

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NIKKI AUDUAN BRANNON,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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

RECEIVED
MAY 15 2012
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT.....5

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL8

CERTIFICATE OF COUNSEL.....9

TABLE OF AUTHORITIES

Cases

Crown Cork and Seal Co, Inc. v. South Carolina Tax Commission, 302 S.C. 140, 394 S.E.
2d 315 (1990)..... 6

North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970)..... 4

Williams v. State, 306 S.C. 89, 410 S.E.2d 563 (1991) 6

Statutes

S.C. Code §24-13-40 6

STATEMENT OF ISSUE ON APPEAL

Whether the court erred in failing to give credit for time served under the house arrest prior to appellant's guilty plea?

STATEMENT OF THE CASE

On May 25, 2011, appellant appeared before the Honorable Roger L. Couch in Spartanburg County and pled guilty to domestic criminal violence of a high and aggravated nature pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970). Appellant was sentenced to ten (10) years suspended upon service of five (5) years with probation thereafter for three (3) years. Darren Haley, Esquire was plea counsel. Ann Marie Thompson was solicitor.

This appeal follows.

ARGUMENT

The court erred in failing to give credit for time served under house arrest prior to appellant's guilty plea.

Appellant was indicted for criminal domestic violence of a high and aggravated nature for intentionally causing harm to a household member or former household member by repeatedly striking the victim in the head and body with a broomstick causing the victim to seek medical attention, the act being aggravated because it resulted in serious bodily injury. Indictment #09-GS-42-4396.

Plea counsel noted that appellant was incarcerated at present but he had two and a half to three years of time credit. He served most of his time on house arrest. He was later violated from house arrest. The court asked if appellant was on bond on GPS monitoring. Plea counsel replied that was correct. (ROA p. 18, line 21 – p. 19, line 6). Counsel asked the court to consider time served which was a little bit over two and a half years. The mandatory minimum sentence was one year. (ROA p. 19, lines 22-25; ROA p. 20, lines 18-21).

The solicitor stated that when appellant was first arrested after the indictment he served twenty-one (21) days. Then he was put on active GPS monitoring for six hundred seven (607) days before he violated. Then he served eighty-five (85) more days. Appellant served one hundred six (106) total days in jail and six hundred seven (607) days on GPS with bond. (ROA p. 36, lines 2-16).

The court sentence appellant to ten (10) years suspended to an active sentence of five (5) years with probation for three (3) years thereafter. He ordered substance abuse counseling, random drug testing, and he required appellant to complete a batters counseling

program. He gave appellant credit for one hundred six (106) days of jail time. He would not, however, give any credit for all of the house arrest time that appellant served. (ROA p. 40, lines 5-15). That ruling was in error.

S.C. Code §24-13-40 provides:

In every case in computing the time served by a prisoner, full credit against the sentence should be given for time served prior to trial and sentencing.

The statute then goes on to state in what instances credit for time served shall not be given. House arrest is not included in those instances where credit shall not be given.


It is well settled that penal statutes are to be construed strictly against the state and in favor of the defendant. Williams v. State, 306 S.C. 89, 410 S.E.2d 563 (1991). The trial court construed the statute in favor of the state and against appellant. The statute gives credit for time served against a sentence except in certain enumerated cases. The time appellant served was not excluded from credit toward his sentence under the statute.¹ When a statute is clear and unambiguous, its terms must be given their literal meaning. Crown Cork and Seal Co, Inc. v. South Carolina Tax Commission, 302 S.C. 140, 394 S.E. 2d 315 (1990).

¹ If the legislature had wanted otherwise it could have so provided.

CONCLUSION

Appellant should be given credit for time served during house arrest.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of May, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NIKKI AUDUAN BRANNON,

APPELLANT

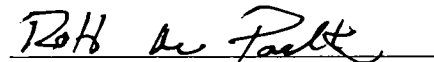
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Nikki Anduan Brannon states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Roger L. Couch, which was held on May 25, 2011, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Nikki Anduan Brannon.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

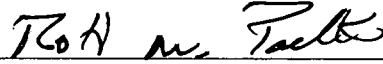
ATTORNEY FOR APPELLANT

This 15th day of May, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 15, 2012



Robert M. Pachak
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 COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

THE STATE,

RESPONDENT,


V.

NIKKI AUDUAN BRANNON,

APPELLANT

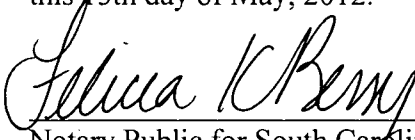
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal has been served on Nikki Anduan Brannon, #346162 at Manning Correctional Institution, 502 Beckman Drive, Columbia, SC 29203; this 15th day of May, 2012.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of May, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires June 21, 2020.