THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Opinion No. 2018-UP-039 (S.C. Ct. App. Filed January 31, 2018)

Appellate Case No. 2016-002144

City of Columbia.....Petitioner,

v.

Robert S. Bruce ..... Respondent.

PETITION FOR A WRIT OF CERTIORARI

Jessica R. Mangum
Office of the City Attorney
Post Office Box 667
Columbia, South Carolina 29202
(803) 737-4242

Attorney for Petitioner

Other Counsel of Record:

Jessica Sturgill, Esquire
Richland County Public Defender's Office
Post Office Box 192
Columbia, South Carolina 29202

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court correctly sentence the Respondent on a shoplifting, value $2000 or less charge when the Court sentenced the Respondent to twenty-one days with credit for one day of time served in pretrial detention?

II. Does S.C. Code Ann. Section 24-13-40 and the holding in State v. Allen require the trial court to give a defendant credit for time served on an unrelated subsequent offense?

STATEMENT OF THE CASE/FACTS

This is an appeal from the circuit court's order remanding the Respondent's case to municipal court to amend sentencing. On October 8, 2014, Officer William Beattie of the City of Columbia Police Department arrested Robert Bruce (hereinafter "Respondent") on the misdemeanor charge of Shoplifting, value $2,000 or less. The Respondent received a $2,130.00 personal recognizance bond and was released on October 9, 2014. On October 17, 2014, the Respondent requested a jury trial for the shoplifting charge.

On March 17, 2015, the Respondent was subsequently arrested on a separate shoplifting charge (Enhancement for 3rd or subsequent offense) on warrant number 2015A4021600611 and received a $5,000.00 surety bond. Because the Respondent did not post that bond, he remained incarcerated at the Alvin S. Glenn Detention Center on the unrelated separate charge. During his incarceration on the second shoplifting charge, the Respondent's personal recognizance bond for the initial shoplifting charge remained in place.

On January 11, 2016, in the Richland County Court of General Sessions, the Respondent pled guilty to the second shoplifting charge as alleged on warrant 2015A40216600611, and the charge was reduced to Shoplifting, value $2,000 or less. The Respondent was sentenced to thirty (30) days, given credit for time served in pretrial detention, and released (having already served approximately 301 days on that unrelated separate charge). The October 8, 2014 shoplifting charge was not included in the Respondent's general session's plea agreement, and it remained a separate and distinct pending charge in the City of Columbia Municipal Court.

On March 23, 2016, the Respondent was tried before a jury for the October 8, 2014 shoplifting offense, and he was found guilty. During sentencing, the Respondent argued that pursuant to S.C. Code Ann. section 24-13-40, he must receive credit for time served in pretrial detention/incarceration on the subsequent unrelated and separate shoplifting offense. The trial court disagreed and sentenced the Respondent to twenty (20) days with credit for the one (1) day of time he served prior to receiving a personal recognizance bond.

On March 30, 2016, the Respondent filed an appeal to the Richland County Court of Common Pleas to challenge his sentence, alleging the municipal court committed an error of law and abused its discretion in refusing to give the Respondent credit for the approximately 301 days he spent in pretrial detention/incarceration on the subsequent unrelated and separate shoplifting offense.

The circuit court, sitting in its appellate capacity (hereinafter "appellate court"), heard oral arguments on August 26, 2016. By written order dated September 19, 2016, The Honorable Clifton Newman granted the Respondent's appeal, finding S.C. Code

Ann. Section 24-13-40 and the Supreme Court's holding in *Allen v. State* required the lower court to give the Respondent credit for the time he served on the subsequent and unrelated additional charge. R. pp. 2-5. *Allen v. State*, 339 S.C. 393, 39, 529 S.E.2d 541, (2012). Judge Newman remanded the case to municipal court with instructions to credit the Respondent with time served for the entirety of his twenty-one (21) day sentence.

On October 19, 2016, the City of Columbia (hereinafter "Petitioner") served notice of appeal to the Respondent. The same day, Petitioner filed clocked copies of the Notice of Appeal with the Richland County Clerk of Court and the South Carolina Court of Appeals.

On January 31, 2018, the Court of Appeals issued a *per curiam* decision affirming the circuit court's decision. On February 15, 2018, the Petitioner filed a petition for rehearing with the South Carolina Court of Appeals, and on March 26, 2018, the Court of Appeals issued an order denying the petition.

