

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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DEC 17 2012

Appeal from York County

SC Court of Appeals

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERRY ALAN GOODE,

APPELLANT

APPELLATE CASE NO. 2011-197007

FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
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ATTORNEY FOR APPELLANT

TABLE OF AUTHORITIES

Cases

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

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. § 24-13-40..... 5

STATEMENT OF ISSUES ON APPEAL

Did the trial court err by refusing to give appellant credit for time served in North Carolina while awaiting trial on his South Carolina charges?

STATEMENT OF THE CASE

Procedural History

On July 14, 2011, Jerry Alan Goode, II (“Goode”) pled guilty to arson in the third degree in York County. R. p. 7, ll. 1 – 4. He was represented by Katie Taylor-Cummings. The State was represented by Leslie Robinson. The Honorable G. Thomas Cooper sentenced Goode to ten years’ imprisonment, suspended upon the service of thirty months’ incarceration and four years’ probation. R. p. 23, l. 22 – 24, l. 9. Judge Cooper gave Goode credit for 233 days time served. R. p. 23, l. 22 – 24, l. 9.

This appeal follows.

Factual Background

Goode was serving time in North Carolina when a hold was placed on him by South Carolina for the charges in the instant case. R. p. 18, l. 1 – 21, l. 6. The hold placed on him by South Carolina affected his security status and work credits in North Carolina. R. p. 20, l. 17 – 21, l. 5. At the sentencing hearing, Goode’s attorney asked the trial court for 317 days of credit for this time in North Carolina. R. p. 18, l. 1 – 21, l. 6. There was no dispute that Goode was entitled to 233 days of credit and he was given this credit by Judge Cooper. Judge Cooper refused to give Goode the additional 317 days’ credit.

ARGUMENT

The Trial Court Erred in Not Giving Appellant 317 Days' Credit for Time Served in North Carolina

Prisoners are entitled to credit for time served while awaiting trial and sentencing. S.C. Code Ann. § 24-13-40. This statute applies to time served in other states' prisons. State v. Dozier, 263 S.C. 267, 273-74, 210 S.E.2d 225, 227 (1974). In Dozier, the appellant was given credit for time served in Georgia after a detainer was placed on him by South Carolina. See id. In Blakney v. State, the defendant was given credit for time served in Berkeley County from the time a hold was placed on him by Beaufort County. 339 S.C. 86, 88-89, 529 S.E.2d 9, 11 (2000). Whether to give credit for time served "is not discretionary with the trial court." State v. McCord, 349 S.C. 477, 487, 562 S.E.2d 689, 694 (Ct. App. 2002).

Appellate counsel for Goode readily admits that the record at the sentencing hearing provides scant guidance as to how the attorneys calculated the days Goode had served. The attorneys apparently conducted an in-depth discussion of how they arrived at their counts in chambers, but did not recreate their counts for the trial judge at the sentencing hearing. R. p. 4, ll. 19 - 22. Appellate counsel has attempted to recreate both the solicitors' count of 233 days and defense counsel's count of the additional 317 days. While appellate counsel can come close, he cannot offer the Court an exact starting and stopping date for counting the time served.

With this in mind, the following dates are apparent from the records available:

- August 26, 2009 Date of offense. (R. p. 29)

- End of August 2009 Goode turns himself in to North Carolina authorities. (R. p. 15, ll. 7 – 12)
- September 10, 2010 Goode was transported from Buncombe County Detention Center to York County Detention Center. (R. p. 29)
- March 17, 2011 Bond form signed by judge. (R. p. 35)
- July 14, 2011 Sentencing Hearing (R. p. 1)

The necessary dates that are missing from the record are the date that a hold was placed on Goode in North Carolina by South Carolina, the date his North Carolina sentence ended, and the date Goode was released on bond. From the date Goode was transported to York County to the date his bond was signed equals 188 days, so apparently the solicitor used this time period for the bulk of the 233 days that were not in dispute. From the time Goode turned himself in until the time he was transported to York County equals approximately 375 days, from which amount comes the 317 days asked for by defense counsel.

Regardless of the lack of exact dates and counts, the Court need not recreate the math of the attorneys to award Goode his requested relief. From the sentencing hearing and the above discussion, it is apparent that the method of counting the additional days to which Goode was entitled was not in dispute. The solicitor never disputed defense counsel's count of the days to which Goode was entitled. Nor did the solicitor make any argument that Goode was not entitled to those days. Therefore, the Court can assume that the 317 days discussed at sentencing are correct.

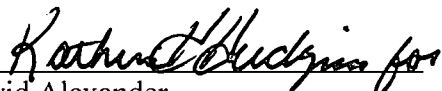
Goode suffered consequences in North Carolina due to the South Carolina hold placed on him. It affected his security status and eligibility for work credits.

Additionally, even though Goode is currently serving his probation in North Carolina, this issue is not moot. Should Goode's probation be revoked, he would be incarcerated and the additional credit would result in an earlier release. Additionally, it may result in an earlier termination of his probation.

CONCLUSION

For the preceding reasons, appellant respectfully asks this Court to grant him an additional 317 days' credit for time served. In the event that the Court cannot grant this credit, appellant asks for a remand to the trial court for the sole issue of determining the proper credit to which he is entitled for time served.

Respectfully submitted,



David Alexander
Appellate Defender

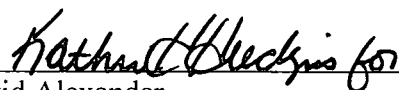
ATTORNEY FOR APPELLANT

This 17th day of December, 2012

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 17th, 2012



David Alexander
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CERTIFICATE OF SERVICE

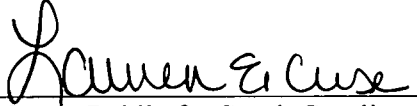
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at the Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 17th day of December, 2012.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of December, 2012.



Notary Public for South Carolina
My Commission Expires: August 23, 2014.