

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Greenville County

Honorable Jessica A. Salvini, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

IZEL MARIO PAUL,

APPELLANT

APPELLATE CASE NO. 2026-000449

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether S.C. Code Ann. § 24-13-40(3) is unconstitutional?

STATEMENT OF THE CASE

On November 25, 2025, a Greenville County grand jury indicted Appellant for trafficking in methamphetamine, 28 to 100 grams. R.*(Indictment). Appellant pleaded guilty to trafficking in methamphetamine, second offense, on February 10, 2016, before the Honorable Jessica A. Salvini. Tr. 1, 3. Kaitlin A. Diaz and Michael G. Martinez represented Appellant; Caroline D. Kneece represented the state. Tr. 1. Judge Salvini sentenced Appellant to sixteen years' imprisonment with no credit for time served. Tr. 16, ll. 10-13.

Appellant noted a timely appeal. Pursuant to Rule 203(d)(1)(B)(iv), SCACR, Appellant asserted that the statute used to deny his credit for time served, S.C. Code Ann. § 24-13-40(3), was unconstitutional. R.*(Rule 203 Explanation). On April 9, 2026, this Court allowed the appeal to proceed. R.*(Allowed to Proceed Letter).

This appeal follows.

STATEMENT OF FACTS

Appellant pleaded guilty in exchange for a negotiated sentencing range of fifteen to twenty-two years' imprisonment. Tr. 4, ll. 8-13.

During mitigation, plea counsel Diaz told the plea court that Appellant had spent 471 days in pretrial detention. Tr. 12, ll. 10-12. The solicitor told the plea court that Appellant had served eight days on his initial arrest but had been arrested nine times since. Tr. 12, ll. 16-17. However, all the other charges were being dismissed as part of this guilty plea. Tr. 12, l. 18. The plea court told Appellant that the negotiated plea deal was "a gift from the state," and that his attorneys had "done an excellent job to be able to get the state to agree to 15 to 22." Tr. 12, ll. 19-23.

Plea counsel Diaz told the plea court that Appellant suffers from lupus, which affects his daily life. Tr. 13, ll. 4-6. Appellant had a seizure in the days leading up to the plea, which plea counsel believed was "caused by the brain tumor that he has indicated that he – or does have, I guess." Tr. 13, ll. 7-9. The plea court then read Appellant's aforementioned letter, which the plea court described as "just asking [the court] for mercy." Tr. 14, ll. 21-22.

Plea counsel Martinez then addressed the plea court. During his presentation, he argued the following:

We would also – I understand – the bond statute. I would, also, ask the Court to – to grant him the credit. As I've raised this before, I would assert that it's a double jeopardy violation to not grant him the credit as he is being, essentially, punished twice for the time that he has served.

I would, at least, ask the Court to check the credit for time served box on the sentencing sheet. And SCDC can give him whatever credit they deem appropriate.

Tr. 15, l. 18 – 16, l. 1. The plea court denied the request. Tr. 16, ll. 2-4. The plea court sentenced Appellant to sixteen years' imprisonment, with no credit for time served. Tr. 16, ll. 11-12. In giving its sentence, the plea court twice stated that it was taking into consideration the time that Appellant had served in pre-trial detention. Tr. 16, ll. 8-9, 13.

STANDARD OF REVIEW

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).

ARGUMENT

S.C. Code Ann. § 24-13-40(3) is unconstitutional.

Due to arrests for ultimately dismissed charges, Appellant was denied credit for the 477 days he spent in pretrial detention. Therefore, Appellant was punished for his arrests. However, because the government may only punish Appellant if it convicts him of a crime, the denial of Appellant's time-served credit denied him his right to due process of law under the Fourteenth Amendment to the United States Constitution.

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); *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."). 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”).¹ 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. Under the Statute, pre-trial detention is unconstitutionally punitive.

