

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAR 15 2017

SC Court of Appeals

APPEAL FROM ADM. LAW COURT

16-ALJ-04-0550-AP

The Honorable S. Phillip Lenski

CASE NO. 2017-000232

Jimmy D. Meggs Jr., 277400,

APPELLANT,

v.

South Carolina Department of Corrections,

RESPONDENT.

BRIEF OF APPELLANT

Jimmy D. Meggs Jr., 277400
TCI SA-227B
1578 Clarence Coker Hwy.
Turboville, SC 29162
(Appellant Pro-Se)

South Carolina Dept. of Corrections
Mr. David Tartasky, Esq.
P.O. Box 21787
Columbia, SC 29221-1787
(Counsel for Respondent)

ISSUES ON APPEAL

1. DOES THE AMENDMENT CREATE A RIGHT OR ENLARGE A RIGHT OF OF A PERSON UNDER DISABILITY ?
2. WHEN THE AMENDMENT OF JUNE, 7 2013 (§ 24-13-40) IS NOT CRIMINAL, IT SHOULD BE GIVEN RETROACTIVE EFFECT AND SCDC SHOULD APPLY TIME SERVED WHILE SPENT UNDER MONITORED HOUSE ARREST BY CREDITING THEIR MONITORED HOUSE ARREST CREDITS AS TO BE IN COMPLIANCE WITH S.C. CODE ANN. § 24-13-40 ?
3. Where S.C. Code Ann. § 24-13-40 "Relates to the **computation** of time served by a prisoner, It is encumbant upon SCDC to comply and is this Statute speaking to them because they are the entity who both computes and calculates a prisoners sentence
4. Should SCDC give Petitioner his Good Time Credit from his time served under Monitored House Arrest as done in the Arthur Field case .

STATEMENT OF THE CASE

Petitioner was arrested January 10 2000 in Florence County. At the bond hearing due to the numerous charges, the Magistrate Court denied bond. The Petitioner attempted to petition the Circuit Court concerning Bond consideration, but this was these "Hearings" were inhibited due to The Detectives claims that he had new warrants. which totaled 12 in all.

Petitioner ultimately gained bond with the stipulation that he secure Monitored House Arrest. along with a \$100,000.00 Surety Bond. The Petitioner met all the stipulations and complied with all of the stipulations during the time before trial.

The Petitioner went to his Preliminary hearing and the State (Attorney General) on his own motion dismissed the bulk of the charges due to a lack of probable cause. The State proceeded and secured an indictment for for two offense and directly presented two charges. The Petitioner proceeded to trial on August 6-9 2001 and was on the aforesaid mention House during this entire time (April 3, 2000 until August 9 2001, or 17 months As mentioned before as it relates to the continuation of serving warrants that would later be dismissed prior to "trial" for lack of probable cause it was discovered that they were secure and signed by the nmagistrate judge on the same day and served to the OPetritioner piece meal for the sole purpose of causing the the hardship of not being able to have a bond determination and also, caused the hardship of the states trying to prevent the petitioner the ability of having a bond determination.

After the Trial jury found Petitioner guilty and before the Court's sentence, the Court engaged in a conversation about the allowance of time spent under Monitored House Arrest. (T.Tr. p. 674 lns.6-25 ; T.Tr. p. 675 lns 1-7).

After Trial, Direct Appeal, and PRC Hearing, in June ,7 2013, South Carolina's Law was clarified to read that [And may be given any time spent under House Arrest.]

DOES THE AMENDMENT CREATE A RIGHT OR ENLARGE A RIGHT OF A PERSON UNDER DISABILITY ?

A.

