

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

RECEIVED
FEB 28 2019
SC Court of Appeals
Respondent,

THE STATE,

v.

TREY C. BROWN,

Appellant

Appellate Case No. 2016-000526.

PETITION FOR REHEARING

Respondent requests rehearing pursuant to Rule 221(a), SCACR. While the result reached by this Court may be equitable, Appellant is not entitled to time served as a matter of law. Respondent submits this Court has misapprehended the statute governing time-served. This case was scheduled for oral argument and instead submitted on the briefs pursuant to Rule 15, SCACR, following the closures caused by September 2018's Hurricane Florence. Respectfully, Respondent seeks rehearing due to a perceived misapprehension of the law in the result reached by this Court.

"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." S.C. Code Ann. § 24-13-40 (eff. June 11, 2010) (emphasis added). If the sentencing court designates

“a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from th[at] date of the commencement.” *Id.* “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.” *Id.* (emphasis added). 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). In a 2013 amendment, our General Assembly reconsidered time-served by prisoners and added that it “may be given for any time spent under monitored house arrest.” S.C. Code Ann. § 24–13–40 (eff. June 7, 2013); 2013 South Carolina Laws Act 34 (H.B. 3193). The plain language of the statute instructs no more and no less.

“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 (2000). “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.” *Id.* “However, [a]ll rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” *State v. Higgins*, 357 S.C. 382, 385, 593 S.E.2d 180, 182 (Ct. App. 2004) (internal quotations omitted). “Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000):

The time-served by prisoners requirement is mandatory, *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010), and its plain-language applicability is premised upon the pendency of criminal charges against the accused. In *State v. Higgins, supra*, this

Court found the plain and ordinary meaning of § 24-13-40's term "prisoner" indicated a legislative intent to award sentencing credit only "to those who actually spend time confined in a penal institution." 357 S.C. at 385, 593 S.E.2d at 182. The calculation of time-served has elsewhere been strictly interpreted to commence upon submission to the custody of the South Carolina Department of Corrections, and not merely upon affirmance of a defendant's conviction and sentence. *Robinson v. State*, 329 S.C. 65, 68, 495 S.E.2d 433, 435 (1998) (time-served calculation for persons released on appeal bond).

Our General Assembly has not spoken to the meaning of time-served as it pertains to detainment in a mental health facility pursuant *only* to an order of civil commitment, as is the case here. Our General Assembly may speak on this issue yet, but the plain meaning of the statute as written and as previously interpreted by our courts does not allow for or contemplate the award granted Appellant. The statute relied upon by this Court's time-served calculation in fact contemplates that criminal charges at all times remain pending against a hospitalized defendant in order for the defendant to receive time-served credit for the hospitalization period. S.C. Code Ann. § 44-23-460 (2011) ("Procedure when superintendent believes *person charged with crime* no longer requires hospitalization" (emphasis added)). The Court's construction of § 44-23-460 in this case is at odds with the plain meaning of the time-served statute. Both Appellant and this Court fail to distinguish that Appellant's period of civil commitment occurred pursuant to a separate probate court proceeding and was not part of the criminal penalty faced as a result of the shooting.

The trial court denied Appellant credit for time served between the dates of October 20, 2009, and February 7, 2014, because no criminal charges were pending against him. During this time, Appellant could not be construed as a "prisoner" subject to the statute governing

computation of time-served. S.C. Code Ann. § 24-13-40; *State v. Higgins, supra*. Rather, Appellant was civilly committed to the South Carolina Department of Mental Health (DMH) under separate, non-prosecutorial proceedings governed by the discernible S.C. Code Ann. § 44-17-580. (R. p. 1). In October 2009, Appellant was not committed pursuant to S.C. Code Ann. § 44-23-410 (determining fitness to stand trial), which was relied upon in this Court's opinion. Nor was Appellant a pretrial or presentence detainee under § 24-13-40. Rather, Appellant was subject to involuntary hospitalization by judicial procedure completed within the jurisdiction of the South Carolina Probate Court. S.C. Code Ann. § 44-17-510, *et. seq.* Factually, Appellant cannot garner time served credits for the time period at issue because his criminal charges were not continually pending, his commitment was not a result of a hearing to determine his fitness to stand trial, and no statutory interpretation allows for time-served credit in Appellant's circumstance. *State v. Higgins, supra* (denying time-served credit for pretrial detention served on house arrest where the plain meaning of § 24-13-40 did not allow it).

As noted in this Court's opinion, *Blakeney* and *Crooks* have elsewhere defined "time served" in § 24-13-40 as meaning "the time during which a defendant is in pre-trial confinement *and* charged with the offense for which he is sentenced (so long as he is not serving time for a prior conviction)." *Blakeney v. State*, 339 S.C. 86, 88, 529 S.E.2d 9, 10-11 (2000) (emphasis in original). But *Blakeney* interpreted a hold from another county sheriff's office as allowing time-served. *Id.* Thus, the *Blakeney* court's opinion only spoke to "time-served" relating to a prisoner's presentence incarceration in another jurisdiction. That case remains distinguishable from Appellant's condition of confinement within DMH, as Appellant (1) was not in any pretrial or presentence confinement when there were no pending charges; (2) and as it cannot be said that the State held the intent to prosecute Appellant, who had been found not

competent and not likely to restore, and whose criminal charges had had been *not prossed* by the State following the probate proceeding. To the extent this Court considered the conditions of Appellant's confinement at DMH as the functional equivalent of another sheriff's office's hold upon the defendant in *Blakeney*, that consideration is not only incongruent, but mooted by the absence of pending criminal charges during the time frame at issue.

