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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC N. VANCLEAVE,

APPELLANT

APPELLATE CASE NO. 2025-002296

INITIAL BRIEF OF APPELLANT

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¹ See page 2 of Order Denying [Appellant’s] Motion for Lost Credit.

² Appellant was tried and sentenced on April 2, 2013. The statute allowing GPS house arrest time served credit was not passed until June 7, 2013.

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STATEMENT OF ISSUE ON APPEAL

The motion hearing judge erred in denying appellant's request for time served credit while on house arrest under GPS monitoring prior to his trial per the ruling that the trial judge who sentenced appellant "made the conscious decision in refusing [such] credit"³ because there was nothing in the record indicating that the trial judge who sentenced appellant on April 2, 2013, which occurred before the June 7, 2013 amendment to the statute that allowed GPS house arrest time served credit to become law,⁴ considered such a sentencing option at that time.

³ See page 2 of Order Denying [Appellant's] Motion for Lost Credit.

⁴ Appellant was tried and sentenced on April 2, 2013. The statute allowing GPS house arrest time served credit was not passed until June 7, 2013.

STATEMENT OF THE CASE

Appellant Eric N. Van Cleave was found guilty of second degree criminal sexual conduct with a minor, lewd act on a child, ABHN, and third degree criminal sexual conduct per jury trial held during the April 2013 term of the Barnwell County General Sessions Court before Judge Doyet A. Early, III. Appellant was sentenced to imprisonment for an aggregate period of twenty years. Attorney Robert T. Williams, Sr., represented appellant at trial, and Assistant Solicitors Susanna M. Ringler and Jack W. Hammack Jr. prosecuted the case.

On August 25, 2025, appellant filed a Motion for Lost Credit, and on October 21, 2025, a hearing was held in response to the matter at the Barnwell County Courthouse before Judge Walton J. McLeod. Appellant appeared pro se at the hearing, and Assistant Leigh Staggs appeared on behalf of the state.

On December 5, 2025, Judge McLeod issued an Order Denying [Appellant's] Motion for Lost Credit. Appellant appealed. This brief follows.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors 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 motion hearing judge erred in denying appellant's request for time served credit while on house arrest under GPS monitoring prior to his trial per the ruling that the trial judge who sentenced appellant "made the conscious decision in refusing [such] credit"⁵ because there was nothing in the record indicating that the trial judge who sentenced appellant on April 2, 2013, which occurred before the June 7, 2013 amendment to the statute that allowed GPS house arrest time served credit to become law.⁶ considered such a sentencing option at that time.

Appellant was convicted on April 2, 2013. Prior to trial, appellant was on house arrest on GPS monitoring from September 2011 to September 2012. Appellant's Motion for Lost Credit filed with the Barnwell County Clerk of Court on November 14, 2025 reads as follows:

[Appellant][asks] this court to give lost credit back while on GPS monitoring/House Arrest for the dates of September 16, 2011 through September 21, 2012, prior to my conviction...according to South Carolina Statute 24-13-40, full credit may be given for anything spent of GPS monitor/House Arrest...

S.C. Code Ann § 24-13-40 (2013) reads as follows:

In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing. *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; or (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 no receive credit for time served prior to trial in reduction of his sentence for the second offense.

⁵ See page 2 of Order Denying [Appellant's] Motion for Lost Credit.

⁶ Appellant was tried and sentenced on April 2, 2013. The statute allowing GPS house arrest time served credit was not passed until June 7, 2013.

However, on June 7, 2013, S.C. Code Ann. § 24-13-40 (2013), was amended to read as follows:

The computation of the time served...must be calculated from the date of the imposition of the sentence....[and] 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.

In the Order denying relief in the instant case, the motion hearing judge ruled as follows:

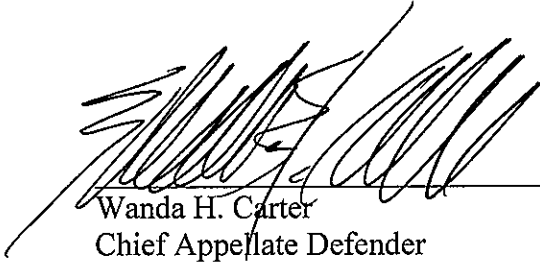
Defendant claims that [the trial judge] erred in not giving him credit for the time he served under house arrest and GPS monitoring prior to his conviction. Due to the age of this case, there is nothing available to this Court to support the assertion that [the trial judge] did not intend to refuse the defendant credit for his time on house arrest. This Court presumes that Judge Early, having presided over the trial, with all the facts at his disposal, and with all his experiences and discretion as the sentencing judge, made the conscious decision in refusing the Defendant his credit. As such, this Court sees no reason to now overrule or otherwise alter the actions of [the trial judge]. Tr. _____.

The presumption that the trial judge who sentenced appellant harbored such prescience and clairvoyance as to know that on April 2, 2013, when appellant was sentenced, that GPS house arrest credit would become a legal sentencing option by way of the amended new law that was passed on June 7, 2013, would constitute an untenable position that presupposes that said trial judge could foresee future sentencing amendments to statutory sentencing laws and apply such foreseeable knowledge at sentencing.

The motion hearing judge erred in denying appellant's request for time served credit for time spent while on house arrest under GPS monitoring prior to trial.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request a remand for a new sentencing hearing in the case.



Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of August, 2026.