STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2011-197007

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JERRY ALAN GOODE,

APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General
SC Bar No. 73562

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUE ON APPEAL........ 3

STATEMENT OF THE CASE 4

ARGUMENT 5

CONCLUSION 7

AUTHORITIES CITED

Cases:

Crooks v. State, 326 S.C. 171, 485 S.E.2d 374 (1997) 5

Garrett v. State, 320 S.C. 353, 465 S.E.2d 349 (1995) 6

State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) 6

State v. Bryant, 372 S.C. 305, 642 S.E.2d 582 (2007) 6

State v. Dickman, 341 S.C. 293, 534 S.E.2d 268 (2000) 6

State v. Lopez, 352 S.C. 373, 574 S.E.2d 210 (Ct. App. 2002) 6

State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997) 6

Statutes:

S.C. Code § 24-13-40 .... 5, 6

STATEMENT OF ISSUE ON APPEAL

The trial judge properly declined Appellant's request for an additional credit of 317 days against his sentence because Appellant was serving a separate sentence in North Carolina during this same 317-day period and was therefore not entitled to credit for that time.

STATEMENT OF THE CASE

Appellant was indicted in York County in January 2011 for arson in the third degree. On July 14, 2011, Appellant pled guilty under North Carolina v. Alford before the Honorable G. Thomas Cooper, Jr. Judge Cooper sentenced Appellant to ten years, suspended upon the service of thirty months and four years of probation, with credit for 233 days of time served. A timely notice of appeal was served and filed.

ARGUMENT

The trial judge properly declined Appellant's request for an additional credit of 317 days against his sentence because Appellant was serving a separate sentence in North Carolina during this same 317-day period and was therefore not entitled to credit for that time.

Appellant argues that the trial judge erred in failing to award him 317 days of purported "time served" in North Carolina. S.C. Code § 24-13-40, "Computation of time served by prisoners," states as follows:

> The computation of 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 (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) 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. 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 (emphasis added). Under this statute, Appellant was not entitled to any credit against his York County sentence for time he served in North Carolina if, at the time of the service, he was already "serving a sentence" for a North Carolina conviction. See Crooks v. State, 326 S.C. 171, 485 S.E.2d 374 (1997) (defendant was not entitled to credit for pre-trial confinement for the time period that he was serving another sentence). Defense counsel admitted at the plea proceeding that "the three hundred seventeen days additional that I'm asking Your Honor for are the – or is the time that [Appellant] was actively serving his North Carolina probation revocation sentence also." (R. p. 18, lines 10-14). Defense counsel also conceded that crediting

Appellant with the "additional" 317 days "is something that is wholly within Your Honor's discretion." (R. p. 21, lines 3-5). In other words, counsel acknowledged that the 317-day credit that Appellant was requesting was not something to which Appellant was actually *entitled*, but was instead something the judge could award, in his discretion, if he felt that Appellant's sentence should be further reduced.[1]

This Court generally has no jurisdiction to disturb a sentence that is within the limits prescribed by statute. See, e.g., Garrett v. State, 320 S.C. 353, 356, 465 S.E.2d 349, 350 (1995) ("It is well settled in this State that this Court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute unless: (a) the statute itself violates the constitutional injunction, Article I, Sec. 19, against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice or pressure or corrupt motive.") (citations omitted). Here, since Appellant was not, under S.C. Code § 24-13-40, entitled to credit for the 317 days he was requesting, the trial judge did not err in declining Appellant's request for this credit. Accordingly, this Court need not disturb Appellant's sentence in any manner, and no remand to the trial court is necessary or warranted.

---

[1] Counsel agreed that the time served to which Appellant was actually "entitled" was 233 days. (R. p. 4, line 24 – p. 5, line 12). The trial judge ultimately awarded Appellant the 233 days, and Appellant raised no objection at that time. (R. p. 23-24). Since Appellant conceded below that awarding the 317 days was something entirely in the judge's discretion, and did not make any objection to the imposed sentence based upon a specific allegation of error, the issue being raised on appeal is not preserved for review. (See R. p. 4-5; p. 18-24). See State v. Benton, 338 S.C. 151, 157, 526 S.E.2d 228, 231 (2000) (an issue conceded in the trial court cannot be argued on appeal); State v. Bryant, 372 S.C. 305, 315-16, 642 S.E.2d 582, 588 (2007) (where defendant conceded below that the court's ruling was not prejudicial, he may not later assert on appeal that the same ruling was prejudicial); State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (a party may not assert one ground at trial and argue another ground on appeal); State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 213 (Ct. App. 2002) (issue is not preserved for appellate review where the alleged error was not raised at plea); State v. Patterson, 324 S.C. 5, 16, 482 S.E.2d 760, 765 (1997) (no issue is preserved where the party accepts the judge's ruling and does not contemporaneously make an additional objection) (*citing* State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976)).

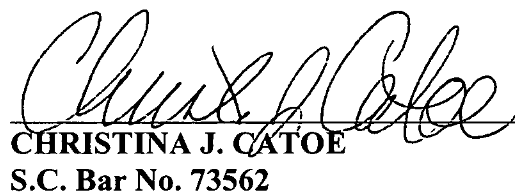
CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm the sentence ordered by the trial court.

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General



CHRISTINA J. CATOE
S.C. Bar No. 73562

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

December 12, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2011-197007

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

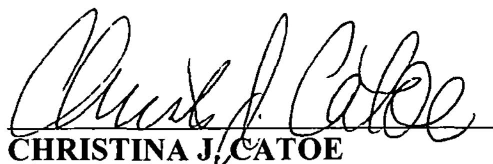
v.

JERRY ALAN GOODE,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.



CHRISTINA J. CATOE

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

December 12, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2011-197007

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

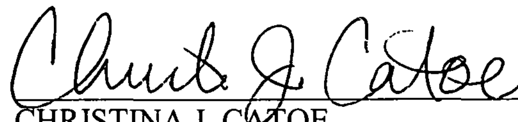
v.

JERRY ALAN GOODE,

APPELLANT.

AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **DAVID ALEXANDER**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **12th day of December, 2012.**



CHRISTINA J. CATOE
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 12th day of December, 2012.

Notary Public for South Carolina.
My Commission Expires: 9/25/19