THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

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SC Court of Appeals

State of South Carolina — Respondent

vs.

Trey Chavez Brown — Appellant.

Final Reply Brief of Appellant

E. Charles Grose, Jr.
The Grose Law Firm, LLC
S.C. Bar No. 66063
404 Main Street
Greenwood, SC 29646
(864) 538-4466
E-mail: charles@groselawfirm.com

Attorney for Appellant Trey Brown

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional

ARGUMENT

Did the trial court err when it denied Trey Brown full credit for time served from September 9, 2006, the date of his arrest, when Mr. Brown remained in the custody of the State of South Carolina pursuant to his arrest and the procedures mandated by S.C. Code Ann. § 44-23-410, *et. seq.*?

The State contends this matter is governed by S.C. Code Ann. § 44-17-580 without regard for the provisions of § 44-23-410, *et. seq*. This argument is without merit because § 44-23-430 expressly limits the application of §§ 44-17-510 though 610 by the provisions of § 44-23-460.[1] Section 44-23-460 requires Mr. Brown receive credit for time he was committed to the Department of Mental Health ("DMH"). Based on a finding of lack of competency, § 44-23-430(2) required the Solicitor to "initiate judicial admission proceedings" for Mr. Brown. The Respondent's Brief, however, mischaracterizes Mr. Brown's commitment to DMH as a civil commitment separate from the criminal charges for which the trial court sentenced Mr. Brown to a term of imprisonment. Because Mr. Brown's commitment to DMH directly resulted from the State's criminal prosecution, the statutory scheme contemplates Mr. Brown receiving credit for the time of his DMH commitment. Section 44-23-460(2) expressly contemplates a person receive credit for time served during a commitment for lack of competency.

The Respondent's Brief misstates the rules followed in California and Minnesota. The cases cited in the State's brief involved commitments that actually were separate from the charge for which the defendant sought credit for time served. *People v. Callahan,* 144 Cal.App.4th 678, 50 Cal.Rptr.3d 677 (2006) (as modified Nov. 9, 2006),

[1] In fact, § 44-23-460 very arguably prohibits the Solicitor from dismissing the charges so that the General Sessions Court retains jurisdiction.

involved a 1997 insanity commitment for one set of charges. In 2004, while still hospitalized under the 1997 commitment, Callahan committed a battery on a hospital guard. The California court held that the time hospitalized under the insanity commitment did not apply to the new battery charge. In *People v. Mendez*, 151 Cal.App.4th 861, 60 Cal.Rptr.3d 182 (2007), while hospitalized on an unrelated insanity commitment, Mendez assaulted another patient with a deadly weapon. *Mendez* followed the rule in *Callahan*. Essentially, these two individuals were "serving a sentence for one offense and awaiting trial and sentence for a second offense," which would not result in credit for time served under S.C. Code Ann. § 24-13-40. That was not the case for Mr. Brown who did not have any other charges.

In reality, California long ago held that a defendant committed to a state hospital prior to trial is entitled to credit for that time. *People v. Cowsar*, 40 Cal.App.3d 578, 581, 115 Cal.Rptr. 160, 161 (1974) was concerned about the "unconstitutional disparity in treatment between those confined in jail and in a state hospital prior to trial." *And see In re Banks*, 88 Cal.App.3d 864, 152 Cal.Rptr. 111 (1979) (held equal protection and due process of law mandate that, in calculating maximum duration of an incompetency commitment, credit must be given for pre-commitment confinement attributable to same criminal prosecution).

