THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Case No. 2016-002144

City of Columbia, ... Appellant,

v.

Robert S. Bruce, ...Respondent.

INITIAL BRIEF OF RESPONDENT

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I. Was the Circuit Court correct in holding that the statutory construction of S.C. Code Ann. § 24-13-40 (2016) and the holding in Allen v. State, 339 S.C. 393, 395 (2000) require the trial court to credit a defendant with time served in pretrial detention on all charges pending at that time, regardless of which charge is technically holding the defendant?

COUNTER-STATEMENT OF THE CASE

Respondent was arrested on October 8, 2014 in the City of Columbia and charged with Shoplifting, value $2,000 or less (ticket number 16002GY). Respondent received a $2,130 personal recognizance bond and was released from Alvin S. Glenn Detention Center on October 9, 2014. Respondent requested a jury trial on October 17, 2014.

While this charge was pending and Respondent was awaiting trial, he was arrested on March 17, 2015 for Shoplifting/Enhancement for 3rd or Subsequent Offense (warrant number 2015A4021600611). Although he received a $5,000 surety bond on the new charge, Respondent was financially unable to post bond and remained incarcerated at Alvin S. Glenn Detention Center. On January 11, 2016, Respondent pleaded guilty to the reduced charge of Shoplifting, value $2,000 or less on the same warrant and was sentenced to thirty days with credit for time served. Respondent was released after serving 301 days of pretrial incarceration.

On March 23, 2016, Respondent was tried and convicted on the October 8, 2014 shoplifting charge (ticket number 16002GY) in the Columbia Municipal Court. Trial Ct. Tr. 43; R. *. At sentencing, Respondent argued S.C. Code Ann. § 24-13-40 requires that credit be given to Respondent for the 301 days spent in pretrial incarceration while this ticket was pending. Trial Ct Tr. 45; R. *. Judge Steven Dennis rejected this argument and sentenced Respondent to twenty-one days of incarceration with only one day of credit for time served. Trial Ct. Tr. 45,48; R. * .

That same day, Respondent filed a Writ of Habeas Corpus arguing he was being detained unlawfully for the same reasons argued on appeal. At that hearing on March 29, 2016, the merits of that argument were not reached and instead Respondent was granted a $5,000 personal recognizance appeal bond by Judge Tanya Gee. On March 30, 2016, Respondent filed a Notice

of Appeal on March 30, 2016. R. *(Notice of Appeal). Respondent was released that same day from Alvin S. Glenn Detention Center, after serving an additional seven days of incarceration.

On August 26, 2016, this appeal was heard before the Honorable Judge Clifton B. Newman in the Richland County Court of Common Pleas. Appeal Tr. 1; R. *. After oral arguments, Judge Newman requested both parties submit proposed orders for his consideration. Appeal Tr. 49, ll. 6-8; Tr. 50, ll. 3-19; R. *. On September 19, 2016, Judge Newman signed an Order remanding the case and instructing the City of Columbia Municipal Court to credit Respondent with time served for the entirety of his twenty-one day sentence. R. * (Order Remanding Case and to Amend Sentence).

The City of Columbia filed this appeal with the Court of Appeals on October 19, 2016. R. *(Notice of Appeal). They submitted their Initial Brief on November 14, 2016. This brief follows.

ARGUMENT

I. The Circuit Court was correct in ruling that the statutory construction of S.C. Code Ann. § 24-13-40 (2016) and the holding in Allen v. State, 339 S.C. 393, 395 (2000) require the trial court to credit a defendant with time served in pretrial detention on all charges pending at that time, regardless of which charge is technically holding the defendant.

Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citing State v. Cutter, 261 S.C. 140, 199 S.E.2d 61 (1973)). Therefore, "[o]n review, [the appellate court is] limited to determining whether the trial judge abused his discretion." Wilson, 345 S.C. at 6 (citing State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). Statutory interpretation is a question of law for appellate courts to review. Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009) (citing Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007)).

A. Credit for pretrial detention must be given in all cases but for two exceptions—where the defendant was an escapee or serving an active sentence on another offense—because the terms of S.C. Code Ann. § 24-13-40 are clear, and therefore courts must apply those terms according to their literal meaning.

The Supreme Court of South Carolina has explained that "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Charleston County School Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993) (citing Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980)). Furthermore, "[a] statute's language must be construed in light of the intended purpose of the statute," and [w]henever possible, legislative intent should be found in the plain language of the statute itself." State v. Gaines, 380 S.C. 23, 33, 667 S.E.2d 728, 733 (2008). The South Carolina Court of

Appeals further elaborated in stating that "[t]he legislature's intent should be ascertained primarily from the language of the statute...[t]he language must be read in a sense which harmonizes with its subject matter and accords with its general purpose." State v. Sweat, 379, S.C. 367, 375, 665 S.E.2d 645, 649 (Ct. App. 2008).

