

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County

R. Knox McMahon, Circuit Court Judge

RECEIVED

JAN 13 2015

S.C. Supreme Court

JOHN WILLIAM DIXON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002193

BRIEF OF APPELLANT
PURSUANT TO WHITE v. STATE

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS1

TABLE OF AUTHORITIES2

STATEMENT OF ISSUE ON APPEAL.....3

STATEMENT OF THE CASE.....4

ARGUMENT5

CONCLUSION7

TABLE OF AUTHORITIES

Cases

<u>North Carolina v. Alford</u> , 400 U.S. 25 (1970)	4
<u>State v. Dozier</u> , 263 S.C. 267, 210 S.E.2d 255 (1974)	6
<u>White v. State</u> , 263 S.C. 110, 208 S.E.2d 35 (1974)	4

Statutes

S.C. Code Ann. §24-13-40	6
--------------------------------	---

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to give petitioner credit for time served in Florida while a “hold” was placed on him by South Carolina authorities for a probation revocation violation, since petitioner had concluded his Florida sentence, he was only being held in Florida jail pursuant to a South Carolina arrest warrant, and he was thus in fairness entitled to credit for this time served?

STATEMENT OF THE CASE

Petitioner was indicted in December 2007 by the York County Grand Jury for threatening the life of a public official. App. 66-67. Petitioner entered an Alford¹ plea to this charge on June 20, 2008. App. 5, ll. 11-22; 7, ll. 15-22. In return for the plea, the state dismissed a charge of “giving false information about a bomb.” Tr. 5, ll. 11-15. Petitioner was represented by Gary Lemel. App. 1. At the conclusion of the plea proceeding the Honorable R. Knox McMahon sentenced appellant to five years imprisonment suspended on service of five years probation. App. 18, ll. 23 – 19, l. 7.

Petitioner subsequently had ninety days of his probation revoked, and he was continued on probation by the Honorable John C. Hayes, III on March 8, 2010. App. 67.

On May 12, 2012 petitioner again appeared before Judge Hayes for a probation revocation hearing. Mark McKinnon now represented petitioner at the revocation hearing. App. 67; Supp. App. 1. At the beginning of the revocation hearing Judge Hayes noted that petitioner had been convicted on various charges in Florida. Supp. App. 4, l. 1 – 6, l. 1.

Defense counsel McKinnon asked the revocation judge to give petitioner a total credit of three hundred days for time served in South Carolina and also for when a “*hold was put on him in South Carolina... in Florida.*” Counsel estimated “that would put him at 300 hundred days of time served.” Supp. App. 6, ll. 1-5. (emphasis added).

The judge revoked petitioner’s probation in full and gave him credit for time served awaiting his probation revocation hearing in South Carolina only. App. 6, l. 25 – 7, l. 13. The sentencing sheet reveals this was only 90 days of credit. App. 79.

This White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) appeal follows.

¹ North Carolina v. Alford, 400 U.S. 25, 37 (1970).

ARGUMENT

The court erred by refusing to give petitioner credit for time served in Florida while a “hold” was placed on him by South Carolina authorities for a probation revocation violation, since petitioner had concluded his Florida sentence, he was only being held in Florida jail pursuant to a South Carolina arrest warrant, and he was thus in fairness entitled to credit for this time served.

Relevant Facts

As seen, defense counsel McKinnon told the judge that a hold was placed on petitioner while he was in jail in Florida based upon the South Carolina revocation warrant. The judge erred by ruling that petitioner was only entitled to time served for the time he served in South Carolina jails. App. 79.

There was no meaningful distinction between giving normal credit for time served in South Carolina, and credit that should have been given to petitioner for time he served in a Florida jail while a hold was placed on him. Petitioner would have been released but for the South Carolina probation arrest warrant. Consequently this Court should issue an order that petitioner receive credit for the time served in Florida after he completed his Florida sentence while a “hold” was placed on him until he could be returned to South Carolina and his probation revocation hearing held.

As seen, defense counsel stated that petitioner should be given credit from July 12, 2011 when the “hold” was placed on him in Florida because of the South Carolina probation revocation warrant. Counsel said this would give petitioner credit for 300 days, rather than just the 90 days previously revoked. The judge only gave petitioner credit for the 90 days “you’ve served on this particular charge here in South Carolina.” Supp. App. 5, l. 23 – 7, l. 11.

The statute in point is:

24-13-40. Computation of time served by prisoners.

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; 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 not receive credit for time served prior to trial in a reduction of his sentence for the second offense.²

Neither exception (1) nor (2) to the statute is applicable. The geographic fact that petitioner was held in a Florida jail after he had finished his Florida sentence is no basis for the court's ruling. He was held in Florida pursuant to a South Carolina detainer.

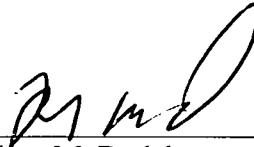
The opinion in State v. Dozier, 263 S.C. 267, 210 S.E.2d 255 (1974) underpins petitioner's position. The court's limitation to time served in South Carolina is thus in error. Finally, if this Court finds this record is insufficient to determine exactly how many days credit petitioner is entitled to from his jail service in Florida then this case should be remanded for that purpose of determining how much time served petitioner is entitled to in this case.

² The hearing in this case was held on May 7, 2012. However, the house arrest provision of the 2013 amendment is not at issue, and this statute controls.

CONCLUSION

By reason of the foregoing arguments, petitioner is entitled to an order awarding him time served for the time he served in a Florida prison while awaiting return to South Carolina to face a probation revocation hearing based on the South Carolina probation arrest warrant.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

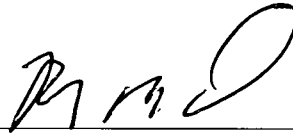
ATTORNEY FOR APPELLANT

This 13th day of January, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Brief of Appellant pursuant to White v. State 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.”

January 13, 2015



Robert M. Dudek
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
R. Knox McMahon, Circuit Court Judge

JOHN WILLIAM DIXON,

PETITIONER,

V.

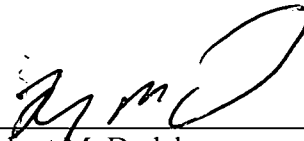
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002193

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant pursuant to White v. State in the above referenced case has been served upon J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Appellant pursuant to White v. State have been served on John William Dixon at 2687 Sherwood Drive, Bonifay, FL 32425, this 13th day of January, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of January, 2015.

Rhonda Demeise Zaporta (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021 .