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S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA**
**In the Supreme Court**

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**APPEAL FROM ABBEVILLE COUNTY**
**R. Scott Sprouse, Circuit Court Judge**

South Carolina Court of Appeals Case No. 2016-000526
Opinion No. 5624 (S.C. Ct. App. filed Feb. 13, 2019)

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**THE STATE,**

**Petitioner,**

**v.**

**TREY C. BROWN,**

**Respondent.**

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# STATE'S PETITION FOR A WRIT OF CERTIORARI

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## CERTIFICATE OF COUNSEL

Counsel for Petitioner, the State of South Carolina, hereby certifies that the petition for rehearing was made and that the Court of Appeals ruled upon the petition on March 21, 2019. (App. 195).

## QUESTION PRESENTED

Whether the Court of Appeals ignored the plain meaning of the "time served by prisoners" statute when the court awarded Respondent time-served credit for a period of time in which he was civilly committed for mental health treatment pursuant to probate court proceedings yet had no pending criminal charges.

## STATEMENT OF THE CASE

Respondent Trey Chavez Brown pled guilty to the September 9, 2006, murder of his father-in-law, Mr. James Keith Kennedy, and for the possession of a firearm during the killing. (App. 5-6). The facts concerning these convictions are not in dispute. (App. 52-56). Rather, the relevant facts and procedure pertain to Brown's diagnosis of schizophrenia, which has at times rendered him not competent to stand trial and led to a period of civil commitment within the South Carolina Department of Mental Health (DMH). (App. 34).

Indicted by the Abbeville County Grand Jury in October 2006 and awaiting trial thereafter, Brown underwent a series of competency evaluations beginning in August 2007. Initially, Dr. Richard Frierson found Brown not competent to stand trial. Frierson also found that though Brown lacked a personal history of mental illness, he had a genetic predisposition to it. (App. 23-26; App. 124-29). During an initial 60-day restoration period, DMH noted Brown may be malingering. (App. 27).

Brown was evaluated again in early 2009, was found genuinely mentally ill, and was ordered to undergo a second 60-day stint at DMH. (App. 29; App. 109-15; App. 139-40). Following the second 60-days, Dr. Frierson found Brown's competency had not been restored and recommended civil commitment. (App. 29-30; App. 105-08).

Then, on October 7, 2009, probate court proceedings resulted in an Order civilly committing Brown to DMH pursuant to S.C. Code Ann. § 44–17–580 (2005). (App. 4). About two weeks later, on October 20, 2009, the State dismissed Brown's pending criminal charges. (App. 12-15).

Years later, in 2014, Brown's condition improved and DMH considered releasing him from inpatient treatment to a residential treatment center. (App. 31). The State sought Brown's

re-evaluation for competency, and Dr. Frierson found him mentally ill but competent to stand trial. (App. 31-32). On February 7, 2014, the State sought and obtained Brown's re-indictment for the same charges: murder and possession of a weapon during the commission of a violent crime. (App. 16-19). As was done in 2006, the State again served Brown with notice of intent to seek a life sentence. (App. 20-21).

Brown pled guilty on February 29, 2016, before the Honorable R. Scott Sprouse. (App. 21-23). The State made no sentencing recommendation. (App. 47). Judge Sprouse sentenced Brown to 30 years for murder and a consecutive five years for the weapons charge. (App. 5-6). Judge Sprouse awarded Brown credit for the time he served between his initial arrest and the State's October 20, 2009, dismissal of the charges against him. (App. 67; App. 79). The court denied Brown time-served credit for the period of time in which he was civilly committed with no charges pending against him. (App. 80). A few days later, Judge Sprouse issued a consent order amending the credit for time served to also include Brown's pre-trial confinement spanning from the February 7, 2014 date of re-indictment to his February 29, 2016 guilty plea and sentence. (App. 7-8).