CERTIORARI

The City submits there are special and important reasons for this Court to exercise its discretion to grant certiorari and to review the decision of the Court of Appeals in this mater pursuant to Rule 242(B), SCACR. Specifically, the City submits the decision of the Court of Appeals was reached through an improper statutory interpretation of section 24-13-40 of the South Carolina Code and a misapplication of the holding in State v. Allen. The Court of Appeals affirmed the circuit court's invention of a statutory sentencing requirement that does not exist in the plain language of the statute and the ramifications of this ruling go far beyond Respondent's case.

For these reasons, the City respectfully asks this Court to grant this petition for a writ of certiorari and issue an opinion which reverses the Court of Appeals' decision affirming the circuit court's order to amend Respondent's sentence.

ARGUMENT

I. THE TRIAL COURT PROPERLY SENTENCED THE RESPONDENT FOR SHOPLIFTING, VALUE $2000 OR LESS WHEN THE COURT SENTENCED THE RESPONDENT TO TWENTY-ONE DAYS WITH CREDIT FOR ONE DAY OF TIME SERVED IN PRETRIAL DETENTION.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "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, 236 (2011) (internal citations omitted). A trial judge has broad discretion in sentencing within statutory limits. In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) (citing Brooks v. State, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997)). "A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant." Id. (citing State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct.App.2008)). A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law. Id. (citing State v. Rice, 375 S.C. 302, 315, 652 S.E.2d 409, 415 (Ct.App.2007)).

Analysis/Discussion

The plain language of S.C. Code Ann. § 24-13-40 provides that

> 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 ... 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 (Supp. 2013) (emphasis added). "Where the terms of a statute are clear, the court must apply those terms according to their literal meaning." *Allen v. State*, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2012). In addition, "[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.* Moreover, "Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention." *State v. Taylor,* 411 S.C. 294, 301, 768 S.E.2d 71, 75 (Ct. App. 2014).

In *Allen v. State*, the Supreme Court found the defendant was entitled to credit for time served on his initial set of charges because his bond was revoked and he was incarcerated following his later arrest on additional charges. Because the defendant's bond on the initial charge had been revoked based upon his later arrest, he was "awaiting trial and sentencing on all offenses ... and was clearly in custody on all charges." *Allen*, 339 S.C. at 395-96, 529 S.E.2d at 542. However, the circumstances in *Allen* are clearly and easily distinguishable from the case at bar. In the present case, the Respondent was given a personal recognizance bond when he was first arrested for shoplifting on October

8, 2014. After the Respondent's March 17, 2015 arrest for the additional, separate, and unrelated shoplifting/property offense, the original bond was not revoked. Additionally, the plain language of the statute clearly states that credit is not given when a prisoner is "serving a sentence for one offense and is awaiting trial and sentence for a second offense." S.C. Code Ann. § 24-13-40 (Supp. 2013). The facts in the record show that the Respondent had served the sentence on the second charge and was waiting for a subsequent trial and sentencing on the first. Moreover, the Respondent was not in custody on the initial charge at the time of the sentencing on his subsequent and unrelated offense because his bond had not been revoked and the personal recognizance bond remained in effect.

Because there appears to be a dearth of cases in South Carolina that address this specific factual scenario, it is instructive to compare the case at bar to cases in other jurisdictions that have addressed similarly situated defendants. *See generally, e.g., People v. Prieskorn*, 424 Mich. 327, 381 N.W.2d 646 (Mich. 1986) (holding that defendant was not entitled to credit for time served for an unrelated offense that was committed while defendant was on bond for another, separate offense); and *Rash v. United States of America*, 2010 WL 6794692, 1 (W. Va. 2010) (finding that "credit for time served will not be granted where the time in custody was credited against another offense")[1]. Likewise, it is prudent to adhere to the generally accepted principal that the courts must reject statutory interpretations that lead to a result so absurd that it was either

[1] As explained in *Rash v. United States*, 18 U.S.C. § 3585(b) provides that "A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences (1) as a result of the offense for which the sentence was imposed; or (2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed; that has not been credited against another sentence."

not intended or would otherwise defeat the plain legislative intention. *Taylor*, 411 S.C. at 301, 768 S.E.2d at 75.

