

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County

Honorable Vernon F. Dunbar, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL TODD ROBERTS, JR.,

APPELLANT

APPELLATE CASE NO. 2025-002273

INITIAL BRIEF OF APPELLANT

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in denying Appellant full credit for his time served in pre-trial detention, where his bond had been revoked due to the alleged commission of a subsequent crime, and where the court sentenced Appellant to the maximum term of incarceration, since double jeopardy requires that punishment already exacted must fully credited, and the violation is flagrantly apparent as the ruling subjects Appellant to incarceration in excess of the statutory maximum?

STATEMENT OF THE CASE

During the August term of 2025, a Lexington County Grand Jury indicted Appellant, Michael Todd Roberts, Jr., for second-degree domestic violence. R. *(indictment, all pages). On October 29, 2025, Appellant appeared before the Honorable Vernon F. Dunbar for a guilty plea hearing. Appellant was represented by James Holladay, III. Suzanne Shaw prosecuted the case. Tr. 1; Tr. 3, ll. 3-7. Appellant pleaded guilty as indicted. Tr. 3, l. 3 – 8, l. 7. The court sentenced Appellant to three years of incarceration with credit for fourteen days of time served. Tr. 13, l. 23 – 14, l. 2. This appeal follows.

STANDARD OF REVIEW

“In criminal cases, appellate courts sit to review errors of law only.” *State v. Robinson*, 426 S.C. 579, 591, 828 S.E.2d 203, 209 (2019) (citing *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). “A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law.” *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). “As in all instances, we review the circuit court’s legal and constitutional conclusions with no deference to the circuit court.” *Owens v. Stirling*, 443 S.C. 246, 264, 904 S.E.2d 580, 589 (2024).

ARGUMENT

The court erred in denying Appellant full credit for his time served in pre-trial detention, where his bond had been revoked due to the alleged commission of a subsequent crime, and where the court sentenced Appellant to the maximum term of incarceration, since double jeopardy requires that punishment already exacted must fully credited. The violation is flagrantly apparent as the ruling subjects Appellant to incarceration in excess of the statutory maximum.

Relevant facts

The solicitor noted at the plea hearing that Appellant posted bond on this offense (second-degree domestic violence) on June 23, 2025, that he was charged with second-degree harassment for conduct that occurred thereafter involving the same victim, and that a motion to revoke Appellant's bond was filed on June 27, 2025. The defense confirmed there was a hearing conducted under the Bond Reform Act on June 30, 2025, and the judge revoked Appellant's bond. Appellant remained in the detention center until his plea. Tr. 5, l. 3 – 6, l. 18; Tr. 9, ll. 20-22.

The defense noted Appellant had been detained for 126 days on the offense and the State was dismissing the harassment charge. Defense counsel argued that Appellant should get credit for 126 days' time served, as subsections (3) and (4) of Section 24-13-40 were "unconstitutional," and counsel referred to what "you [i.e., the judge] know" is "our position in our office and certainly the defense bar." Tr. 9, l. 23 – 10, l. 15. The solicitor countered that Appellant was not entitled to credit for time served once his bond was revoked per the Bond Reform Act and asked that Appellant only be given credit for serving approximately two weeks before he bonded out. Tr. 11, l. 16 – 12, l. 22.

The court sentenced Appellant to serve three years' incarceration and granted him credit for fourteen days' time served. Tr. 13, l. 23 – 14, l. 2.

The defense noted in its Rule 203(d)(1)B(iv) explanation to this Court that applying subsections (3) and (4) of section 24-13-40 in this case “would amount to ‘double jeopardy’ because the Defendant would essentially be punished twice for the same offense, by serving time on two separate occasions: before conviction as well as after conviction.”

Discussion

Appellant may not lawfully be punished twice for the same crime—by serving 126 days on the front end in pre-trial detention and three years on the back end in prison. The constitutional violation is particularly apparent in this case as the crime carries a maximum term of imprisonment of three years.