Respondent Brown moved for the court to reconsider the denial of credit for time served during the period when he was solely civilly committed without pending charges, which was from October 20, 2009 to February 7, 2014. The court denied the motion. (App. 9-10). Brown's notice of appeal followed, and the Court of Appeals reversed, ruling that "a finding that Brown is not entitled to time-served credit would conflict with the General Assembly's mandate that prisoners receive credit for all time served." (App. 183). The State filed a Petition for Rehearing which the Court of Appeals denied March 21, 2019. (App. 186-96). Respondent now files its Petition for Writ of Certiorari to review the Court of Appeals' published Opinion.

## ARGUMENT

Between October 20, 2009, and February 7, 2014, Respondent Brown remained in the custody of DMH pursuant only to an order of civil commitment as provided in S.C. Code Ann. § 44–17–580 (2005). The Court of Appeals ruled Brown's civil commitment functionally equivalent to the service of pre-trial detention and awarded him time-served credit for the timespan. (App. 180-85). Both the Court of Appeals and Brown have failed to distinguish that Brown'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. While the result reached by the Court of Appeals may be equitable, the statutory authority cited in support of the result does not allow for the interpretation reached by that court. Rather, the trial court accurately denied Brown credit for time served for the time no charges remained pending against him. As a matter of law, Brown is not entitled to time-served for the period in question, and certiorari is warranted to address the Court of Appeals' extension of S.C. Code Ann. § 24–13–40, the statute governing "time served by prisoners," to a non-prisoner.

"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*, the 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). This Court has also elsewhere reasoned that public policy weighs against making available "credit against sentences for future crimes after an individual has regained his freedom" because it "would provide a sense of immunity and an incentive to engage in criminal conduct." *Campbell v. State*, 275 S.C. 249, 250 (1980) (defendant denied time-served credit for time served for a prior conviction which had been invalidated).

In fact, this Court has previously 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) (citing *Crooks v. State*, 326 S.C. 171, 485 S.E.2d 374 (1997)). However, the Court of Appeals improvidently analogized Brown's case to that of *Blakeney* in order to extend the definition of "time served by prisoners." (App. 183-84). *Blakeney* interpreted the existence of a hold from another county sheriff's office as the basis for an allowance of time-served credit. 339 S.C. at 88, 529 S.E.2d at 10-11. Thus, *Blakeney* only spoke to "time-served" relating to a prisoner's presentence incarceration in another jurisdiction. That case remains distinguishable from Brown's condition of confinement within DMH, as Brown (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 Brown, who had been found not competent and not likely to restore, and whose criminal charges had had been *nol prossed* by the State following the probate proceeding. To the extent this Court considered the conditions of Brown'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.

And, the statute relied upon in the Court of Appeals' time-served calculation in fact contemplates that criminal charges at all times remain pending against a hospitalized defendant 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)). Thus, the Court of Appeals' application of § 44–23–460 in this case is also at odds with the plain meaning of the time-served statute. (App. 184-85). During this time, Brown 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*. Brown was civilly committed to DMH due to a separate, non-prosecutorial commitment proceedings governed by S.C. Code Ann. § 44–17–580 rather than the discernible S.C. Code Ann. § 44–23–410. 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 statute as written and as previously interpreted by our courts does not allow for or contemplate the award granted Brown.

In October 2009, Brown was not committed pursuant to S.C. Code Ann. § 44–23–410 (determining fitness to stand trial). Nor was Brown a pretrial or presentence detainee under § 24–13–40. Rather, Brown 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, Brown 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 time-served credit to an individual who is not regarded as a "prisoner" for the time period in question. *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).

Moreover, the nature of Brown's civil commitment proceedings moots the Court of Appeals' interpretation of the conditions of confinement[1] as a premise supporting the time-served award. (App. 184-85). 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. *See, e.g.*, *State v. Miller*, 404 S.C. 29, 38 (2013) ("Notwithstanding its punitive attributes, this Court and many others, to include the United States Supreme Court, have concluded that an SVP program is a civil, non-punitive treatment program . . . and we see no existing basis for treating this type of civil commitment for persons with mental illness any differently than other forms of civil commitment."). 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.

