse Appellant's sentence and remand with instructions to credit him for his time served in pre-trial detention.

W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of August, 2026.