“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). This means that a court must

¹ 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).

determine what interest a statute implicates, and “what process is due under those circumstances.” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 571-73 (1972). Generally, the government may only impose punishment if it does so through the criminal justice system. *See, e.g., Kansas v. Hendricks*, 521 U.S. 345, 361-62 (1997). This means that a person can only be punished if they are given the process that comes with a criminal trial, *i.e.*, the presumption of innocence or proof beyond a reasonable doubt. *See, e.g., In re Winship*, 397 U.S. 358, 364 (1970). For this reason, pre-trial detention cannot be punitive because a person in pre-trial detention “has not been adjudged guilty of any crime.” *Bell v. Wolfish*, 441 U.S. 520, 535-36 (1979). Therefore, if a person has been detained pre-trial, the state may only “subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment or otherwise violate the Constitution.” *Id.* at 536-37.

The Court must look to several factors to determine whether the Statute is punitive. First and foremost, if the General Assembly expressly intended the Statute to be punitive, it is. *United States v. Salerno*, 481 U.S. 739, 747 (1987); *see Ellingburg v. United States*, 607 U.S. 163, 168 (2026) (“And so long as the text and structure of the Act demonstrate that Congress intended at least ‘to impose punishment,’ that ‘ends the inquiry.’”) (*quoting Smith v. Doe*, 538 U.S. 84, 92 (2003)). To determine this, the Court may apply several “tests traditionally applied to determine whether a governmental act is punitive in nature.” *Bell*, 441 U.S. at 537. The Court should consider:

Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears

excessive in relation to the alternative purpose assigned are all relevant to the inquiry, and may often point in differing directions.

Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69 (1963) (footnotes omitted). The first several tests are designed to determine whether the legislature intended to impose a punishment. If it did not, then the Court must apply the last test: “Unless [the legislature] expressly intended to impose punitive restrictions, the punitive/regulatory distinction turns on ‘whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned’” thereto. *Salerno*, 481 U.S. at 747 (first alteration added, second alteration in original).

Criminal punishment, historically, was broadly defined: it meant “coercive penalties for...transgressions” against “the laws of society.” 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 8 (1769). A statute will be considered punitive if it imposes some disability “for the purposes of punishment—that is, to reprimand the wrongdoer, to deter others, etc.....” *Trop v. Dulles*, 356 U.S. 86, 96 (1958); *see also, Owens v. Stirling*, 443 S.C. 246, 268, 904 S.E.2d 580, 591 (2024) (the “three purposes of punishment” are “(1) reform or rehabilitation, (2) general deterrence, and (3) specific deterrence”).

Here, the Statute was passed for the purpose of deterring criminal behavior while on bond and working retribution against those who do. The Statute was therefore passed for the purposes of punishment and is therefore punitive. 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)).

Because the Statute is for the purpose of deterrence, it is “chiefly intended for the prevention of future crimes;” historically meeting the definition of punishment. 4 BLACKSTONE, *supra*, at 16.

Further, the Statute is retributive; another purpose of punishment. *Trop*, 356 U.S. at 97. 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.”). The Statute therefore exists to deny a benefit to a person as a consequence of past conduct. *See, e.g., 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); *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)). In this way, the Statute can only be punitive.

Therefore, because the Statute is for the purpose of deterrence, and because it works retribution against those defendants whose bond is revoked, the “text and structure of the Act demonstrate that [the General Assembly] intended at least ‘to impose punishment.’” *Ellingburg*, 607 U.S. at 168. Because pre-trial detention cannot be punitive, the Statute violates the Due Process Clause of the Fourteenth Amendment.

B. The Statute Violates the Double Jeopardy Clause.

Appellant was denied time-served credit due to subsequent arrests while on bond. However, the charges arising from those subsequent arrests were dismissed. Therefore, he was punished twice for the offense to which he pleaded guilty.

“No person shall...be subject for the same offense to be twice put in jeopardy of life or limb....” U.S. Const. amend. V (changed to American English spelling); *Benton v. Maryland*, 395 U.S. 784, 787 (1969) (Double Jeopardy Clause applicable to the states under the Fourteenth Amendment); 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....”). The Double Jeopardy Clause requires that “no man can be twice lawfully punished for the same offense.” *Ex Parte Lange*, 85 U.S. (18 Wall.) 163, 168 (1873). “[T]his basic constitutional guarantee is violated when punishment already exacted for an offense is not fully ‘credited’ in imposing sentence upon a new conviction for the same offense.” *North Carolina v. Pearce*, 395 U.S. 711, 718 (1969), *overruled in part on other grounds by Alabama v. Smith*, 490 U.S. 794 (1989).