Section 24-13-40 of the South Carolina Code of Laws governs the computation of time served by prisoners in this state. It provides:

> The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. 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 (2016)(emphasis added).

In 2000, the Supreme Court of South Carolina issued its seminal opinion on the meaning of § 24-13-40 in Allen v. State, 339 S.C. 393, 529 S.E.2d 541 (2000). In ruling, the Supreme Court of South Carolina pointed to the canon of statutory construction that "where the terms of a statute are clear, the court must apply those terms according to their literal meaning." Allen, 339 S.C. at 395. The Supreme Court continued, "[t]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its scope." Id. Per the rules of statutory construction, the Supreme Court held that § 24-13-40 "**mandates** a prisoner be given credit for all time served prior to trial **unless** one of two exceptions exist: 1) either the prisoner

was an escapee or 2) the prisoner was already serving a sentence on one offense." Id. (emphasis added). The Court held that when neither exception applies, pretrial detention must be credited to the defendant. See id. at 395–96.

This strict interpretation of the language of § 24-13-40 has not only been upheld, but even strengthened, in the more than sixteen years since Allen was decided. The Supreme Court in 2002 made clear that the decision to deny a defendant credit for time served "is not discretionary with the trial court." State v. McCord, 349 S.C. 477, 487, 562 S.E.2d 689, 694 (2002). In 2008, the Court of Appeals addressed this statute as it applied to pretrial detention in different jurisdictions. State v. Suber, 2008 WL 9848567 (S.C. Ct. App. Dec. 9, 2008). The Court held that where a prisoner is being detained pretrial on two sets of charges in two different counties, the prisoner was entitled to credit on both sets of charges for all time spent pre-sentencing. Id. The Court only excluded credit from the latter resolved set of charges for the time the defendant spent incarcerated after sentencing on the first set of charges, per the active sentence exception in § 24-13-40. Id. The Court of Appeals in 2010 reinforced that there are only two exceptions to § 24-13-40 when it held that "[a] judge's disappointment in the maximum sentence he can impose is not one of the exceptions to the mandatory language in section 24-13-40." State v. Boggs, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010). In 2015, the Court of Appeals specified that the same strict interpretation of § 24-13-40 – there being only two exceptions to the mandatory nature of credit for pretrial detention – applies to split sentences, stating that "[t]he statute does not make a distinction for split sentences; thus, under the plain language of the statute, we find the pre-trial detention time should apply against a probation revocation whenever a probationer receives a split sentence." Hayes v. State, 413 S.C. 553, 560, 777 S.E.2d 6, 10 (Ct. App. 2015).

Additionally, the courts' strict interpretation and application of the only two exceptions to mandatory credit for time served in § 24-13-40 has not been disturbed by the Legislature. Allen and Blakeney v. State, 339 S.C. 86, 529 S.E.2d 9 (2000) were decided in 2000 and McCord in 2002. Although the Legislature amended § 24-13-40 in 2010 and 2013, the mandatory nature of credit for pretrial time and the strict two exceptions to this credit remain unchanged.[1] Importantly, no additional exceptions or preconditions have been added.

In the present case, Respondent spent 301 days before conviction and sentencing incarcerated at Alvin S. Glenn Detention Center while Ticket 16002GY was pending and while he was awaiting trial. Neither exception listed in § 24-13-40 applies to Respondent's situation; Respondent was not detained as an escapee of another penal institution nor was Respondent serving an active sentence on another offense. As such, the Circuit Court was correct in ruling that per the plain language of § 24-13-40 and the holding in Allen, Respondent is entitled to credit for that time towards his sentence on Ticket 16002GY. Therefore, the Court should affirm.

B. There is no requirement in S.C. Code Ann. § 24-13-40 that bond be revoked on the charge being sentenced in order to trigger entitlement to that pretrial detention credit.

Appellant contends that revocation of the original bond upon re-arrest is required in order to continue accruing credit towards that sentence. As explained above, the plain language of § 24-13-40 does not support such a construction. Appellant may be relying upon dicta in Allen to come to this conclusion, but the holding in Allen does not require revocation as a precondition to obtaining credit.

[1] Specifically, in the 2010 amendment the legislature "substituted 'must be calculated from' for 'shall be reckoned from' in the first and second sentences, substituted 'However, when' for 'But when' in the second sentence, and made other nonsubstantive changes." Then in 2013, the amendment added ', and may be given for any time spent under monitored house arrest' at the end of the third sentence" after the portion stating that credit must be given for pretrial time. S.C. Code Ann. § 24-13-40 (2016).

