

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR 29 2015

Certiorari to Lancaster County

S.C. Supreme Court

William Jeffrey Young, Circuit Court Judge

ROSHUNE CARELOCK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002272

JOHNSON PETITION FOR WRIT OF CERTIORARI

LARA M. CAUDY
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

Did the PCR court err by finding Petitioner's claim involving credit for time served was not a cognizable claim under the PCR Act and that Petitioner was not entitled to credit for time he served in the Department of Corrections for a probation revocation since the violation occurred while Petitioner was in custody awaiting trial and Petitioner had not posted bond on his pending charge?

STATEMENT

A Lancaster County Grand Jury indicted Petitioner at the January 21, 2010 term of General Sessions for assault and battery with intent to kill (ABIK). App. 429-430. His case was called to trial on January 26, 2010 before the Honorable Brooks P. Goldsmith, and a jury. Assistant Solicitor Trey Cook represented the state, and William Frick represented Petitioner. App. 1.

On January 27, 2010, the jury found Petitioner guilty of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN). App. 340, ll. 7-17. He was sentenced by Judge Goldsmith to ten years imprisonment. App. 349, ll. 4-6.

The South Carolina Court of Appeals affirmed Petitioner's convictions. State v. Carelock, Op. No. 2012-UP-287 (S.C. Ct. App. Filed May 9, 2012); App. 363-364.

On April 2, 2013, Petitioner filed an application for post-conviction relief (PCR) raising the issue argued in this petition. App. 365-371. The state filed a return to this application dated December 18, 2013. App. 372-377. The matter proceeded to an evidentiary hearing on July 29, 2014 before the Honorable W. Jeffrey Young. App. 378. Assistant Attorney General J. Croom Hunter represented the state, and W. Michael Hemlepp, Jr. represented Petitioner. App. 378. By order dated August 28, 2014, Judge Young denied Petitioner relief. App. 421-428.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred by finding Petitioner's claim involving credit for time served was not a cognizable claim under the PCR Act and that Petitioner was not entitled to credit for time he served in the Department of Corrections for a probation revocation since the violation occurred while Petitioner was in custody awaiting trial and Petitioner had not posted bond on his pending charge.

PCR Hearing

Petitioner testified at the PCR hearing that he did not receive credit for the time he served in pretrial detention before his trial. He was arrested on May 21, 2007 and never posted bond before his trial. Petitioner explained that he was on probation at the time of his arrest for ABIK and that, while he was in pretrial detention, his probation was subsequently revoked due to his arrest. App. 394, l. 16 – 395, l. 23. Petitioner was transferred from the Lancaster County Detention Center to the South Carolina Department of Corrections where he served two years. He maintained, “So upon my release date . . . S.C.D.C. made a mistake, and they just released me. They never returned me to Lancaster County to make bond.” App. 396, ll. 3-5. Petitioner testified that he should have received credit for the time he served from the date of his arrest until the date the Department of Corrections released him since he was in pretrial detention and had never posted bond.

William Frick, Petitioner's trial counsel, testified that he thought Petitioner was entitled to credit for the time he served in the Department of Corrections related to his probation revocation. Frick explained, “[P]art of the reason why he [Petitioner] was in the Department of Corrections is because he was charged - - not yet convicted but charged - - with this offense. Had a bond, had not posted bond. So my argument was that that was pretrial detention and he was entitled to the time that he spent in the Department of Corrections. Judge Goldsmith did not agree with me.” App. 408, l. 18 – 409, l. 6. Frick said he had a conversation with Judge Goldsmith on this subject, but it was

not on the record. He testified, “He [Judge Goldsmith] and I differed on the view of whether or not a probation-violation time on a charge for why you went to . . . the Department of Corrections - - whether or not you were entitled to that time in S.C.D.C. His general stance was you were not, you were down there for another offense, so you were not entitled to that time. I disagreed. I thought that was part and parcel and you were down there on pretrial detention.” App. 409, ll. 7-21.

Order of Dismissal

The PCR court found “that the trial judge was well within his authority to deny [Petitioner] credit for any time spent incarcerated prior to trial due to his probation revocation.” App. 426-427. The court further found that Petitioner’s claim regarding credit for time served was not a cognizable ground for relief at PCR. App. 427. Moreover, the court found that under S.C. Code Ann. § 24-13-40, Petitioner was not entitled to credit for the two years he served in the Department of Corrections “because his pretrial incarceration was due to his probation being revoked for another conviction.” App. 427.