For the reasons stated *supra*, the denial of time-served credit to Appellant in this case is punitive. Therefore, the question becomes whether that punishment, combined with Appellant’s sentence, is a double punishment for the purposes of the Double Jeopardy Clause.

Pearce is illustrative here. In that case, a North Carolina court convicted a defendant of a crime and sentenced him to 12-to-15 years’ imprisonment. 395 U.S. at 713. Several years later, that defendant’s conviction was reversed in a state post-conviction relief proceeding. *Id.* He was retried and convicted a second time. *Id.* This time, he was sentenced to eight years’ imprisonment, but he was not credited for the prison time he already served. *Id.* The result was that his new prison term, when combined with the time he had already served, was a longer sentence than originally imposed. *Id.* The Supreme Court held that this factual situation violated the Double Jeopardy Clause. *Id.* at 718. The fact that the defendant’s sentence was lengthened meant that he was given two punishments for the same offense. *Id.* “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.*

The logic from *Pearce* can be applied here. According to one court, when addressed with a similar situation:

Pre-trial detention is nothing less than punishment. An unconvicted accused who is not allowed or cannot raise bail is deprived of his liberty. His incarceration is indistinguishable in effect from that of one, such as *Pearce*, who is retried after obtaining post-conviction relief. In both instances, the power of the state has been utilized to punish the complainant. Fundamental notions of fair play as well as the double jeopardy clause require that [the defendant] receive credit for pre-commitment incarceration.

Culp v. Bounds, 325 F. Supp. 416, 419 (W.D.N.C. 1971); *see also Wright v. Maryland Penitentiary*, 429 F.2d 1101, 1103 (4th Cir. 1970) (recognizing that the denial of time-served credit “arguably violates...the double jeopardy clause” but ultimately deciding the case on procedural grounds). There is “no practical, realistic, or substantive difference between time spent in pretrial detention for want of bail and time spent in detention pending an appeal of a conviction or time spent under a subsequently vacated and reinstated sentence.” *Reanier v. Smith*, 517 P.2d 949, 954 (Wash. 1974) (*en banc*).

Another instructive case is *Wilson v. North Carolina*, 438 F.2d 284 (4th Cir. 1971). In that case, the United States Court of Appeals for the Fourth Circuit reviewed a habeas petition from a prisoner serving a life sentence with the possibility of parole after ten years. *Id.* at 285. At the time, in North Carolina, a sentence was not deemed to have begun until all appellate remedies had been exhausted. *Id.* The defendant sought to have the time he spent in prison in between the date he was sentenced and the date of the dismissal of his appeal credited towards his parole eligibility date. *Id.* at 285-86. The Fourth Circuit found that the denial of that time-served credit violated the Double Jeopardy Clause. *Id.* at 286. This is because the prisoner’s

confinement while his appeal was pending was punishment, and the Double Jeopardy Clause requires credit for “punishment already exacted.” *Id.* (quoting *Pearce*, 395 U.S. at 717).

Here, Appellant was *alleged* to have committed other “offenses” while out on bond, but he was never convicted of or sentenced for those offenses. Therefore, the punishment exacted against him, that his time-served credit was denied and revoked, cannot have constitutionally resulted from any other “offense” than the one he pleaded guilty to. *See Bell*, 441 U.S. at 536-37. Since he was already punished for trafficking methamphetamine, his sentence for that offense constitutes a second punishment. And when “punishment already endured” is “not fully subtracted from any new sentence imposed,” *Pearce*, 395 U.S. at 718, the sentence is unconstitutional.

Therefore, the plea court erred in refusing to credit Appellant for his time served. Accordingly, this Court should reverse and remand for resentencing.

CONCLUSION

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



Molly M. Keegan

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This 23rd day of September, 2026.

ATTORNEYS FOR APPELLANT