In Allen, Ricky Lee Allen was arrested and incarcerated for two counts of grand larceny and one count of malicious injury to property on June 4, 1996. 339 S.C. at 394. Eighteen days later, on June 22, 1996, he was released on bond. Id. On June 26, 1996, he was arrested on new charges: breaking into a motor vehicle and petit larceny. Id. His bond from the June 4th arrest was revoked (at some unspecified time), and he remained in jail until September 12, 1996 when he pleaded guilty to all five offenses. Id. The Supreme Court held that the trial judge erred in not giving Mr. Allen credit on the three June 4th offenses for the time he did from June 26th through September 12th. Id. at 396.

As explained in the subsection A, the Supreme Court held that since Mr. Allen was neither an escapee nor serving an active sentence, neither exception applied and credit must be given. Allen, 339 S.C. at 395. That is the holding of Allen. The Court then goes on to explain, "[m]oreover, Allen's bond was revoked on the first set of charges." Allen, 339 S.C. at 396. The choice to use this word, "moreover," is important. The Court had already made its determination that the lower court had erred in not crediting Mr. Allen with the pretrial time because of the plain language of the statute. That reasoning alone was sufficient for their holding. The use of the word, "moreover[2]" implicates a separate, additional reason to reject the argument raised by the State, not a necessary precondition.

Furthermore, in Allen, the Supreme Court held Mr. Allen was entitled to credit for time from the day he was arrested, not the day bond was revoked. 393 S.C. at 396. While the facts of the case do not specify when bond on his first set of charges was actually revoked, based on common practice, bond would not have been revoked immediately. When the government wants to revoke a defendant's bond, they must file a motion, give notice to all parties, and then

[2] Merriam-Webster's Dictionary defines "moreover" as "in addition to what has been said: besides." Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/moreover.

schedule the hearing with the court. It is not an immediate process, and takes several days at a minimum. Thus, it appears the actual revocation of bond is unnecessary and instead incarceration while a charge is pending is the touchstone for calculating time served.

This view is further supported by the Supreme Court's definition of "time-served" provided that same year in Blakeney. There, the Court pointed to Crooks v. State, 326 S.C. 171, 485 S.E.2d 374 (1997) and clarified that "'time-served' in § 24-13-40 means the time during which a defendant is in pre-trial confinement and **charged** with the offense for which he is sentenced (so long as he is not serving time for a prior conviction)." 339 S.C. at 88. The Court specifically did **not** say "held" on the offense for which is sentenced. Therefore, revocation of bond or being held on the offense being sentenced is not a requirement to be entitled to the mandatory credit for pretrial time under § 24-13-40; instead, Allen, Blakeney and the plain language of the statute dictate that credit must be given for those offenses which have been charged while a defendant is serving pretrial detention (not as an escapee or as an active sentence on another offense).

There is no South Carolina case law that states revocation of bond on that specific pending charge is a necessary precondition. Nor is there any South Carolina case law that states the defendant can only receive credit for time served if the pending charge "relates" to the one holding him in pretrial detention. The plain language of § 24-13-40 simply does not include either revocation of bond on or relation back to the sentenced offense.

Even if the Court were to say the dearth of case law specifically addressing whether revocation is necessary or whether a defendant needs to be held specifically on the offense for which he is sentenced creates ambiguity in the statute, the rule of lenity would apply. The rule of lenity resolves any doubt in favor of the defendant. State v. Samuels, 403 S.C. 551, 558 743

S.E.2d 773, 777 (2013)(citing Bryant v. State, 384 S.C. 525, 533, 683 S.E.2d 280, 284 (2009)). The Supreme Court has held that penal statutes must be construed strictly against the government and in favor of the defendant. Samuels, 403 S.C. at 558 (citing State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991)). To construe § 24-13-40 in favor of the defendant would mean not reading in requirements for revocation of bond or relation back to the offense holding the defendant, two requirements that are simply not in the text of the statute.

Here, Respondent was incarcerated pretrial – not as an escapee or serving an active sentence – and charged with Ticket 16002GY for over 300 days. Per § 24-13-40, Allen, and Blakeney, the fact that the City chose not move to revoke his bond on Ticket 16002GY does not affect Respondent's entitlement to credit. That requirement is not in the plain language of the statute, it is not required per the holding in Allen, and is not required per the definition of time-served from Blakeney. Such a condition would contribute an additional reason, a "moreover," to Respondent being entitled to that credit. There is no ambiguity as to whether this is a precondition but even if the Court were to find a genuine ambiguity, the rule of lenity requires the statute be resolved in favor of Respondent and no such precondition be read into § 24-13-40. As such, the Court should affirm the Circuit Court's ruling.

C. Appellant's view of the Circuit Court's ruling is overbroad and the case law cited by Appellant only serves to illustrate the ways in which the South Carolina Legislature could have chosen—but did not so choose—to limit the scope of credit applied to pretrial detention.