A disability would create " the inability of one person to alter a given relation with another person. As an impairment generality two offenders come before the bench with equal footing, both convicted of crimes, both convicted in competent jurisdiction but only one is asking for time he spent while in the county jail and the is asking for time he spent under monitored house arrest both have equal footing in their process only one will receive his credit prior to 2013 because the state had not specified that house arrest could be calculated. The one with the house arrest is under disability because of the impairment that the statute did not specify the allowance of this credit as in the case of the Petitioner, even so, the Court when faced with this question in the Petitioner's case. Counsel Redmond asked the Court to consider the time that I spent while on monitored house arrest. The Court (Judge James E. Brogdon) asked counsel if there was anything in Judge Thomas' Order about whether she thought it was appropriate and both my counsel and the Attorney General said it was not specified. (See Tr.T. p. 674 lines6-25 ; T.Tr.p. 675 lines 1-6) .

As this issue has been improperly addressed in the past. The South Carolina Legislature in their wisdom amended § 24-13-40 to add this language as to clarify to the Courts their ability to grant this "time served" prior to trial and sentencing and 2) The Petitioner would humbly point out that South Carolina Code does not say that the only way that a criminal defendant is to receive credit is when he was in jail.

South Carolina Law says: [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 any thime spent under monitored house arrest. § 24-13-40 (In Part)

The Statute refers to "Computing the time served by a prisoner. It is incumbent upon SCDC because who else computes or Calculates an Offenders time but SCDC. Secondly, what Statute authorizes SCDC to Calculate and allow credit, non but S.C. Code Ann. § 24-13-40, because the 2013 amendment clarified what would constitute time served as to include Monitored House Arrest and term time served was in the language prior to the 2013 Bill, SCDC should only verify those (may) persons who served monitored House Arrest and compute it toward their sentence as it relates to finality, even though finality may attach to a criminal conviction and the consequences of that conviction as in the case of Varner 423 S.E.2d. _____. The sentence has not become final, and finality has not attached and also because 24-13-40 is remedial in nature, the Petitioner should receive the benefits of the time served prior to trial and sentencing specifically the 17 months I spent under Monitored House Arrest (April 3 2000 until August 9 2001).

B.

Black's Law defines a Remedial Law as "a Statute that corrects or modifies an existing Law (In Part). As the Court knows Title 24 is not criminal. When comparing Wiesart v. Stewart Supra. The issue boils down to whether or not:

1) the **May** is either a) synonymous with shall or must which would create a right for review by the court, or, b) That the may would make it discretionary. However, it would be the Courts discretion and not the Government. Considering the Wiesart v. Stewart decision, because the Petitioner was under disability, "The Petitioner should be given Judicial review. In any case, either the credit would be mandatory or at the very least, The Court and not the State entity has the discretion to decide whether or not this credit should be applied. When reviewing the terms Disability and impairment, the Petitioner would contend in this argument that he would have been under disability and

not simply an impairment

The Courts of South Carolina has the discretion to make at the very least a determination as to whether or not credit should be granted.

The second part of this argument is that it is mandatory for the granting of this credit as 24-13-40 ^{plainly} ~~plainly~~ says along with numerous of cases that a Defendant can not be denied his credit for time served prior to trial and sentencing. Considering that the time discussed was prior to trial and sentencing he should be granted it by the Court or allowed an opportunity to heard on the discretion as it relates to the allowance of credit.

WHEN THE AMENDMENT OF JUNE, 7 2013 (§ 24-13-40) IS NOT CRIMINAL IT SHOULD BE GIVEN RETROACTIVE EFFECT AND SCDC SHOULD APPLY TIME SERVED WHILE SPENT UNDER MONITORED HOUSE ARREST BY CREDITING THEIR MONITORED HOUSE ARREST CREDITS AS TO BE IN COMPLIANCE WITH S.C. Code Ann. § 24-13-40.

It is the Petitioners contention that the Legislature's intention by amending S.C. Code Ann. § 24-13-40 (Computation of time served by a prisoner was revised and brought to the forefront to keep the Statute economically viable for modern day changing times for applicability. The Amendment added," and may be given for any time spent under monitored house arrest." 2013 Act No. 34 § 1 (June 7 2013). The amendment is not a new remedy or a change in the statute, it does however allow the Statute the be enlarged (Extended in scope) to show that it has always been a part of § 24-13-40, just dormant in the background until remedy needs it's application. This determination is brought about by the Statutory Construction and the intent of lawmakers as a remedy (Equitable Relief) and is merely a correction of wording to bring about modern day viability of changing times.

