**STATE OF SOUTH CAROLINA**
**IN THE COURT OF APPEALS**

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**Appeal from Abbeville County**
**Honorable R. Scott Sprouse, Circuit Court Judge**

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**THE STATE,**

**Respondent,**

**v.**

**TREY C. BROWN,**

**Appellant**

**Appellate Case No. 2016-000526.**

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# FINAL BRIEF OF RESPONDENT

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**ATTORNEYS FOR RESPONDENT**

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**ATTORNEYS FOR RESPONDENT**

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Cases



### Statutes



### Other Authorities

## APPELLANT'S STATEMENT OF THE ISSUE ON APPEAL

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.*?

## RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

Whether the trial court accurately denied Appellant credit for time served between the dates of October 20, 2009, and February 7, 2014, during which time no charges were pending against Appellant, and during which time Appellant remained in the care of the Department of Mental Health due to a separate civil commitment governed by S.C. Code Ann. § 44–17–580 rather than S.C. Code Ann. § 44–23–410.

## STATEMENT OF THE CASE

Appellant Trey Chavez Brown pled guilty to the September 9, 2006, murder of his father-in-law, Mr. James Keith Kennedy, and for the possession of a firearm during the killing. (R. pp. 2-3). The Abbeville County Grand Jury first indicted Appellant for these charges during its October 2006 convening. (R. pp. 9-12). The State subsequently served Appellant with notice of intent to seek life without the possibility of parole. (R. p. 17).

Pursuant to S.C. Code Ann. § 44–17–580 (2005), Appellant was civilly committed to the South Carolina Department of Mental Health ("DMH") on October 7, 2009. (R. p. 1). The State dismissed Appellant's charges on October 20, 2009. (R. pp. 9-12).

On February 7, 2014, the State sought and obtained Appellant's re-indictment for the same charges. (R. pp. 13-16). The State again served Appellant with notice of intent to seek a life sentence. (R. p. 18).

Appellant pled guilty on February 29, 2016, before the Honorable R. Scott Sprouse. (R. pp. 2-3). The State made no sentencing recommendation. (R. p. 44, lines 15-19). Judge Sprouse sentenced Appellant to 30 years for murder and a consecutive five years for the weapons charge. (*Id.*).

At the time of sentencing, Appellant received credit for time he served between his initial arrest and the State's October 20, 2009, dismissal of the charges against him. (R. p. 64, lines 9-18; R. p. 76, lines 23-25). The court calculated that time to total three years, one month, and eleven days. (*Id.*; R. pp. 2-3). The court denied time served credit to Appellant concerning the period of time in which he was civilly committed with no charges pending against him. (R. p. 77, lines 2-12).

A few days later, Judge Sprouse issued a consent order amending the credit for time served to also include Appellant's pre-trial confinement spanning from his February 7, 2014, re-indictment until his February 29, 2016, guilty plea and sentence. (R. pp. 4-5).

Appellant also moved for the court to reconsider the denial of credit for time served during the period when Appellant was solely civilly committed. (R. pp. 6-7). The court denied the motion. (*Id.*). Notice of this appeal followed. (R. pp. 127-31).

## STATEMENT OF FACTS

The facts concerning Appellant's convictions are not in dispute. (R. pp. 49-53). The relevant facts instead pertain to Appellant's diagnosis of schizophrenia, which has at times rendered him not competent to stand trial and led to a period of civil commitment to DMH. (*See* R. p. 31, lines 2-21).

Prior to entry of Appellant's guilty plea, the court received testimony from Dr. Richard Frierson, whom the parties stipulated to as an expert in forensic psychiatry. Dr. Frierson testified on Appellant's behalf regarding a number of competency evaluations conducted during the course of Appellant's incarceration and civil commitment. (R. p. 22, lines 3-11).

Appellant was first evaluated for his competency to stand trial on August 15, 2007. Dr. Frierson found him genetically predisposed to mental illness and further found that, regardless of an absence of a personal history of mental illness, Appellant did not appear competent to stand trial at that time. (R. p. 23, lines 8-25; R. pp. 121-26). The court responded by ordering 60 days of competency restoration. (R. p. 24, lines 1-6; Supp. R. p. 1). During this time frame, DMH evaluations noted that Appellant presented in a manner indicative of malingering. (R. pp. 113-20). It appeared he may be feigning psychosis. (R. p. 24, lines 2-21).

Spawned by concerns by jailhouse officials and defense counsel, the court again ordered Dr. Frierson to evaluate Appellant in early 2009. (R. p. 24, line 22 – p. 25, line 23). A March 6, 2009, evaluation gave rise to a finding of genuine mental illness, another order for a 60-day commitment for competency restoration, and Appellant's second hospitalization at DMH. (R. p. 26, lines 4-13; R. pp. 106-12; Supp. R. pp. 2-3).

Following this second 60-day stint at DMH, Dr. Frierson found that Appellant's competency had not been restored and recommended a civil commitment. (R. p. 26, line 24 – p.