Appellant's claim that the Circuit Court's statutory interpretation of § 24-13-40 would apply credit to "any trial and any sentence" (App. Initial Brief, p. 7) is overbroad and simply incorrect; the universe encompassed by the mandatory nature of § 24-13-40 is finite. The plain language of § 24-13-40 and the Circuit Court's strict interpretation of that language would only require that Respondent's 301 days of pretrial incarceration be credited towards those offenses

presentence jail time specifically for the offense which he is convicted. 424 Mich. at 651. The Court explains that "[h]ad the Legislature intended that convicted defendants be given sentence credit for all time served prior to sentencing day, regardless of the purpose for which the presentence confinement was served, it would not have conditioned and limited entitlement to credit to time served 'for the offense of which [the defendant] is convicted.'" Id.

In comparison, South Carolina's statute does not condition credit for time served on being held specifically for the sentenced offense. Instead, § 24-13-40 conditions entitlement to credit for pretrial time served on that time not being the result of two situations: the defendant is an escapee from another penal institution or the defendant is serving an active sentence. Had the South Carolina legislature intended to limit credit for time served only to the offense for which the defendant is convicted, they could have included that language as Michigan chose to do.

In Rash, the statute at issue is the federal statute governing credit for prior custody, 18 U.S.C. § 3585(b) (2015), which states that credit is only granted where 1) "the time spent in custody resulted from the offense for which the sentence was imposed or 2) "the time spent in custody resulted from another charge, which the defendant committed after he was arrested on the offense for which he is sentenced." Appellant cites Rash for the proposition that "[i]n both cases [of 18 U.S.C. § 3585(b)], credit for time served will not be granted where the time in custody was credited against another offense." 2010 WL 6794692 at *1. However, neither the statute nor the holding in Rash support Appellant's interpretation of § 24-13-40. Instead, both support Respondent's interpretation and the Circuit Court's ruling in this case.

First, this federal statute governing credit for time served actually requires credit to be granted for time served in the **exact** situation here in Respondent's case. Section 2 of 18 U.S.C. § 3585(b) states that credit is granted where "the time spent in custody resulted from another

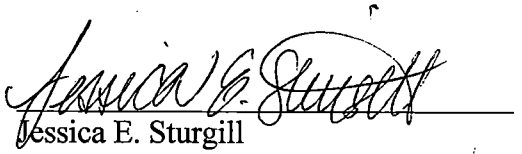
charge, which the defendant committed after he was arrested on the offense for which he is sentenced." The 301 days Respondent spent in pretrial detention was a result of another charge, which the defendant committed after he was arrested on Ticket 16002GY – the offense for which he was sentenced in this case. So while this case is not controlling, looking to the federal statute on credit for time served pretrial and presentencing for guidance actually favors Respondent receiving credit for those 301 days.

Even applying the rule quoted from Rash – that "credit for time served will not be granted where the time in custody was credited against another offense" – still supports Respondent receiving credit for time served on the entirety of his twenty-one day sentence in this case. Only thirty of the 301 days Respondent spent incarcerated from March 17, 2015 to January 11, 2016 were credited towards, or used up by, his second charge – warrant 2015A4021600611. That leaves 271 days of pretrial detention while Respondent was charged with Ticket 16002GY that have not been credited towards another offense. Again though, the federal statute discussed in Rash is not the same statute as South Carolina's statute and there is no South Carolina case law analyzing § 24-13-40 and holding that credit cannot be used towards more than one offense. But even so, applying the federal statute and Rash rule cited by Appellant in her Initial Brief to Respondent's situation actually still supports the Circuit Court's ruling to remand the case and grant Respondent credit for time served on the entirety of his twenty-one day sentence.

If anything, the cases Appellant cites in her Initial Brief from other jurisdictions are examples of how South Carolina legislature could have drafted § 24-13-40 if the intention was to limit the availability of time served credits. The South Carolina Legislature chose not to include such limiting language and as such, the Court should affirm the Circuit Court's ruling.

CONCLUSION

For the above-stated reasons and those already in the Record, Respondent respectfully requests this Court affirm the Circuit Court's Order remanding this case to the City of Columbia Municipal Court with instructions to credit Respondent with time served on all twenty-one days of his sentence.



Jessica E. Sturgill
Assistant Public Defender

Attorney for Respondent

This 14th day of December, 2016

THE STATE OF SOUTH CAROLINA
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Respondent and Respondent's Designation of Matter in the above-referenced case have been served upon Jessica R. Mangum at the City Attorney's Office located at 1401 Main Street, Suite 1000, Columbia, SC 29202 by leaving these documents with her secretary or other person of authority at said office.

Steven Harper
Clerk

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This 14th day of December, 2016