

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Stephanie P. McDonald, Circuit Court Judge

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S.C. Supreme Court

ADRIAN WHITE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2014-000846

JOHNSON PETITION FOR WRIT OF CERTIORARI

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in failing to give Petitioner credit for time served on house arrest?

STATEMENT

Indictments

On October 28, 2009, Petitioner Adrian White was indicted by the Berkeley County Grand Jury for assault and battery with intent to kill (“ABWIK”) and possession of a weapon during the commission of a violent crime. App. 82-86.

Guilty Plea

On July 23, 2012, Petitioner pled guilty to the two charges before the Honorable Kristi L. Harrington. App. 1-5. Petitioner was represented by J. Mitchell Lanier¹, and the State was represented by Assistant Solicitor Adrian G. Dejeu. App. 1.

The State agreed to a negotiated sentence of twenty years, suspended upon the service of ten years followed by five years probation. App. 5, ll. 20-24. Judge Harrington sentenced Petitioner to twenty years for ABWIK suspended upon the service of ten years followed by five years probation. On the possession of a weapon charge, Judge Harrington sentenced Petitioner to five years. The sentences were ordered to run concurrent. App. 15, ll. 5-17; 84; 87. Petitioner did not file a direct appeal.

Application for Post-Conviction Relief and Evidentiary Hearing

On January 2, 2013, Petitioner filed his application for post-conviction relief (“PCR”). App. 17-29. The State filed its Return on or about October 10, 2013. App. 30-36.

An evidentiary hearing was held before the Honorable Stephanie P. McDonald on November 20, 2013. App. 37-69. Petitioner was represented by Lance S. Boozer, and the State was represented by Assistant Attorney General Ashleigh R. Wilson. App. 37.

¹ Mr. Lanier passed away prior to the filing of the PCR application. App. 71.

Petitioner testified that his plea counsel began representing him the day after he was charged in June 2009. Petitioner was able to make bond and was placed on house arrest for three years prior to pleading guilty. App. 41, l. 10 – 42, l. 5.

Petitioner asserted that he asked his plea counsel to request credit for the time he served on house arrest but that his plea counsel refused to do so. App. 42, ll. 6-20. Petitioner also requested in his PCR application that the PCR court award him credit for the time he served on house arrest. App. 24.

Petitioner further testified that after he pled guilty, he learned that his plea counsel had represented the victim's brother and father. Plea counsel did not disclose that representation to Petitioner. If Petitioner had known that information, he would not have retained his plea counsel for representation. App. 42, l. 21 – 43, l. 15.

Order of Dismissal

Judge McDonald filed her Order of Dismissal on March 26, 2014 denying Petitioner's PCR application. App. 71-81. In this Order, Judge McDonald denied Petitioner credit for time served under house arrest. She further ruled that Petitioner had not shown any conflict of interest by his plea counsel's prior representation of the victim's family members. Finally, she ruled that Petitioner's plea was entered freely and voluntarily.

Id.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in failing to give Petitioner credit for time served on house arrest.

Prior to Petitioner's guilty plea, he had served three years of house arrest. App. 42, ll. 1-17. Petitioner asked the PCR court to credit the three years he served on house arrest to his sentence. App. 24. The PCR court declined to credit Petitioner with the three years served on house arrest. App. 77.

S.C. CODE ANN. § 24-13-40 provides:

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. . . . 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*.

Id. (emphasis added).

This statute allows credit for time spent under house arrest. Even though the statute was not enacted until June 2013 after Petitioner was sentenced, this statute applies retroactively such that Petitioner is entitled to his house arrest credit of three years. While statutes are generally construed prospectively rather than retroactively, a statute is applied retroactively when the statute is remedial or procedural in nature. Edwards v. State Law Enforcement Div., 395 S.C. 571, 579, 720 S.E.2d 462, 466 (2011). A statute is remedial where it creates new remedies for existing rights or enlarges the rights of persons under disability. Id.

Here, § 24-13-40 creates a new remedy for the existing right of the computation of the time served by prisoners and enlarges the amount of credit a prisoner is entitled to in calculating the time he must serve on his sentence. Therefore, contrary to the PCR court's

ruling, § 24-13-40 applies retroactively because it is remedial in nature. Under § 24-13-40, Petitioner is entitled to three years credit for the time he served on house arrest, and the PCR court erred in failing to grant this credit to Petitioner. See Allen v. State, 339 S.C. 393, 529 S.E.2d 541 (2000) (in post-conviction relief action, petitioner was entitled to credit for time served under § 24-13-40); Blakeney v. State, 33 S.C. 86, 529 S.E.2d 9 (2000) (same).

CONCLUSION

Based on the foregoing reasons, Petitioner Adrian White requests this Court to grant his Petition for Writ of Certiorari and allow full briefing on the issue.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO BERKELY COUNTY
STEPHANIE P. MCDONALD, CIRCUIT COURT JUDGE

ADRIAN WHITE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2014-000846


PETITION TO BE RELIEVED AS COUNSEL

Counsel for Adrian White states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on November 20, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Adrian White.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender
ATTORNEY FOR PETITIONER

This 21st day of November, 2014.

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CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Ashleigh R. Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Adrian White, #351674, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 21st day of November 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 21st day
of November, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.