27, line 14; R. pp. 102-05). Following a hearing, a civil commitment order was issued October 7, 2009. (R. p. 9, lines 1-14; R. p. 1). The State subsequently dismissed the charges against Appellant on October 20, 2009. (R. pp. 9-12).

In 2014, Appellant's condition improved and DMH considered releasing him from inpatient treatment. (R. p. 28, lines 1-10). The State sought Appellant's re-evaluation for competency, and Dr. Frierson found Appellant mentally ill but competent to stand trial. (R. p. 28, line 13 – p. 30, line 23). The State then re-indicted Appellant on February 7, 2014. (R. pp.13-16).

Between October 20, 2009, and February 7, 2014, Appellant remained in the custody of DMH's forensic hospital pursuant only to an order of civil commitment as provided in S.C. Code Ann. § 44–17–580 (2005). (R. p. 27, lines 18-22; *see* R. pp. 9-16). Except for both 60-day commitments, Appellant was housed at the county detention center until this October 2009 civil commitment. (*See* Supp. R. pp. 1-3). Once civilly committed, Appellant remained at DMH until the day before his plea. (*See* R. p. 34, line 7 – p. 35, line 22).

One week prior to the guilty plea, Dr. Frierson again evaluated Appellant and found him competent to stand trial. (R. p. 32, line 12 – p. 35, line 14; R. pp. 79-86). At this February 22, 2016, evaluation, Dr. Frierson opined that Appellant exhibited some signs of malingering. (R. p. 37, line 3 – p. 39, line 1). When Appellant pled guilty on February 29, 2016, Dr. Frierson affirmed his competency finding. (R. p. 42, lines 3-16).

## ARGUMENT

**I. The trial court did not err when it denied time served credit for the period of Appellant's civil commitment because during the time frame at issue, Appellant had no charges pending upon which he could accrue time served credit, and was civilly committed for reasons other than the criminal charge to which he ultimately pled.**

Appellant fails to distinguish that the civil commitment at issue occurred pursuant to a separate probate court proceeding and was not part of the criminal penalty faced as a result of the shooting.

In a criminal case, the appellate court sits to determine whether the trial court abused its discretion by basing a ruling upon an error of law. *State v. Halcomb*, 382 S.C. 432, 438, 676 S.E.2d 149, 152 (Ct. App. 2009). "When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. In such cases, the appellate court is not required to defer to the trial court's legal conclusions." *State v. Sweat*, 379 S.C. 367, 373, 665 S.E.2d 645, 649 (Ct. App. 2008) (quotation and citation omitted), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010).

At issue is the trial court's acceptance of "the State's argument that the time that [Appellant] spent under a civil commitment should not count toward his time served." (R. p. 77, lines 5-7). For a period of four years, three months, and eighteen days, Appellant had no charges pending against him and, as posited by the State, would therefore "not be entitled to credit for time served." (R. p. 63, lines 16-24).

A. <u>The statute governing calculation of time served does not instruct an award of time served credits for periods of time during which no charges are pending.</u>

The pertinent section of the South Carolina Code mandates that time served "must be calculated from the date of the imposition of the sentence." S.C. Code Ann. § 24–13–40 (2013). And "in computing the time served by a prisoner, full credit against the sentence must be given

for time served prior to trial and sentencing." *Id.* Credit should not be given (1) when the prisoner is an escapee and (2) when the prisoner is already serving time for one offense and awaiting trial on a second. *Id.*; *Allen v. State,* 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000).

"The issue of interpretation of a statute is a question of law for the court." *State v. Sweat, supra.* "Where the terms of a statute are clear, the court must apply those terms according to their literal meaning. The 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." *Allen v. State, supra* (citations omitted). Of particular import in this case, this Court has interpreted the applicable statute as mandating the trial court apply credit for time served unless one of the two aforementioned exceptions applies. *State v. McCord,* 349 S.C. 477, 487, 562 S.E.2d 689, 694 (Ct. App. 2002) ("this matter is not discretionary with the trial court"); *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (same). Neither statutory exception applies here.

The straightforward, common sense reading of § 24–13–40 in relation to the case at bar instructs that the trial court must credit a prisoner with time served awaiting disposition of his charges. S.C. Code Ann. § 24–13–40 (2013). Considering the foregoing, if no charges are pending against a prisoner, then time served credits cannot accrue. There is not an active indictment for any credits to accrue towards. Thus, the State posits that the trial court appropriately denied the motion to credit Appellant for the period of his civil commitment stemming from the October 20, 2009, dismissal of charges to his February 7, 2014, re-indictment. Time served credit is not warranted for the period in question because no charges remained pending and, as a result, Appellant could not accumulate time served credit.