Moreover, this Court's interpretation of the conditions of confinement as a premise supporting the application of time-served is mooted by the nature of Appellant's civil commitment proceedings. Civil commitments hold a purpose entirely different from that of any statute pertaining to the computation of time-served credit for prisoners. *E.g.* S.C. Code Ann. § 44-17-410 (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). The State may order an individual be confined for reasons other than those penal in nature. An involuntary hospitalization "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" enacted in the interest of the mentally ill—not the criminal. 8 S.C. Jur. Mental Health § 22. This Court should not overlook the difference between a penal confinement and a person's commitment for mental health treatment.

Critically, 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 for symptoms later developed in pre-trial

confinement.¹ (R. p. 1). That is, Appellant was committed because a judicial officer found that he lacked sufficient insight or capacity to make responsible decisions with respect to his treatment, or because of a likelihood of serious harm to himself or others as a result of his mental condition. S.C. Code Ann. § 44-17-580. The dismissal of Appellant's charges during this 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-adversarial interest in protecting the mentally ill. *See* 8 S.C. Jur. Mental Health § 22. Thus, during the period in question, Appellant was not accumulating good time credits in relation to any past or future charge, and his time could not be counted as that of a "prisoner" as required by the time-served statute.

Finally, if undisturbed, the Opinion of this Court leads to an ambiguous result for future applications. As noted by this Court, the question of this Appellant's accumulation of time-served credit derives from a unique factual posture. However, the decision reached is built upon the presupposition that a civilly committed one-time criminal defendant will regain the competency required for prosecution. The decision reached also presupposes that the State always has an intent to prosecute regardless of the competency of the defendant. Both presuppositions are contrary to the record in this case because the State *not proessed* Appellant's charges when Appellant was evaluated as genuinely mentally ill and not likely to restore competency to stand trial.² (R. pp. 9-12, 26-27, 63). In a scenario capable of repetition, Appellant

¹ Of relevance on this point, Dr. Frierson testified that Appellant's evaluations from DMH during his first 60-day commitment, which occurred prior to October 2009, noted that Appellant presented in a manner indicative of malingering. (R. pp. 24, 113-20; *contra* R. p. 25-26).

² To the extent the Court relies upon the lower court's handwritten language on the civil commitment Order that directed Appellant be returned to the custody of the detention center, that Order was made prior to the charges being *not proessed*. (R. p. 1). After the State rescinded the

served mutually exclusive timeframes of confinement as both a pre-trial detainee and as a mental health patient. Yet this Court's award of time-served credit veers away from the plain meaning of "prisoner" utilized in § 24-13-40. Now, an individual may garner time-served credit for periods of time in which he or she was actually not charged with any crime, yet was undergoing mental health treatment in the care and custody of DMH, and regardless of any future intent to prosecute for then-unlevied criminal acts.³ This is a result the plain meaning of the time-served statute could not intend. The purpose of Appellant's confinement during the time period in question was only for that of mental health treatment, regardless of the type of mental health facility housing the individual. Would this Court reach the same conclusion if the record in this case evidenced that Appellant spent time in a privatized facility as a result of the same civil commitment proceeding? Is the type of mental health facility in which a person who later regains competency and is later prosecuted for a prior criminal act a proper consideration at the time of sentencing, where sentencing is a matter of statutory law and not equity?

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. If no charges are pending against a prisoner, and there is no active indictment, then time served credits cannot accrue. Accordingly, the trial court's denial of time-served during Appellant's period of civil commitment did not amount to an error of law.

charges (and prior to such time as they were reinstated), the detention center would not have had the authority to take Appellant into custody because he was not eligible to be kept as a prisoner. *See* S.C. Code Ann. § 24-5-60 (2010).

³ For which there is no statute of limitations or other bar. *See* S.C. Code Ann. § 44-23-460(2) (prosecution barred if defendant subject to mental health hospitalization "for a period of time exceeding the maximum possible period of imprisonment to which the person could have been sentenced if convicted as charged").

State v. Halcomb, 382 S.C. 432, 438, 676 S.E.2d 149, 152 (Ct. App. 2009) (enunciating applicable standard of review). 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 was not a prisoner and did not face any criminal penalty.

For the foregoing reasons, it is respectfully submitted that this Court should grant rehearing to consider a more narrow reading of S.C. Code Ann. § 24-13-40 in light of *State v. Higgins, supra*, and the juxtaposition of the plain and ordinary meaning of the term prisoner with the purpose of confinement as a result of a civil commitment.


Respectfully submitted,

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February 28, 2019
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STATE OF SOUTH CAROLINA
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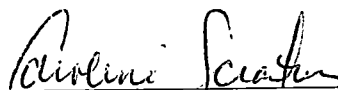
Appellate Case No. 2016-000526.

PROOF OF SERVICE

I, Caroline M. Scrantom, counsel for the Respondent, certify that I have served the within Petition for Rehearing by depositing two (2) copies of the same in the United States mail, addressed to his attorney of record at:

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served this 28th day of February, 2019.



CAROLINE SCRANTOM
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ALAN WILSON
ATTORNEY GENERAL

February 28, 2019

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SC Court of Appeals

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211


Re: The State v. Trey Chavez Brown
Appeal from Abbeville County
Appellate Case No. 2016-000526

Dear Ms. Kitchings:

Enclosed for filing in your office are the originals and six (6) copies of the Petition for Rehearing in the above-referenced case, together with Certificate of Service.

Thank you for your assistance in this matter.

Sincerely,


Caroline M. Scramton
Assistant Attorney General

CMS:dmd
Enclosures

cc: E. Charles Grose, Esq. (w/two copies of encls.)
The Honorable David Stumbo, Solicitor, Eighth Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Advocacy Division (w/copy of encls.)