“If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offence.” *Ex parte Lange*, 85 U.S. 163, 168 (1873). The “Double Jeopardy Clause of the Fifth Amendment is applicable to the States through the Fourteenth Amendment.” *Benton v. Maryland*, 395 U.S. 784, 787 (1969). It protects against multiple criminal punishments for the same offense. *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969), *overruled on other grounds by Alabama v. Smith*, 490 U.S. 794 (1989). See *Hudson v. United States*, 522 U.S. 93 (1997) (same). See S.C. Const. art. I, § 12 (“No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself.”); *State v. Brown*, 319 S.C. 400, 407, 461 S.E.2d 828, 832 (Ct. App. 1995) (“The Double Jeopardy Clauses of both the United States and South Carolina Constitutions protect against multiple punishments for the same offense.”).

Pre-trial detention is punishment. *See Stack v. Boyle*, 342 U.S. 1, 4 (1951) (the “traditional right to freedom before conviction” via bail “serves to prevent the infliction of punishment prior to conviction”); *In re Young*, 107 Cal. Rptr. 915, 920 (Cal. Ct. App. 1973) (presentence jail time “is a deprivation of liberty”); *Anglin v. State*, 525 P.2d 34, 36 (Nev. 1974) (“Presentence detention is behind-bars confinement. Legal categories do not remove the punitive aspects of the rigors and restraints of detention.”); *Parker v. Bounds*, 329 F. Supp. 1400, 1401 (E.D.N.C. 1971) (“Pre-trial detention is nothing less than punishment.”). Indeed, the mere existence of the commonplace “time served” sentence is a systemic acknowledgement that pre-trial detention is punitive.

The statute itself supports this understanding. S.C. Code Ann. § 24-13-40 provides in relevant part,

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.

(emphasis added). Prior to 2023, defendants received credit for time served prior to sentencing, unless subject to another sentence. In 2023, the General Assembly added subsections (3) and (4). *Bond Reform*, S.C. Acts No. 83 (2023). The purpose of these amendments was to deter offenders from committing additional crimes while on bond, incapacitate them if they did so that they could not commit even more offenses, and exact retribution by denying them something to

which they would otherwise be entitled: credit for time served.¹ By granting credit for time served in most cases, section 24-13-40 recognizes pre-trial detention is sufficiently equivalent to post-trial imprisonment to justify day-for-day credit on the sentence in satisfaction of the penological goals of punishment: deterrence, incapacitation, and retribution are three of the four legitimate purposes of punishment. *See Graham v. Florida*, 560 U.S. 48, 71 (2010) (legitimate goals of penal sanctions are retribution, deterrence, incapacitation, and rehabilitation); *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.”).

“It seems recognized that the right to credit for jail time awaiting trial on a bailable offense and pending appeal is not a matter of legislative grace but is a right constitutionally mandated, available to state prisoners as well as federal prisoners.” *Durkin v. Davis*, 538 F.2d 1037, 1039–40 (4th Cir. 1976) (footnote omitted). *See Martin v. Leverette*, 244 S.E.2d 39, 41 (W. Va. 1978) (double jeopardy requires credit for time served prior to sentencing, at least where to deny it would result in incarceration in excess of the maximum authorized punishment); *North Carolina v. Pearce*, 395 U.S. at 718 (double jeopardy protection “is violated when punishment already exacted for an offense is not fully ‘credited’ in imposing sentence upon a new conviction for the same offense”).

¹ When the bill was passed by the House, the Speaker 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 Aug. 12, 2026). *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”).

