

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from York County
Honorable Paul M. Burch, Circuit Court Judge
Appellate Case No. 2015-002563

SC Court of Appeals

THE STATE,

Respondent,

vs.

JOHN KENNETH MASSEY, JR.,

Appellant.

**MOTION TO ALLOW FILING OF
SUPPLEMENTAL RECORD ON APPEAL**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In July of 2013, Appellant John Kenneth Massey, Jr. was arrested following an investigation into the theft of a four-wheeler. In October of 2013, the York County Grand Jury indicted Massey for grand larceny and malicious injury to personal property with both offenses subject to enhancement as third or subsequent property crimes. In November of 2015, Massey proceeded forward to trial and was convicted as indicted by a jury. In December of 2015, the trial judge sentenced Massey to an aggregate term of imprisonment of twelve years. Likewise, the trial judge specifically determined Massey was entitled to 140 days of credit for time served. Massey then timely filed and perfected an appeal.

II.

On appeal, Massey has raised three separate issues. Through one of those issues, Massey contends: “The trial judge erred in failing to credit Appellant with time served in pre-trial detention awaiting disposition of the charges in direct contravention of the mandatory statutory provision and controlling case law.” Specifically, in raising that contention, Massey maintains he was entitled to 566 days of credit for time served based on his time in pre-trial detention but only received 140 days of credit.

III.

Although the trial judge determined Massey was only entitled to 140 days of credit for time served based upon the information before him, the South Carolina Department of Corrections has determined Massey was entitled to 582 days of credit for time served as reflected by his sentence start date of April 29, 2014, which is a date 582 days before Massey’s conviction date of December 2, 2015. Inmate Search Detail Report for John Kenneth Massey, Jr., <https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000305341>.

IV.

Upon discovering Massey had been credited with 582 days towards his sentence, undersigned counsel for the State contacted the Department of Corrections to confirm that information. In response to the inquiry, the State received documentation from the Department of Corrections confirming Massey has received 582 days of credit for time served. Notably, that documentation was certified as true by a records officer for the Department of Corrections and, therefore, is self-authenticating under the South Carolina Rules of Evidence. See Rule 902(4), SCRE (instructing “[e]xtrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to . . . [a] copy of an official record or report or entry therein, or of a

document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subsection (1), (2), or (3) of this rule or complying with any statute or rule promulgated by the Supreme Court”).

V.

Pursuant to Rule 210(c) of the South Carolina Appellate Court Rules, the Record on Appeal shall contain all matter designated by the parties and can include any matter presented to the lower court or tribunal. Additionally, pursuant to Rule 212(b) of our appellate rules, a party may supplement the Record on Appeal with additional matter not included in the record after receiving leave from the Court to do so.

VI.

In the case sub judice, Massey is seeking for this Court to reverse on appeal based on an error he alleges occurred in relation to the credit for time served he received. As a result, information related to the credit for time served Massey has *actually* received is critical to the proper resolution of his appeal.¹ Cf. State v. Boggs, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (looking to “the online records of the South Carolina Department of Corrections” in determining whether an error occurred in relation to the credit for time served Boggs received); State v. McCord, 349 S.C. 477, 487-488, 562 S.E.2d 689, 695 (Ct. App. 2002) (“After reviewing

¹ Significantly, based on the information provided by the Department of Corrections, Massey has already received more credit for time served than he is currently seeking through his appeal. Thus, Massey has already obtained all the relief he desires. See, e.g., Sloan v. Greenville Cty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (“An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists. A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.” (citations omitted)).

documentation this court received pursuant to our request at oral argument from both appellate defense and the attorney general's office, we find McCord is entitled to credit for time served beginning June 10, 1997, the date he was incarcerated in the Charleston County Detention Center pending trial on the State's charges against him."'). Accordingly, the State asks this Court to permit it to file a Supplemental Record on Appeal containing the self-authenticating documentation provided by the Department of Corrections regarding the credit for time served Massey has received.

VIII.

Prior to the filing of this motion, undersigned counsel for the State spoke with Massey's appellate counsel, and his counsel confirmed she has no objections to the filing of the State's Supplemental Record on Appeal in this case.

WHEREFORE, Respondent prays that this Court will allow the State to file a Supplemental Record on Appeal; accept the filing of the State's Supplemental Record on Appeal; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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