Under the appellate court's interpretation of the statute, if the Respondent's trial and sentencing on his October 8, 2014 shoplifting charge had occurred while he was serving any portion of the thirty (30) day time served sentence he received on the subsequent unrelated shoplifting charge, the Respondent would not qualify for credit under S.C. Code section 24-13-40. Moreover, the appellate court reasons that because the Respondent was not tried and sentenced on the October 8, 2014 shoplifting charge during the time he was incarcerated on the subsequent charge, he must be given credit for that time. That result appears expressly contrary to existing public policy and is so patently absurd that such an interpretation presumably could not be the intent of the Legislature.

Additionally, under the appellate court's interpretation of the statute, the 301 days the Respondent served in pretrial detention/incarceration on the subsequent charge must also be applied to any future sentence he might receive because "full credit against the sentence must be given for time served prior to trial and sentencing." R. pg. 4. Essentially, the court construes the statutory language "prior to trial and sentencing" to apply to any trial and any sentence. This interpretation clearly and unnecessarily expands the scope of the statute beyond its intended meaning.

Accordingly, to accept the appellate court's interpretation of the statute would be tantamount to rewarding a defendant for the commission of multiple crimes; and the Legislature certainly did not intend to reward defendants who commit multiple crimes

with more credit than those who did not.[2] If the Legislature had intended for criminal defendants to benefit from the disposition of criminal acts that occur "last in time," they would have certainly seen fit to change the plain language of section 24-13-40 accordingly.

Most importantly, the statute plainly reads that credit is not to be given when a defendant awaits trial and sentencing on a separate and distinct offense; and it is significant that the language does not dictate that sentences must "relate back" or be otherwise predicated upon a linear disposition of charges. Rather, the most logical reading of the plain language is that credit for time served is simply not assessed on separate and distinct offenses – regardless of which occurs first in time – and especially not in situations where the defendant remains on bond prior to the ultimate disposition of the charges.

Ultimately, the public policy of the State is not to reward defendants merely because they commit separate and distinct crimes and subsequently serve separate and distinct pretrial detentions or sentences. The plain language of section 24-13-40 expressly prohibits credit for time served when a defendant awaits trial and sentencing on a separate offense and the Legislature clearly did not intend to reward defendants who commit additional crimes.

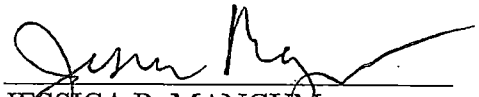
CONCLUSION

For the reasons stated, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari and issue an order reversing the decision of the Court of

[2] In addition, it is illogical to suggest that a Defendant who has committed multiple crimes must be allowed to benefit more so than another defendant who has remained on bond prior to sentencing.

Appeals, reversing the circuit court, and affirming the sentence of the trial court. If the Court grants the petition for a writ of certiorari, Petitioner would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,



JESSICA R. MANGUM
Office of the City Attorney
Post Office Box 667
Columbia, South Carolina 29202
(803) 737-4242

Attorney for Petitioner

Columbia, South Carolina
April 25, 2018

THE STATE OF SOUTH CAROLINA
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Opinion No. 2018-UP-039 (S.C. Ct. App. Filed January 31, 2018)

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PROOF OF SERVICE

The undersigned hereby certifies that she served a copy of the PETITION FOR A WRIT OF CERTIORARI upon the Attorney for the Respondent by placing a copy in the United State mail, first class postage prepaid to her at her office as indicated below on this 25th day of April, 2018.

Jessica Sturgill, Esquire
Assistant Public Defender
Fifth Circuit Public Defender's Office
Post Office Box 192
Columbia, South Carolina 29202

Jessica R. Mangum
Office of the City Attorney
Post Office Box 667
Columbia, South Carolina 29202
(803) 737-4242
Attorney for Appellant

April 25, 2018

Office of the City Attorney
Post Office Box 667 • Columbia, SC 29202 • (803) 737-4242 • Fax (803) 737-4250

April 25, 2018

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: City of Columbia v. Robert S. Bruce
Court of Appeals No.: 2016-002144

Dear Ms. Kitchings:

Enclosed for filing please find one (1) copy of the Petition for a Writ of Certiorari in the above-referenced matter.

By copy of this letter, I am serving same on the attorney for the Respondent.

Sincerely,

Jessica R. Mangum
Assistant City Attorney

JRM/jlh
Enclosures as Stated

cc: Jessica Sturgill, Esquire