Code of Laws of South Carolina 1976 § 24-13-40. " The Computation of time served by prisoners under sentence imposed by the Courts of this State must be calculated from the date of 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 any time spent under monitored House Arrest."

The term "May" used in the amendment is not left without interpretation to be deemed discretionary by judicial review. May, in context used is " in an effort to effectuate Legislative Intent to be held synonymous with "Shall" or "Must" Black's Law Dictionary 9th ed. (2009).

"Full Credit for time served must be given to any defendant detained before trial, unless 1) The defendant was an escapee from another penal institution, or 2) The defendant is serving a sentence for a separate offense while awaiting trial." S.C. Code Ann. § 24-13-40 (Atty. Gen. Opinion); S.C. Op. Atty. Gen. (Feb. 8 2011) " Because the language of § 24-13-40 is mandatory, a judge cannot deny a defendant credit for time served prior

to trial unless one of the two exceptions apply State v. McCord 349 S.C. 477, 487 , 562 S.E.2d. 689, 694 (Ct. App. 2002) State v. Boggs 388 S.C. 314, 316, 696 S.E.2d. 597-98 (S.C. App. 2010); Captain Waddell Coe (SLED) 2011 WL 782315 (2011) Gallishaw v. SCDC 2014 WL 2575416 (Nov. 2014).

Legislative intent is a design or plan that the legislature had at the time of enacting a Statute." Blacks Law Dictionary 9th Ed. (2009); C.J.S. § 315" It is elementary that the cardinal rule for the construction of Statute is to ascertain and give effect to the intention of the lawmaking body. All technical rules of construction are subservient (useful as a means or a tool; promoting an end) to the paramount consideration." Bruno Yacht Sales Inc. 353 S.C. 31, 39, 577 S.E.2d. 202, 207 (2003).

" In determining Legislative intent, th Court will if necessary, reject the literal import of words used in a Statute. It has been said that, words ought to be subservient to the intent, and not the intent to the words, Greenville Baseball Inc. v. Beardon 200 S.C. 363, 20 S.E.2d. 813, 816 (1932), and it is proper to consider the purpose sought to be accomplished."

Arkwright Mills v. Murph, 219 S.C. 438, 65 S.E.2d. 665 (1951); State v. Baucon 340 S.C. 339, 342, 531 S.E.2d. 922-23 (2000)

"What a Legislature says in the text of a Statute is considered the best evidence of Legislative intent or will." Wade v. State Op. No. 25409, 348 S.C. 255, 559 S.E.2d. 843 (2002), and "is clearly apparent from the Statutory Language, A Court may not embark upon a search for it outside the Statute." State v. Leopard 349 S.C. 467, 472-73, 563 S.E.2d. 342, 345 (S.C. App. 2002).

"The true aim and intention of legislature controls the literal meaning of a Statute. The historical background and circumstances at the time a Statute or amendment was passed can be used to assist in interpretation. An entire Statute or amendment therein, must be practical, applicable, fair and consistant with the purpose, plan, and reasoning behind its making "Greenville Baseball Inc. v. Bearden, 200 S.C. 363

20 S.E.2d.813, 816 (1942). "The dormant factor concerning Statutory Construction is the intent of Legislature, not the language used" Spartanburg Sanitary Sewer Dist. v. City of Spartanburg 283 S.C. 67, 321 S.E.2 258." The Honorable Charles T. Barton, 2014 WL 5439609 (* 4) (Oct 16 2014)

Petitioner states that the amendment (A formal revision made to a Statute to bring about correction) which was added to § 24-13-40 is made by insertion (" An amendment that places new wording within a Statutes current wording. Some authorities disatinguish amendments by adding, which places new wording after the current wording of the amendment by asserting. "Black's Law Dictionary 9th Ed. (2009)

