

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

G. Edward Welmaker, Circuit Court Judge

JOHN WILLIAM DIXON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002193

RETURN TO MOTION TO DISMISS

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel would respectfully show this Court:

1. Petitioner agrees with the state's procedural history listed in its motion to dismiss which is that: Petitioner filed the petition for writ of certiorari, the brief of petitioner pursuant to White v. State, and the appendix in this matter on January 13, 2015. This Court has granted Respondent's request for extensions of time in which to file the return to the petition for writ of certiorari and brief of respondent. The return was due Monday, June 1, 2015.

2. Petitioner is no longer in the custody of the South Carolina Department of Corrections. Petitioner indicated at his post-conviction relief hearing that his “max out” date on his sentence was “September 2014.” App. 63, line 20. Attached to the Respondent’s motion were records of the Department of Corrections indicating a projected sentence completion date of September 24, 2014. A search of the Department of Corrections “Incarcerated Inmate Search” website (<http://public.doc.state.sc.us/scdc-public/>) also shows Petitioner is no longer incarcerated. Respondent also asserted in its motion to dismiss that a search of the South Carolina Department of Probation, Parole and Pardon Services’ Offender Database Search” (SCDPPPS) by the Respondent also indicated Petitioner is not on parole for these or any other charges. Respondent additionally asserted that contact by undersigned counsel to SCDPPPS on June 5, 2015, confirmed that Petitioner was not on parole for these or any other charges.

3. Respondent filed a Motion to Dismiss on May 28, 2015 with this Court requesting that this appeal be dismissed as moot. Respondent asserted: “Before any action can be maintained, there must exist a justiciable controversy. Byrd v. Irmo High School, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant or effectual relief impossible for the reviewing court. Seabrook v. Knox, 369 S.C. 191, 631 S.E.2d 907, 910 (2006). A case becomes moot when the parties no longer possess a cognizable interest in the outcome. Id. at 200, 631 S.E.2d at 912 (citing Powell v. McCormack, 395 U.S. 486, 496, 89 S.Ct. 1944, 1951 (1969)).”

4. The PCR judge in this case ruled petitioner was entitled to White v. State relief. The issue in the White v. State brief is 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.” Brief at 5. Petitioner argued in the alternative in his petition for writ of certiorari that: “Probation revocation counsel was, in the alternative ineffective for failing to present sufficient evidence for the probation revocation judge to rule on the issue of his entitlement for credit for time served in Florida prisons while a “hold” was placed on him by South Carolina probation officials.”

5. In Nelson v. Ozmint, 390 S.C. 432, 434-435, 702 S.E.2d 369, 370 (2010), this Court dealt with the issue of whether “S.C. Code § 16–25–20(B)(3) requires an inmate serving a mandatory minimum one-year sentence for CDV 3rd to actually be imprisoned for one year?”

6. This Court determined that it should decide the issue even though Petitioner Nelson had been released from SCDC, and the state argued the issue was moot:

At the outset, we note petitioner was released from SCDC in August, 2010, making his underlying claim moot. See Sloan v. Dep't of Transp., 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008) (This Court “will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.”). If, however, an issue raised is capable of repetition but generally will evade review, the Court can address the issue. *Id.* We find this issue is one that is capable of repetition, yet will usually evade review because most inmates will have served the year required by SCDC's interpretation of the statute before the lawfulness of the interpretation can be reviewed. We therefore construe this as an action for a declaratory judgment.

Nelson v. Ozmint, 390 S.C. 432, 434-435, 702 S.E.2d 369, 370 (2010). This Court then held the statute actually required inmates convicted of CDV 3rd to be imprisoned for the mandatory minimum of one year. Nelson v. Ozmint, 390 S.C. at 437, 702 S.E.2d at 371.

7. In the present probation revocation case, defense counsel 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 revealed this was only 90 days of credit. App. 79. White v. State brief at 4.

8. Undersigned counsel also argued that:

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. 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.” White v. State brief at 5.

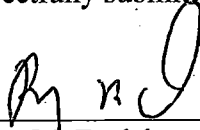
9. Petitioner argued the revocation judge erred by failing to give him credit for the time served while a South Carolina “hold” was placed on him in Florida pursuant to S.C. Code §24-13-40 since neither of the two exceptions to the statute applied to him. The two statutory exceptions to being given credit for time served are: (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. White v. State brief at 5-6.

10. Petitioner further argued that State v. Dozier, 263 S.C. 267, 210 S.E.2d 255 (1974) underpinned his position, and that the revocation court’s limitation to credit for time served being that time served *only in South Carolina* was error. White v. State brief at 6.

11. Petitioner submits that the issue of entitlement to time served while incarcerated in another state solely because a “hold” from this state is an issue capable of repetition, and that this Court should decide the issue regardless of the fact that petitioner has been released from SCDC custody. This Court recently expressed its concern with, inter alia, inmates unnecessarily serving more time than required in prison because of administrative delays in serving arrest warrants upon incarcerated inmates by granting certiorari in its original jurisdiction, and deciding Michael D. Hall v. State et al., Appellate Case No. 2014-001239, Shearouse’s Adv. Sh. #4, at 70-71 (January 28, 2015). Petitioner would respectfully submit that whatever this Court disposition of this credit for time served in another state issue ultimately is, this case should not be summarily dismissed, and this issue disposed of, without it being fully briefed.

WHEREFORE, undersigned counsel opposes Respondent's motion to dismiss for the reasons stated above, and respectfully submits the motion to dismiss should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

June 8, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

G. Edward Welmaker, Circuit Court Judge

JOHN WILLIAM DIXON,

PETITIONER,

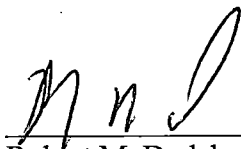
V.

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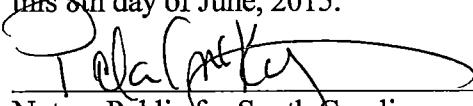
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the return to the motion to dismiss in the above-referenced case has been served upon opposing counsel, Joshua L. Thomas, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 2920, this 8th day of June, 2015.



Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 8th day of June, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022.

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RECEIVED

JUN - 8 2015

S.C. Supreme Court



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

June 8, 2015

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: John William Dixon v. State, Appellate Case No. 2013-002193

Dear Mr. Shearouse:

Enclosed please find an original and six copies of the return to the motion to dismiss, along with a certificate of service.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/pcm

Enclosure

cc: Joshua L. Thomas, Esquire