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[1] Except for two prior 60-day commitments, Brown was housed at the county detention center from his arrest until this October 2009 civil commitment. (*See* App. 138-40). Once civilly committed, Appellant remained at DMH until the day before his plea. (App. 30; *see* App. 37-38).

Critically, Brown's liberty was not lost during his period of civil commitment as a *punitive* consequence of the murder to which he ultimately pled guilty. Brown was civilly committed pursuant to S.C. Code Ann. § 44–17–580 for symptoms later developed in pre-trial confinement.[2] (App. 4). That is, Brown 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 Brown'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, Brown'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, Brown 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.

In a scenario capable of repetition, Brown served mutually exclusive timeframes of confinement as both a pre-trial detainee and as a mental health patient. Yet the Court of Appeals awarded time-served credit. This award 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

[2] Of relevance on this point, Dr. Frierson testified that Brown's evaluations from DMH during his first 60-day commitment, which occurred prior to October 2009, noted that Brown presented in a manner indicative of malingering. (App. 27; App. 116-23; *contra* App. 28-29). When he was found to have regained competency after a 2016 evaluation, Dr. Frierson recorded that Brown stated "he was aware he would stay in the hospital" if he did not "pass" the competency evaluation, and said he, "'won't have to go to prison – it's hard in prison – here [DMH] is more like a safety net.'" (App. 87). One week before the 2016 guilty plea, Frierson noted Brown again exhibiting some signs of malingering. (App. 40-42)

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 Brown'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.[4]

Finally, if undisturbed, the Court of Appeals' published Opinion leads to an ambiguous result for future application. The Court of Appeals indicated that the question of Brown's accumulation of time-served credit derives from a unique factual posture. (App. 185). However, the decision reached is built upon the presupposition that the State always has an intent to prosecute regardless of the competency of the defendant. The decision reached also presupposes that a civilly committed one-time criminal defendant will regain the competency required for prosecution. Both presuppositions are contrary to the record of intent in this case because the State *nol prossed* Brown's charges when he was evaluated as genuinely mentally ill and not likely to restore competency to stand trial. (App. 12-15; App. 66). The Court of Appeals' Opinion supplants an indelible intention upon the prosecutor when in fact his actions denote otherwise. Criminal defendants have now been given authority based upon an incorrect presupposition thay may now allow them the opportunity to avail themselves of indefinite

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[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").

[4] To the extent the Court of Appeals relied upon the Circuit Court's handwritten language on the civil commitment Order directing Brown be returned to the custody of the detention center—that Order was made prior to the charges being *nol prossed.* (App. 4; App. 12-15). After the State rescinded the charges (and prior to such time as they were reinstated), the detention center would not have had the authority to take Brown into custody because he was not eligible to be kept as a prisoner. *See* S.C. Code Ann. § 24–5–60 (2010).

periods of commitment to DMH in order to reduce penalties they may or may not face at a later time.

Petitioner does not turn a blind eye to the facially harsh result it seeks imposed by nature of its challenge to the Court of Appeals. However, 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 Brown's period of civil commitment did not amount to an error of law. *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, Brown 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 Brown was not a prisoner and did not face any criminal penalty.

## CONCLUSION

The time-served statute must be equally applied rather than malleable to the facts of any particular case. For the foregoing reasons, it is respectfully submitted that this Court should grant certiorari 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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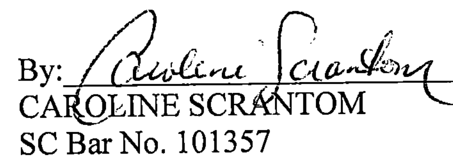
By: 
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April 18, 2019
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## PROOF OF SERVICE

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

E. Charles Grose, Jr.
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404 Main Street
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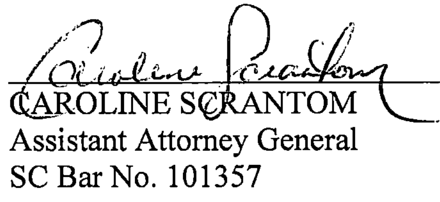
I further certify that all parties required by Rule to be served have been served this 18th day of April, 2019.



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