This action creates a consolidated Statute which is a "Law that Corrects or Clarifies the Legislative provision on a particular subject and embodies them in a single Statute, often with minor amendments by drafting improvements." Courts generally presume that a consolidating Statute leaves prior case law intact (Blacks). The result of such consolidation satisfies the "One Subject" prong prescribed by S.C. Const. Art III § 17 Which states:

Every act or resolution having the force of Law shall relate to but one subject, and that shall be expressed in the title." 2005 Act No. 27 § 1 States The General Assembly finds that the section presented in an act constitute one subject as required by Article III, Sect. 17 of the S.C. Constitution, in particular finding that each change and each topic relates directly, to or in conjunction with other sections to the subject that is clearly enumerated in the title." The General Assembly futher finds that a common purpose or Relationship exists among the sections, representing a potential plurality but not disunity of topics or remedies, notwithstanding the reasonable minds might differ in identifying more than one topic or remedy contained in the act."Hercules Inc. v. State Tax Comm'n 274 S.C. 137, 143, 262 S.E.2d. 45, 48 (KN3) (1980)

Petitioner avers that § 24-13-40 is a remedial statute in nature and is not to be treated as a criminal statute. § 24-13-40 and any amendment added is and should always be viewed as procedural. This being said, it is the Petitioner's stance that the credit of time served and monitored house arrest should be applied retroactively, not prospectively.

A criminal statute "is a law that defines, classifies, and sets forth punishment for one or more specific crimes" in comparison to a remedial statute that is "a law that affords a remedy." (Black's), i.e. remediation which means, The correction, repair, restoration, or any other action taken in order to bring any condition or circumstance into compliance with a statute, standard, or regulation." 2014 South Carolina Law Acts 156 (HB 4574) (Apr. 14 2014). Remedial is providing a remedy by means of redress to correct a fault or defect and to enforce existing substantive rights." A remedial Statute is one that " is curative and corrects an error in a Statute's original enactment that interferes with interpreting or applying the Statute." Black's

Remedial laws must be construed broadly and liberally to effectuate their purpose, which rule of liberal construction will be taken as a guide" Buggs v. U.S. Rubber Co. Winnsboro Mills 201 S.C. 281, 22 S.E.2d. 881 (S.C. 1942) "Legislation that is remedial should be construed liberally to accomplish the end for which it was intended Strawhorn v. J.A. Chapman Const. Co.

In the case of State v. Varner 310 S.C. 264, 266, 423 S.E.2d. 135 133-34 (S.C. 1992) "Varner" Applicant requested his sentence, to be applied retroactively to a new amendment added to a criminal statute, this amendment replaced the old punishment. Title (16) in S.C. Code of Laws in a criminal title that provides punishment not a form of remedy. Varner was sentenced before amendment Section § 16-3-910 became effective and their is no

language in the act which would require the retroactive application to him. See Hercules, Inc. v. S.C. Tax Comm'n 274 S.C. 137, 262 S.E.2d. 45 (1980) (Prospective application is presumed absent specific provision or clear legislative intent to the contrary). Therefore, because former Section § 16-3-910 was in effect when Varner was sentenced, the proper punishment is the one required by that section.

"Generally, Statutory enactments are to be considered prospective rather than retroactive in their operations unless there is a specific provision in the enactment or clear legislative intent to the contrary. South Carolina Dept. of Rev. v. Rosemary Coin Machine Inc., 339 S.C. 25, 28, 528 S.E.2d. 416, 418 (2000), Statutes that are remedial or procedural in nature, however, operate retroactively. Id.; Carolina Power & Lights Co. v. Bennettsville, 314 S.C. 137, 139, 442 S.E.2d. 177, 179 (1994); The Honorable Steven Goldfinch Jr. 2014 WL 4953186 (*3) (Sept 18 2014) The Honorable Raymond E. Clearly III, 2014 WL 4953185 (*5) (Sept. 23 2014). Procedural Law is a specific method or course of action which proscribes the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves." Black's