In a similar manner, the State misstates the rule in Minnesota. In *State v. Johnson*, 744 N.W.2d 376 (Minn. 2008), while serving a civil commitment as a sexual offender, Johnson made terroristic threats against members of the hospital staff. Under these circumstances, the Minnesota Supreme Court did not allow credit the time for the prior civil commitment towards the new criminal charge. In reality, Minnesota ordinarily

requires a defendant receive credit for time served in a secure state hospital facility after a finding of incompetency to stand trial. *State v. Bonafide*, 457 N.W.2d 211 (Minn. 1990). The Kansas Supreme Court explained the rationale for the rule followed in *Bonafide*:

> The physical place of confinement is not important as the appellant technically continued to be in jail while held in custody at the hospitals. He was not free on bail, had no control over his place of custody and was never free to leave the hospitals. For all practical intents and purposes, he was still in jail. The court takes judicial notice that the state mental hospitals have the facilities to enforce confinement of their patients, which brings them within the dictionary definition of a "jail."

State v. Mackley, 220 Kan. 518, 519, 552 P.2d 628, 629 (1976).

Other states follow the same rule as California, Minnesota, and Kansas. *E.g. Tal-Masso v. State,* 515 So.2d 738, 739-40 (Fl. 1987) ("there is 'no meaningful distinction ... between incarceration before trial in a county jail, and state enforced confinement in a mental hospital in preparation for trial.'"); *State v. La Badle*, 87 N.M. 391, 534 P.2d 483 (1975) (held that defendant who was ordered confined in state mental hospital under maximum security conditions after he had been found incompetent to stand trial during evidentiary hearing in criminal proceedings which involved felony charges was held in "official confinement on suspicion or charges of the commission of a felony" within meaning of statute providing for credit on sentences for time spent in presentence confinement.). *Commonwealth v. Jones*, 211 Pa.Super. 366, 236 A.2d 834 (1967) (held that defendant who was charged with arson and committed to state hospital prior to plea of guilty was in custody so that he was entitled to have time spent in hospital credited toward sentence received for crime charged); *State v. Ewell*, 234 Md. 56, 60, 198 A.2d 275, 277 (1964) ("time spent under detention in a mental institution should be counted as

a part of the sentence served"); *People ex. rel. Molina v. Noble*, 28 Misc.2d 646, 216 N.Y.S.2d 541 (1961) (held that a prisoner detained in the New York City correctional institution was entitled to credit on his sentence for the time he was incarcerated prior to conviction in the Matteawan State Hospital for the criminally insane); *Petition of Stearns*, 343 Mass. 53, 175 N.E.2d 470 (1961) (writ of habeas corpus on the ground that if the time spent in a state hospital by the petitioner were deducted from his sentences the petitioner would be entitled to an immediate discharge).

DMH placed Mr. Brown at the Columbia Regional Care Center, located on DMH property on Farrow Road in Columbia, South Carolina, operated by Correct Care Solutions "in partnership with the SC Department of Mental Health and Bryant Psychiatric Hospital," and self-described as "the only private detention healthcare facility in the United States." An overhead photograph of the facility, found on Correct Care Solutions website, demonstrates the secure nature of this "detention healthcare facility," confirming the State detained Mr. Brown in the same manner has a county detention center.[2]

The plain meaning of § 44-23-410, *et. seq.* mandates a defendant hospitalized for lack of competency receive credit for time served while committed to DMH. As pointed out by the California courts, a contrary interpretation would violate the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. *See State v. McGrier*, 378 S.C. 320, 663 S.E.2d 15 (2008) ("legislative acts are to be construed in favor of constitutionality and will be presumed constitutional absent a showing to the contrary"). *See also* S.C. Const. Art. I, § 3.

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[2] http://www.correctcaresolutions.com/our-services/crcc/ (last viewed Jan. 22, 2017).

CONCLUSION

This Court should reverse the trial court judge and enter an order granting Mr. Brown full credit for time served from September 9, 2006, the date of his arrest.

Respectfully Submitted,

By 

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Appellant Trey Brown

May 31, 2017

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Rule 211(b), SCACR Certification

The undersigned counsel certifies that the Final Reply Brief of Appellant complies with Pursuant to Rule 211(b), SCACR.

Respectfully Submitted,

By _____

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
E-mail: charles@groselawfirm.com

Attorneys for the Appellant

May 31, 2017
Greenwood, South Carolina