

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Lexington County
The Honorable L. Casey Manning, Plea Judge
The Honorable G. Thomas Cooper, Jr., Probation Revocation Judge
The Honorable Edward W. Miller, Post-Conviction Relief Judge

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AUG 29 2016

S.C. SUPREME COURT

Opinion No. 5335 (S.C. Ct. Ap. Filed July 29, 2015)

Appellate Case No. 2015-002294

NORMAN J. HAYES,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

REPLY BRIEF OF PETITIONER

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ARGUMENT IN REPLY

i.

This is a case about when credit for time-served should be applied. In its plain language analysis, Respondent characterizes S.C. Code section 24-13-40 as having “three important components.” (Brief of Respondent, p. 11). This case turns on the second “important component” – the requirement that “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.” § 24-13-40. The Court of Appeals’ opinion basically interprets the words “the sentence” to include any duration of probation revocation rather than simply the original sentence, therefore requiring the application of time-served credits any time probation is revoked. Such an interpretation is erroneous given the unique nature of probation within the overarching penological scheme.¹ Probation is a matter of grace. State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655-56 (2006).² Revocation is simply a means to enforce the conditions of probation. State v. McCray, 222 S.C. 391, 396, 73 S.E.2d 1, 3 (1952). Probation revocation is only meaningful inasmuch as it relates to an actual sentence for a criminal offense.³ The legal justification for imprisonment following a probation revocation does not stem from the violation, but rather the underlying conviction or guilty plea. See, e.g., State v. Franks, 276 S.C. 636, 638, 281 S.E.2d 227, 228 (1981) (the penalty imposed upon a finding of violation of probation conditions is a forfeiture of the act of

¹ It could also lead to the absurd result of a probationer being partially revoked multiple times without actually ever being incarcerated. See See Pascoe v. Wilson, Op. No. 27646 (S.C. Sup. Ct. filed July 13, 2016) (Shearouse Adv. Sh. No. 28 at 27-28) (statutes should be construed as to escape an absurdity and carry its intention into effect).

² As Respondent points out, this does not mean a probationer is not entitled to fair treatment. Despite, however, Respondent’s unnecessary and – frankly – unfortunate disparagement of the civil servants in the Department of Corrections and the Department of Probation, Parole and Pardon Services, (Brief of Respondent, p. 3, 9), there is nothing in the record to suggest either agency has applied the law in any other fashion than consistently and in good faith.

³ Indeed, S.C. Code § 24-24-460 specifically allows for revocation of “all or a portion only of the sentence imposed,” and “[s]hould only a portion of the sentence imposed be put into effect, the remainder of such sentence shall remain in full force and effect so long as all of his sentence has not been served and the period of probation has not expired.”

grace extended and reimposition of the unserved portion of the original sentence. No additional punishment is invoked.”).

Accordingly, in the proper context, what Respondent characterizes as a “heretofore unappreciated distinction” between a sentence and probation revocation is neither novel nor unusual. Instead, the Court of Appeals has reinterpreted the meaning of a probation revocation and – in effect – given probation violators across the state the ability to apply their credits for time served in a manner that is inconsistent with the plain language of the section 40 and the nature of probation. The Court of Appeals should be reversed.

ii.

In addition to being contrary to firmly established penological principles, the Court of Appeals’ decision seems to rest largely on an apparent inequity in this specific situation. Respondent’s argument skirts dangerously close to inferring that malevolent bureaucrats in the Department of Corrections and Department of Probation, Parole and Pardon Services are intentionally depriving probationers of their statutory right to credit for time served. (Brief of Respondent, p. 13).

This conclusion ignores the fact that one of the key characteristics *and benefits* of probation is that it is an alternative to imprisonment, which sometimes consumes a probationer’s credit for time served. Even under the Court of Appeals’ interpretation of section 40, a probationer that completes probation without ever having been revoked will never receive the benefit of their time served credits, other than fulfilling the initial portion of a split sentence, because their sentence will terminate following completion. Indeed, but for the grace of probation in this case, the current controversy would not exist – Respondent would have served his entire sentence less any time served credits, and spent significantly more time in prison. That

the *benefit* of anything less than a full revocation may also consume some or all of the benefits of a probationer's time-served credits is not an outrageous application of the statute. The Court of Appeals decision, which erroneously allows Respondent and those similarly situated to have their cake and eat it, too, should be reversed.

CONCLUSION

For the foregoing reasons, Petitioner requests that the lower court's decision be reversed.

Respectfully submitted,

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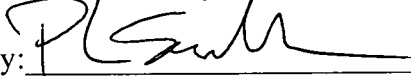
Petitioner.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Reply Brief of Petitioner complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Deonna Rogers, certify that I have served the within Reply Brief of Petitioner on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

**Laura Ruth Baer, Esquire
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I further certify that all parties required by Rule to be served have been served.

This 29th day of August, 2016.



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