A Statute is remedial and applies retroactively when it creates new remedies for existing rights or enlargens rights of a person under disability (the inability to perform some function; an objectively measurable condition of impairment) 4 S.C. Jurisprudence Action § 15 (2007) Howard v Allen 368 F. Supp 310 (D.S.C. 1973) Smith V. Eagle Const Co. 282 S.C. 140, 143, 318 S.E.2d. 89 (1984); State v. Bolin 673 S.E.2d. 885-887 (Ct. App. 2009) Carolina Cloride Inc v. S.C. Dept. of Trans. 706 S.E.2d.501 (S.C. 2011) ; State v. Hilton 752 S.E.2d. 549 (S.C. 2013) D & L Enterprises Inc. 757 S.E.2d. 695 (S.C. 2014) Mr. William E. Gunn, Chief of Staff, Office of Comptroller General 2014 WL 4253409 (*2) (Aug. 2014)

It is the Petitioner's contention that the legislature's intent in amending S.C. Code Ann. § 24-13-40 (Computation of time served by a prisoner) was revised to bring about wording to the forefront to keep the statute economically viable for modern day application to keep current with changing times. The amendment added, " and may be give for any time spent under monitored house arrest." 2013 Act. No. 34 § 1 (June, 7 2013). The amendment is not a new remedy or a change in the statute, it does however, allow the statute to be enlarged (Extended in scope) to show that has always been a part of § 24-13-40 just dorment in the background until remedy needs it's appliapplication. This determination is brought about by the statutory construction and the intent of the lawmakers as a remdey (equitable relief) and is merely a correction in wording to stay current in the language of law.

Code of Laws of South Carolina (1976) § 24-13-40." The computation of time served by a prisoner under sentence imposed by the Courts of the~~ese~~^{is} State must be calculated from the date of commencement of the service of sentence. In every case in computing the time served by a prisoner, Full credit against the sentence **must** be given for any time spent under monitored house arrest

The term **may** in this context of the amendment is not without interpretation to be left discretionary by judicial review. May, " in an effort to effectuate legislative intent to be held synonymous with shall or must. Black's Law 9th "Full credit for time served must be given to any defendant detained before trial unless 1) The defendant was an escapee from another penal institution, or 2) The defendant is serving a sentence from a separate offense while awaiting trial " S.C. Code Ann. § 24-13-40 (Atty. Gen. Opinion); S.C. Op. Atty. Gen. (Feb 8, 2011) Because the Language of § 24-13-40 is mandatory, a judge can not deny a defendant credit for time served prior to trial unless

one of the two exceptions apply." State v. McCord 562 S.E.2d. 689 (Ct. App. 2002) State v. Boggs SUPRA.

Lastly, as it would relate to the mind of the drafters of this Amendment to § 24-13-40. State Senator Todd Rutherford took the case of one Arthur Field on or about 2011. While he was representing his private client. He was "Sponsoring" a bill that would allow the Court to give such credit towards a criminal defendant's sentence. While the Senator was "Sponsoring" this bill he had a high profile client, who was on bond and "on monitored House Arrest" . As the Court knows, on June, 7 2013 the Legislature passed and the Governor signed the 2013 bill to enact it into law. Some time afterwards, Senator/ Lawyer Todd Rutherford took his client up for "sentencing" before the court and asked for his time he had spent under monitored house arrest. He went up for sentencing in October of 2013.

Interestingly, The State made the argument that he should not receive the benefits of this amendment due to his being on this Monitored House before the passing of the Law. The Court rejected the States argument and granted Mr. Field his time he served on Monitored House Arrest. (Case No. 2012-CP-040-1055 Filed 11-29-12)

CONCLUSION

Based on the foregoing, The Petitioner **Prays** that this Court either rule that 1) SCDC is required to apply Petitioners Monitored House Arrest time towards his sentence, and/or 2) Give Petitioner his Good time and Work Credits while serving time on Monitored House Arrest as was done in the Arthur Field case in Anderson County, and/or 3) Allow Petitioner to have a hearing as to whether to allow such credits, and/or 4) Rule that the 2013 Bill is to have Retroactive effect, and/or 5) Rule that the May is either discretionary as it relates to the Court or is mandatory as it should be construed in conjunction with the entire Statutory effect and meaning. Or any other relief that this Court deems just and proper. The Petitioner Humbly and Respectfully Submits the following to the Court for their

Consideration.