Section 16-25-20(C) provides that a person guilty of second-degree domestic violence “must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned for not more than three years, or both.” Denying Appellant credit for 126 days’ pre-trial detention and sentencing him to the statutory maximum sentence of three years means that he is subject to incarceration for more than three years.² In *North Carolina v. Pearce*, 395 U.S. at 716-17, the United States Supreme Court addressed “whether the Constitution requires that, in computing the sentence imposed after conviction upon retrial, credit must be given for time served under the original sentence.” In holding the Double Jeopardy Clause required prior time served be credited in imposing sentence, the Court explained,

The constitutional violation is flagrantly apparent in a case involving the imposition of a maximum sentence after reconviction. Suppose, for example, in a jurisdiction where the maximum allowable sentence for larceny is 10 years’ imprisonment, a man succeeds in getting his larceny conviction set aside after serving three years in prison. If, upon reconviction, he is given a 10-year sentence, then, quite clearly, **he will have received multiple punishments for the same offense. For he will have been compelled to serve separate prison terms of three years and 10 years, although the maximum single punishment for the offense is 10 years’ imprisonment.** Though not so dramatically evident, the same principle obviously holds true whenever punishment already endured is not fully subtracted from any new sentence imposed.

Id., 395 U.S. at 718 (emphasis added). *Cf. Williams v. Illinois*, 399 U.S. 235, 241-42 (1970) (“[O]nce 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

² Even if it is unlikely Appellant will be incarcerated for the entire sentence, this Court “must determine this matter without reference to the statutory incidents of penal service, such as allowances for good time and eligibility to parole.” *State v. Kimbrough*, 212 S.C. 348, 357, 46 S.E.2d 273, 277 (1948). “Pardon, parole or commutation is an act of grace and a matter of discretion, and may be refused. A just sentence is imperative and must not be denied.” *Id.*

to a period of imprisonment beyond the statutory maximum” by reason of their indigency.); *United States v. Haymond*, 588 U.S. 634, 637 (2019) (“Only a jury, acting on proof beyond reasonable doubt, may take a person’s liberty.”); *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”).

Appellant’s pre-trial detention after his bond revocation was punishment. *Stack v. Boyle*, 342 U.S. at 4. Double Jeopardy protections require that Appellant receive credit for the time he already served. *North Carolina v. Pearce*, 395 U.S. at 717. At both points he is serving time on the same domestic violence charge. He may not be “twice lawfully punished for the same offence.” *Ex parte Lange*, 85 U.S. at 168. The constitutional violation is “flagrantly apparent” in this case as it was in the Supreme Court’s example in *Pearce*, block quoted above. Since Appellant received the maximum sentence, the denial of credit for his time served in detention results in his incarceration in excess of the statutory maximum. *Pearce*, 395 U.S. at 718.

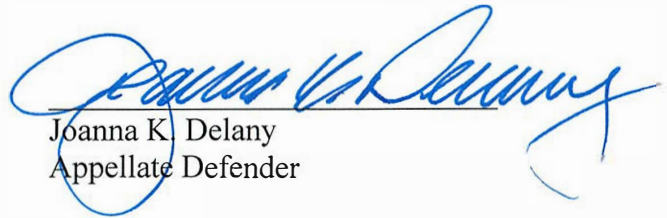
State v. Sanders, 251 S.C. 431, 445, 163 S.E.2d 220, 228 (1968), should be distinguished. Sanders challenged the trial judge’s failure to give him credit for time spent in jail prior to sentence, arguing that imposition of “the maximum sentence, without credit for the presentence time spent in jail, amounted to the imposition of cruel and unusual punishment[.]” *Id.* The Court premised its decision on the fact that “there is no statute in this State requiring the trial judge to give a prisoner credit for the time spent in custody prior to trial” and concluded that “[s]ince the presentence jail time was no part of the punishment imposed, it cannot be considered in determining whether the punishment was cruel or unusual.” *Id.* *Sanders* does not control the analysis because the predecessor statute that existed at the time did not provide mandatory credit

for time served prior to trial. *Id.* Moreover, Sanders did not assert a double jeopardy claim, as Appellant does in this case.

Appellant was entitled to have his time served in pre-trial detention fully credited against his sentence. U.S. Const. amend. V; S.C. Const. art. I, § 12; *North Carolina v. Pearce*, 395 U.S. at 717.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his sentence and remand with instructions to fully credit him for his time served in pre-trial detention.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of August, 2026.

CERTIFICATE OF COUNSEL

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

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Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

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This 12th day of August, 2026.