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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

State v. Brown, 426 S.C. 63, 824 S.E.2d 476 (Ct. App. 2019)
Appellate Case Number 2019-000651

State of South Carolina .... Petitioner,

vs.

Trey C. Brown .... Respondent.

Response to State's Petition for Writ of *Certiorari*

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STATE'S STATEMENT OF 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 not pending criminal charge?

TREY BROWN'S STATEMENT OF QUESTION PRESENTED

Did the Court of Appeals correctly interpret the legislative intent when it awarded Trey Brown full credit for time served from September 9, 2006, the date of his arrest, when Mr. Brown remained in the custody of the State of South Carolina pursuant to his arrest and the procedures mandated by S.C. Code Ann. § 44-23-410, *et. seq.*?

STATEMENT OF THE CASE

The State charged Trey Brown with the September 9, 2006 death of his father-in-law, Mr. Keith Kelley. Mr. Brown called 911 and later turned himself in to the authorities. The Abbeville County Grand Jury indicted Mr. Brown for murder and possession of a firearm during the commission of a violent crime. Record on Appeal (hereinafter "R.") 9-12. Pursuant to S.C. Code Ann. § 17-25-45, the Solicitors Office served notice of intent to seek life without the possibility of parole if Mr. Brown were convicted of a "most serious" offence. R. 17.

Prior to calling this case for trial, Dr. Richard Frierson of the South Carolina Department of Mental Health (hereinafter "DMH") concluded that Mr. Brown was not competent to stand trial. R. 106-12. The Honorable Frank R. Addy, Jr. committed Mr. Brown to the DMH for sixty days for restoration of competency. R. 1. Because Mr. Brown's competency to stand trial could not be restored in sixty days, the State petitioned

the Probate Court to commit Mr. Brown to the DMH. R. 1. The Probate Court granted the State's petition. R. 1. On October 20, 2009, the Solicitor's Office dismissed Mr. Brown's charges. R. 9, 11.

On February 7, 2014, the State obtained new indictments for murder and possession of a firearm during the commission of a violent crime. R. 13-16. As the result of evaluations conducted on April 28, 2014 and June 2, 2014, Dr. Frierson opined that Mr. Brown was competent to stand trial. R. 95-101. On October 28, 2015, the State once again served notice of intent to seek life without the possibility of parole if Mr. Brown were to be convicted of a "most serious" offense. R. 18.

On February 29, 2016, Mr. Brown pled guilty to murder and possession of a firearm during the commission of a violent crime. The Honorable R. Scott Sprouse sentenced Mr. Brown to thirty years for murder and five years for possession of a firearm during the commission of a violent crime. The sentences are consecutive. R. 2, 3, 76-77. Mr. Brown requested credit for time served while committed to the DMH. The Solicitor opposed Mr. Brown receiving credit for time during the commitment to the DMH during the period of time that no indictments were pending. Judge Sprouse agreed with the Solicitor and denied Mr. Brown credit for time served during the DMH commitment when the indictments were not pending. R. 63, 65, 76-77.

On March 2, 2016, Judge Sprouse entered a consent order amending the amount of credit for time served to correct an error in calculating the amount of time. R. 4-5. Also, on March 2, 2016, Judge Sprouse denied Mr. Brown's motion to reconsider the denial of credit for time served during the period of the DMH commitment when no indictment was pending. R. 6-7.

Mr. Brown appealed to the Court of Appeals. The Court of Appeals scheduled an oral argument for September 11, 2018. The Court of Appeals cancelled the oral argument because of state closings resulting from Hurricane Florence. On September 19, 2019, pursuant to Rule 215, SCACR, the Court of Appeals submitted Mr. Brown's appeal for consideration without oral argument. On February 23, 2019, the Court of Appeals reversed the trial court and awarded Mr. Brown credit for time served during the entire DMH commitment. *State v. Brown*, 426 S.C. 63, 66, 824 S.E.2d 476, 478 (Ct. App. 2019), Appendix (hereinafter "A.") 180-85. On February 28, 2019, the State petitioned for rehearing. A. 186-94. By written order dated March 21, 2019, the Court of Appeals denied the petition for rehearing. A. 195-96.

