(5)

RECEIVED
JUN 08 2017
SC Court of Appeals

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

State of South Carolina Respondent

vs.

Trey Chavez Brown Appellant.

Final 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 Contents i

Table of Authorities ii

Statement of Question Presented 1

Statement of Case 2

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.*? 4

Conclusion 6

Rule 211(b), SCACR Certification 7

TABLE OF AUTHORITIES

Cases

Blakeney v. State, 339 S.C. 86, 529 S.E.2d 9 (2000) 5

Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) 4

State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991) 4

State v. Boggs, 388 S.C. 314, 696 S.E.2d 597 (Ct. App. 2010) 5

State v. Dennis, 402 S.C. 627, 742 S.E.2d 21 (Ct. App. 2013) 4

State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (1974) 5

State v. McCord, 349 S.C. 477, 562 S.E.2d 689 (Ct. App. 2002) 5

Statutes

S.C. Code Ann. § 17-25-45 2

S.C. Code Ann. § 24-13-40 ..... 4, 5

S.C. Code Ann. § 44-23-410 ..... 1, 4

STATE'S STATEMENT OF QUESTION PRESENTED

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.*?

STATEMENT OF THE CASE

The State charged the appellant, Trey Brown, with the September 9, 2006 death of his father-in-law, Mr. Keith Kelley. Mr. Brown called 911 and later turned himself in to the authorities. The Abbeville County Grand Jury indicted Mr. Brown for murder and possession of a firearm during the commission of a violent crime. Record on Appeal (hereinafter "R.") 9-12. Pursuant to S.C. Code Ann. § 17-25-45, the Solicitors Office served notice of intent to seek like without the possibility of parole if Mr. Brown were convicted of a "most serious" offence. R. 17.

Prior to calling this case for trial, Dr. Richard Frierson of the South Carolina Department of Mental Health (hereinafter "DMH") concluded that Mr. Brown was not competent to stand trial. R. 106-12. The Honorable Frank R. Addy, Jr. committed Mr. Brown to DMH for sixty days for restoration of competency. R. 1. Because Mr. Brown's competency to stand trial could not be restored in sixty days, the State petitioned the Probate Court to commit Mr. Brown to DMH. R. 1. The Probate Court granted the State's petition. R. 1. On October 20, 2009, the Solicitor's Office dismissed Mr. Brown's charges. R. 9, 11.

On February 7, 2014, the State obtained new indictments for murder and possession of a firearm during the commission of a violent crime. R. 13-16. As the result of evaluations conducted on April 28 and June 2, 2014, Dr. Frierson opined that Mr. Brown was competent to stand trial. R. 95-101. On October 28, 2015, the State once again served notice of intent to seek life without the possibility of parole if Mr. Brown were to be convicted of a "most serious" offense. R. 18.

On February 29, 2016, Mr. Brown pled guilty to murder and possession of a firearm during the commission of a violent crime. The Honorable R. Scott Sprouse sentenced Mr. Brown to thirty years for murder and five years for possession of a firearm during the commission of a violent crime. The sentences are consecutive. R. 2, 3, 76-77. Mr. Brown requested credit for time served while committed to DMH. The Solicitor opposed Mr. Brown receiving credit for time during the civil commitment to DMH during the period of time that not indictments were pending. Judge Sprouse agreed with the Solicitor and denied Mr. Brown credit for time served during the civil commitment. R. 63, 65, 76-77.

On March 2, 2016, Judge Sprouse entered a consent order amending the amount of credit for time served to correct an error in calculating the amount of time. R. 4-5. Also, on March 2, 2016, Judge Sprouse denied Mr. Brown's motion to reconsider the denial of credit for time served during the period of the civil commitment when no indictment was pending. R. 6-7.

This appeal follows.

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.*?

"In criminal cases, the appellate court sits to review errors of law only and is bound by the factual findings of the circuit court unless clearly erroneous. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Dennis*, 402 S.C. 627, 634–35, 742 S.E.2d 21, 25 (Ct. App. 2013) (internal quotations and citations omitted).

The facts are not in dispute, and the sole issue before this Court is whether the trial court judge erred as a matter of law in denying Mr. Brown credit for time served during the civil commitment when no indictment was pending. S.C. Code Ann. § 24-13-40 controls. A court must abide by the plain meaning of the words of a statute. *Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* 341 S.C. at 85, 533 S.E.2d at 581. When a statute is penal in nature, the rule of lenity requires that any ambiguity must be construed strictly against the State and in favor of the defendant. *State v. Blackmon,* 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Mr. Brown requested the Court to grant him credit for time served, pursuant to S.C. Code Ann. § 24-13-40, form when the State took him into custody on September 9, 2006 and because Mr. Brown remained in custody of the State pursuant to statutory procedures, S.C. Code Ann. § 44-23-410, *et. seq.* The Solicitor opposed Mr. Brown receiving credit for time served during the involuntary commitment, and the Court

agreed. Section 44-23-460(2), however, would have barred prosecution of Mr. Brown if he had "been hospitalized for a period of time exceeding the maximum possible period of imprisonment to which [he] could have been sentenced if convicted as charged." Our General Assembly, therefore, expressed its intent that a person adjudicated not competent to stand trial be credited, towards any eventual sentence, with the time served while confined to DMH.

Denial of credit for time served is reviewable on appeal, and our appellate courts consistently enforce S.C. Code Ann. § 24-13-40 and credit individuals with time served in pre-trial detention. *State v. Boggs*, 388 S.C. 314, 696 S.E.2d 597 (Ct. App. 2010) (plea judge's denial of jail credit for time defendant served in pretrial detention based upon state's decision to drop charge against defendant from armed robbery to strong arm robbery was an error at law). *See also State v. McCord*, 349 S.C. 477, 562 S.E.2d 689 (Ct. App. 2002) (Trial court could not deny defendant credit for time served prior to trial and sentencing based on fact that court had not given defendant a life sentence); *Blakeney v. State*, 339 S.C. 86, 529 S.E.2d 9 (2000) (defendant, who was jailed in another county on unrelated charges and had "hold" place on him for current robbery charge, was entitled to credit for time served from date on which sheriff's department issued warrant for his arrest for robbery); and *State v. Dozier*, 263 S.C. 267, 210 S.E.2d 225 (1974) (defendant was entitled to credit on his sentence for time spent in prison in Georgia while contesting extradition to South Carolina).

This Court should reverse the trial court.

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
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUN 08 2017
SC Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

State of South Carolina Respondent

vs.

Trey Brown Appellant.

Rule 211(b), SCACR Certification

The undersigned counsel certifies that the Final 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