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Respectfully Submitted,

MAR 15 2017

SC Court of Appeals

Jimmy D. Meggs Jr.

CERTIFICATE OF SERVICE

I Jimmy D. Meggs do certify that I have served my Brief of Appellant and Record on Appeal on Respondent's Counsel, South Carolina Dept. of Corrections, Office of General Counsel, Mr. David Tartasky, Esq. Post Office Box 21787, Columbia, SC 29221-1787 by depositing the same in the United States Mail, Postage Prepaid on this _____ day of March, 2017.



Jimmy D. Meggs Jr., 277400
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1578 Clarence Coker Hwy.
Turbeville, SC 29162

This _____ day of March 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM ADM. LAW COURT

16-ALJ-04-0550-AP

The Honorable S. Phillip Lenski

CASE NO. 2017-000232

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MAR 15 2017

SC Court of Appeals

Jimmy D. Meggs Jr., 277400,

APPELLANT,

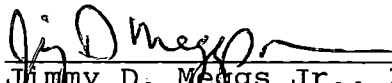
V.

South Carolina Department of Corrections,

RESPONDENT.

PROOF OF SERVICE

I Jimmy D. Meggs Jr. do certify that I have served my brief of Appellant and my Record on Appeal on the Respondent's Counsel of Record. South Carolina Department of Corrections, Office of General Counsel, Mr. David Tartasky, Esq. or Mrs. Melissa J. Arnold, Esq., Post Office Box 21787, Columbia, SC 29221-1787 by depositing the same in the United States Mail, Postage Prepaid on this 10th day of March 2017. *Christina Coker Bigelow*


Jimmy D. Meggs Jr., 277400
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(Appellant Pro-Se)

This 10th day of March 2017.

Jimmy D. Meggs., Jr. 277400
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March 8 2017

RE: Brief and Record on Appeal
CASE NO. 2017-000232

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MAR 15 2017

SC Court of Appeals

The S.C. Court of Appeals
The Honorable Jenny A. Kitchings
Post Office Box 11629
Columbia, SC 29211

Dear Mrs. Kitchings:

Enclosed please find my Brief of Appellant and Record on Appeal on The Respondents Counsel of Record. In my last letter, I asked the Court to consider allowing an Appeals Bond. Also, I asked the Court to please consider allowing me to proceed without payment of the 100.00 filing fee due to the issues presented in this appeal.

The central issue here is the allowance of credit of time served on Monitored House Arrest. A favorable ruling on this appeal would result in me being incarcerated beyond my max-out and I humbly ask for a Appeals bond with a stipulation of being placed on Monitored House Arrest.

Lastly, I would ask for the Appointment of Counsel in this Appeal and/ or the Appointment of Counsel in Petitioning the Lower Court for this Credit. I want to Thank you for your Thoughtful Consideration in these requests.

With Kind Regards...I Am.

Sincerely, Yours,

ENCLOSURES:
Brief of Appellant
Record on Appeal

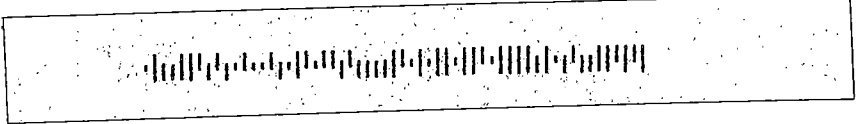
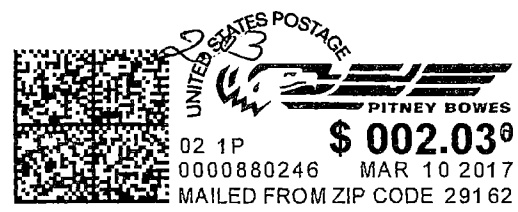


Jimmy D. Meggs Jr.

CC: SCDC
S/P/L
J/A/K
File

Jimmy D. Meggs Jr., 5000 1/2

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