On April 18, 2019, the State petitioned this Court for a writ of *certiorari* to review the opinion of the Court of Appeals. This response follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only and is bound by the factual findings of the circuit court unless clearly erroneous. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Dennis*, 402 S.C. 627, 634–35, 742 S.E.2d 21, 25 (Ct. App. 2013) (internal quotations and citations omitted). "When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the [circuit] court properly applied the law to those facts. In such cases, the appellate court is not required to defer to the [circuit] court's legal conclusions." *Brown*, 426 S.C. at 66, 824 S.E.2d at 478 (quoting *State v. Sweat*, 379 S.C. 367, 373, 665 S.E.2d 645, 649 (Ct. App.

2008) and *Nationwide Mut. Ins. Co. v. Prioleau,* 359 S.C. 238, 242, 597 S.E.2d 165, 167 (Ct. App. 2004).

"A writ of *certiorari* is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242, SCACR. The rule provides a non-exhaustive list of reasons for this Court to exercise its discretion, which are "(1) Where there are novel questions of law," "(2) Where there is a dissent in the decision of the Court of Appeals," "(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court," "(4) Where substantial constitutional issues are directly involved," and "(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court." *Id.*[1]

ARGUMENT

The Court of Appeals correctly interpreted the legislative intent when it awarded Trey Brown full credit for time served from September 9, 2006, the date of his arrest, when Mr. Brown remained in the custody of the State of South Carolina pursuant to his arrest and the procedures mandated by S.C. Code Ann. § 44-23-410, *et. seq.*

The State acknowledges it seeks to impose a "facially harsh result" on Trey Brown "by nature of its challenge to the Court of Appeals." Petition for writ of *certiorari* at 11. The result sought by the State is harsh because it ignores the legislative intent of S.C. Code Ann. § 44-23-410, *et. seq.* This Court should deny the State's petition for three reasons. First, S.C. Code Ann. §§ 24-13-40 and 44-23-410, *et. seq.* control and

[1] Admittedly, this Court has not directly decided the issue raised by Trey Brown in the trial court and on appeal to the Court of Appeals. Nevertheless, as discussed in the argument section, the Court of Appeals decision does not conflict with any prior decisions of this Court and is consistent with every other state that has considered the issue. This Court's intervention, accordingly, is not necessary.

mandate Mr. Brown receive credit for time served during the entire DMH commitment. Second, the Court of Appeals correctly considered the character of the location of Mr. Brown's confinement. Third, the result reached by the Court of Appeals is consistent with appellate decisions in every state that has considered this issue.

1. **S.C. Code Ann. §§ 24-13-40 and 44-23-410, *et. seq.* control and mandate Mr. Brown receive credit for time served during the DMH commitment.**

The facts are not in dispute, and the sole issue before the Court of Appeals was whether the trial court judge erred as a matter of law in denying Trey Brown credit for time served during the DMH commitment when no indictment was pending. S.C. Code Ann. §§ 24-13-40 and 44-23-410, *et. seq.* control. A court must abide by the plain meaning of the words of a statute. *Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* 341 S.C. at 85, 533 S.E.2d at 581. When a statute is penal in nature, the rule of lenity requires that any ambiguity must be construed strictly against the State and in favor of the defendant. *State v. Blackmon,* 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Mr. Brown requested the Court to grant him credit for time served, pursuant to S.C. Code Ann. § 24-13-40, form when the State took him into custody on September 9, 2006, and because Mr. Brown remained in custody of the State pursuant to statutory procedures, S.C. Code Ann. § 44-23-410, *et. seq.* The Solicitor opposed Mr. Brown receiving credit for time served during the portion of the DMH commitment when no indictment was pending, and the trial court agreed. Section 44-23-460(2), however, would have barred prosecution of Mr. Brown if he had "been hospitalized for a period of

time exceeding the maximum possible period of imprisonment to which [he] could have been sentenced if convicted as charged." Our General Assembly, therefore, expressed its intent that a person adjudicated not competent to stand trial be credited, towards any eventual sentence, with the time served while confined to the DMH.

