

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**RECEIVED**

DEC 07 2015

SC Court of Appeals

Appeal from Charleston County  
The Honorable Roger M. Young, Circuit Court Judge  
Case No. 2015-001171

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THE STATE, ..... RESPONDENT

v.

PHILIP SIMONEAUX, ..... APPELLANT

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INITIAL BRIEF OF RESPONDENT

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**STATEMENT OF ISSUE ON APPEAL**

- 1. Whether the Court properly exercised its discretion in refusing to grant credit for time served while under house arrest pursuant to 24-13-40?**

## STATEMENT OF THE CASE

The Appellant committed a sexual battery with a thirteen-year-old child in 1985. He was arrested for Criminal Sexual Conduct with a Minor 2<sup>nd</sup> Degree in February of 2012. The Appellant was released on a \$50,000 surety bond which had the condition of house arrest and GPS monitoring. \*Bail Proceeding Form Feb. 15, 2012. On May 15, 2014, the Appellant pled guilty Assault and Battery 2<sup>nd</sup> degree before the Honorable R. Ferrell Cothran Jr. and received a sentence of three years suspended to probation for two years, with the special condition of registering as a sex offender.

The Appellant violated his probation in numerous ways. He failed to complete sex offender counseling, and possessed pornography in violation of the special conditions of supervision.

On May 22, 2015, in Charleston County General Sessions, the Honorable Roger M. Young revoked the Appellant's probation in full, not including an earlier 90-day revocation. At the hearing, Appellant's attorney requested jail credit for the 27 months of electronic monitoring prior to the plea. The court declined to award the credit.

This appeal follows that denial of credit.

## ARGUMENT

### **1. The Court did not abuse its discretion when it declined to award credit for electronic monitoring under 24-13-40.**

Appellant claims that the probation revocation court abused its discretion by not awarding credit for 27 months of monitored home detention while on bond prior to the initial plea.

The court must award pre-trial detention credit for time served pursuant to S.C. Code §24-13-40 (Supp.2013). *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010). However, inmates are only entitled to credit for actual time spent in a penal institution, and not house arrest. *State v. Higgins*, 357 S.C. 382, 385, 593 S.E.2d 180, 182 (2004).

At the time *Higgins* was decided, section 24-13-40 did not make any mention of monitored house arrest. The Supreme Court found that the legislature's intent was to only grant credit for incarceration and house arrest, even when monitored through active means, did not fit the definition of incarceration under the statute. *Id.* The General Assembly amended 24-13-40 in 2013, adding the provision that the trial court may award credit for monitored house arrest. This amendment did not overturn the holding in *Higgins*, instead adding that monitored house arrest was a form of detention that the court may award to an inmate in its discretion.

The Appellate court's authority is only to review the circuit court's decision to correct errors of law or if the evidence indicates the judge acted in an arbitrary or capricious manner. *State v. Hamilton*, 333 S.C. 642, 511 S.E.2d 94 (Ct.App.1999). "The term 'abuse of discretion' has no opprobrious implication and may be found if the conclusions reached by the lower court

are without reasonable factual support.” *State v. Corey D.*, 339 S.C. 107, 118, 529 S.E.2d 20, 26 (2000).

The Appellant maintains that the revocation court abused its discretion by not basing its decision on evidence and therefore requests that the case be remanded. However, the court does give its reasoning as to why it did not award the home detention credit. “And I’m not giving him credit because of the violation that he had while he was on bond. Even though he was on home detention, I don’t find that he was on good behavior during his term of probation, so he shouldn’t get credit for the electronic monitoring.” \* Tr. p. 8, ll. 3-8.

Consequently, the Appellant’s argument that the court abused its discretion is unfounded. The court gave clear reasoning for its decision – the Appellant’s own poor behavior while on probation leading to several violations – so its discretion was not arbitrary.

Appellant also appears to argue that when the original sentencing judge checked the box on the sentencing sheet that “[t]he Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40” it implied he was to receive credit for his monitored house arrest. This implication is not supported by the evidence. In fact, the revocation court pointed out that it had not been ruled on by the sentencing court. “Judge Cothran didn’t address it, and, under the circumstances, I don’t find that he’s entitled to it.” \*Tr. p. 6, ll. 3-5.

Furthermore, this is confirmed by the transcript from the May 15, 2014 plea<sup>1</sup> in which the court makes no special mention of jail credit for the time under house arrest. \*Tr p. 30, ll. 8-15.

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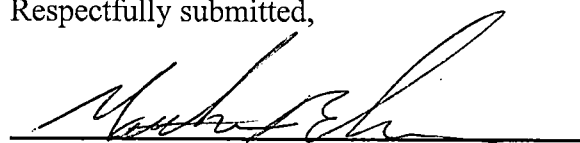
<sup>1</sup> The transcript indicates that the plea took place before the Honorable Roger Young. This is an error, and the Honorable R. Ferrell Cothran Jr. presided over the proceedings.

Consequently, the house arrest credit was not awarded at the original sentencing, and the revocation court properly exercised its discretion when it refused to award it for his probation violations.

### CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that the Appellant's appeal be dismissed.

Respectfully submitted,



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