Similarly, the statutory scheme Appellant cites in support of applying time served contemplates that criminal charges at all times remain pending against a hospitalized defendant

in order for him to be credited for the period of hospitalization at a later sentencing proceeding. S.C. Code Ann. § 44–23–460 (2011) (denoting procedure for hospitalized defendant who is mentally ill or intellectually disabled and barring prosecution where hospitalization exceeds maximum possible penalty for crime charged)[1]; *see also In re: State v. Linkhorn*, Op. No. 27684 (S.C. Sup. Ct. filed Nov. 16, 2016) (Shearouse Adv. Sh. No. 44 at 55) (concluding that "if an individual cannot be involuntarily committed to DDSN following judicial admission proceedings, the individual *may* be confined in jail if there are criminal charges pending against him"). Factually, Appellant cannot garner time served credits for the time period at issue because his criminal charges were not continually pending.

B. The reason for Appellant's confinement during the time in question was not penal in nature and time served credits are not applicable for periods of confinement unrelated to the ultimate conviction.

An additional rationale supports the trial court's decision. Appellant's civil commitment does not stem from his criminal adjudication, but rather occurred pursuant to the doctrine of parens patriae. The State may order an individual be confined for reasons other than those penal in nature. *E.g.* S.C. Code Ann. § 44–23–410 (2016), *et. seq.* (emergency admission of person likely to cause serious harm; procedures; court review; assessment by examiners; initiation of emergency commitment procedures; hearing; right to counsel).

> Although a proceeding for the involuntary hospitalization of an individual considered, by those seeking commitment, to be mentally ill and to meet other statutory requirements for compulsory care is similar to a civil action, in personam, it is more in the nature of a special proceeding. It is a proceeding by the state not truly adversary in character, but based on the state's authority of "parens patriae" and the state's police power.

[1] Note that in this case, Appellant's period of civil commitment does not come close to exceeding the maximum possible period of imprisonment for murder. *See* S.C. Code Ann. § 16–3–20 (2010).

8 S.C. Jur. Mental Health § 22.

Appellant's liberty was not lost during his period of civil commitment as a punitive consequence of the murder to which he ultimately pled guilty. Appellant was civilly committed pursuant to S.C. Code Ann. § 44–17–580 (2005). (R. p. 1). That is, Appellant's commitment stemmed from a judicial finding that he lacked sufficient insight or capacity to make responsible decisions with respect to his treatment, or due to a likelihood of serious harm to himself or others as a result of his mental condition. S.C. Code Ann. § 44–17–580 (2005).

The dismissal of Appellant's charges during the period of civil commitment denotes a shift in the State's interest and purpose in confinement. While the State initially acted to punish a criminal act, Appellant's confinement became, for a period of time, solely the result of the State's non-adversary interest in protecting the mentally ill. Thus, during the period in question, Appellant was not accumulating good time credits in relation to any past or future charge.

> Specifically, conduct credit cannot be awarded for pretrial confinement on a finding of incompetency to stand trial, because sentence credits for good behavior are "particularly inconsistent" with the therapeutic goals of treating a defendant so that his competency can be restored. "The purpose of confinement is to restore the mental ability to stand trial. . . . [T]hat goal would be hindered if mere institutional good behavior and participation automatically reduced the therapy period." In short, the therapeutic purpose of incompetency confinement in a state hospital has little if anything to do with the statutory conduct credit incentive available to a competent criminal defendant held in jail prior to trial. The therapy must not be artificially shortened by a factor unrelated to psychiatric concerns.

*People v. Callahan*, 144 Cal. App. 4th 678, 686–87, 50 Cal. Rptr. 3d 677, 682–83 (Cal. Ct. App. 2006), *as modified* (Nov. 9, 2006) (internal citations and quotations omitted).

Between October 20, 2009, and February 7, 2014, Appellant underwent mental health treatment as a result of a judicial proceeding separate and unrelated to any criminal charge. Under such circumstances, time served credits are not due for the period of time during which Appellant had no charges pending against him. *People v. Mendez*, 151 Cal. App. 4th 861, 864,

60 Cal. Rptr. 3d 182, 184 (Cal. Ct. App. 2007) ("A defendant is entitled to credit for presentence custody only if he shows the conduct that led to his conviction was the sole reason for his loss of liberty during the presentence period.") (jurisdiction requiring credit for time served in presentence custody) (citing *People v. Callahan*, *supra*); *see State v. Johnson*, 744 N.W.2d 376 (Minn. 2008) (denying time served credits for time spend in civil commitment where the commitment occurred prior and was unrelated to the criminal charge); *State v. Stafford*, 2002 WL 31859518 at *1, 2002-Ohio-7184, ¶ 4 (Oh. Ct. App. 2002) (unpublished) (per curiam) (no time served credits for period of civil commitment because commitment stemmed from loss of competency and therefore "cannot be treated as confinement arising out of the offense under which he was convicted").

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should affirm Appellant's convictions and sentence for murder and possession of a weapon during the commission of a violent crime.

Respectfully submitted,

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June 19, 2017
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## CERTIFICATE OF COMPLIANCE

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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

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