Discussion

The PCR court erred by finding Petitioner’s claim regarding credit for time served is not cognizable under the PCR Act. In Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), “this Court held that under the PCR statute, PCR is proper only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence.” Delahoussaye v. State, 369 S.C. 522, 525, 633 S.E.2d 158, 160 (2006) (quoting Al-Shabazz, 338 S.C. at 367, 527 S.E.2d at 749) (internal quotation marks omitted); See S.C. Code Ann. § 17-27-20(a). However, this Court also noted two non-collateral matters specifically listed in S.C. Code Ann. § 17-27-20(a)(5) that are cognizable under the PCR Act. One of the two is “the claim that an applicant’s sentence has expired.”

Delahoussaye, 369 S.C. at 525, 633 S.E.2d at 160 (citing Al-Shabazz, 338 S.C. at 368, 527 S.E.2d at 749).

For the majority of non-collateral matters, Al-Shabazz stated that these claims generally would be decided first by the South Carolina Department of Corrections internal grievance system and then would be subject to review under the Administrative Procedures Act (APA). Delahoussaye, 369 S.C. at 525, 633 S.E.2d at 160 (citing Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750). This Court noted that one of these non-collateral matters is “when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status.” Delahoussaye, 369 S.C. at 525, 633 S.E.2d at 160 (quoting Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750) (internal quotation marks omitted).

According to the Department of Corrections, Petitioner’s expected release date is November 2, 2015. If Petitioner had been properly given credit for the two years he served for his probation revocation while in pretrial detention, he would have already been released from the Department of Corrections. Thus, his sentence has expired and his claim is cognizable under the PCR Act.

Not only did the PCR court err by finding that Petitioner’s claim was not cognizable under the PCR Act, but the court also erred by finding that Petitioner was not entitled to credit for the two years pretrial detention he served in the Department of Corrections under S.C. Code Ann. § 24-13-40. This statute reads 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; 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.

S.C. Code Ann. § 24-13-40 (emphasis added).

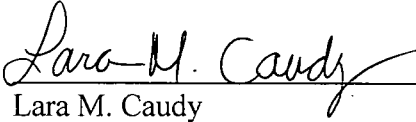
Citing Allen v. State, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000), the PCR court found the two years pretrial detention Petitioner served in the Department of Corrections “was due to his probation being revoked for another conviction” and, therefore, under S.C. Code Ann. § 24-13-40, Petitioner was not entitled to credit for time served because he “was already serving a sentence on one offense.” App. 427. This ruling was incorrect. Petitioner was in pretrial detention at the Lancaster County Detention Center when his probation was revoked as a direct result of his new arrest for ABIK. Petitioner never posted bond and, therefore, was clearly in custody on both the new ABIK charge and the probation revocation while he was housed in the Department of Corrections. See Allen, 339 S.C. at 396, 529 S.E.2d at 542. Because Petitioner remained in custody on his pending ABIK charge until the Department of Corrections mistakenly released him, he should have received credit for the time he served until that date. See Goings v. Missouri Dept. of Corrections, 6 S.W.3d 906 (Mo. 1999) (inmate whose parole was revoked for prior offenses when he was arrested for a subsequent offense was entitled to credit for time served for both prior and current offenses).

Petitioner respectfully requests this Court reverse the order of the PCR Court and find he is entitled to credit for time served from the date of his arrest for ABIK on May 21, 2007 until the date he was released from the Department of Corrections after serving the sentence related to his probation revocation because he was in custody on both the prior and current offenses.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of April, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LANCASTER COUNTY
WILLIAM JEFFREY YOUNG, CIRCUIT COURT JUDGE

ROSHUNE CARELOCK,

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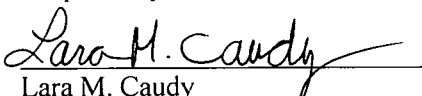
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Roshune Carelock 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 July 29, 2014. 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 one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests the Court relieve her as counsel for Roshune Carelock.

Respectfully submitted,


Lara M. Caudy
Appellate Defender
ATTORNEY FOR PETITIONER

This 29th day of April, 2015

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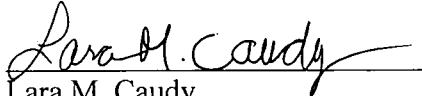
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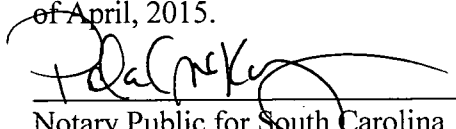
CERTIFICATE OF SERVICE

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 upon J. Croom Hunter, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Roshune Carelock, #292483, at McCormick Correctional Institution, this 29th day of April, 2015.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day
of April, 2015.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.