Denial of credit for time served is reviewable on appeal, and our appellate courts consistently enforce S.C. Code Ann. § 24-13-40 and credit individuals with time served in pre-trial detention. *E.g. State v. Boggs*, 388 S.C. 314, 696 S.E.2d 597 (Ct. App. 2010) (plea judge's denial of jail credit for time defendant served in pretrial detention based upon state's decision to drop charge against defendant from armed robbery to strong arm robbery was an error at law); *State v. McCord*, 349 S.C. 477, 562 S.E.2d 689 (Ct. App. 2002) (Trial court could not deny defendant credit for time served prior to trial and sentencing based on fact that court had not given defendant a life sentence); *Blakeney v. State*, 339 S.C. 86, 529 S.E.2d 9 (2000) (defendant, who was jailed in another county on unrelated charges and had "hold" place on him for current robbery charge, was entitled to credit for time served from date on which sheriff's department issued warrant for his arrest for robbery); and *State v. Dozier*, 263 S.C. 267, 210 S.E.2d 225 (1974) (defendant was entitled to credit on his sentence for time spent in prison in Georgia while contesting extradition to South Carolina).

The Court of appeals correctly applied these legal principals when it held:

> [S]ection 44-23-460(2) of the South Carolina Code (2018) would have barred the prosecution of Brown if he had "been hospitalized for a period of time exceeding the maximum possible period of imprisonment to which the person could have been sentenced if convicted as charged." Thus, if Brown had been committed for longer than the possible sentence for his crime, the State would not have been able to re-indict him. The time-served statute mandates prisoners be given "*full credit* against the sentence ... for time served prior to trial and sentencing." § 24-13-40 (emphasis

> added). We find, under the limited and unique facts of this case, Brown is entitled to credit for time served even though there were no charges pending against him. Although the charges were technically dropped, the result was functionally the same as if the charges were still pending against Brown.

Brown, 426 S.C. at 69, 824 S.E.2d at 480 (emphasis original), A. 184-85.

The State contends this matter is governed by S.C. Code Ann. § 44-17-580 without regard for the provisions of § 44-23-410, *et. seq*. This argument is without merit because § 44-23-430 expressly limits the application of §§ 44-17-510 though 610 by the provisions of § 44-23-460.[2] Section 44-23-460 requires Mr. Brown receive credit for time he was committed to the DMH. Based on a finding of lack of competency, § 44-23-430(2) required the Solicitor to "initiate judicial admission proceedings" for Mr. Brown. The State, however, mischaracterizes Mr. Brown's commitment to DMH as a civil commitment separate from the criminal charges for which the trial court sentenced Mr. Brown to a term of imprisonment. Because Mr. Brown's commitment to the DMH directly resulted from the State's criminal prosecution, the statutory scheme contemplates Mr. Brown receiving credit for the time of his DMH commitment. Section 44-23-460(2) expressly contemplates a person receive credit for time served during a commitment for lack of competency.

The Court of Appeals did not commit an error of law. This Court, accordingly, should deny the State's petition for a writ of *certiorari*.

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[2] In fact, § 44-23-460 very arguably prohibits the Solicitor from dismissing the charges so that the General Sessions Court retains jurisdiction.

2. **The Court of Appeals correctly considered the character of the location of Mr. Brown's confinement.**

In his Final Reply Brief, A. 173-76, Trey Brown asked the court below to consider the character of the facility where the State confined Mr. Brown during his commitment to the DMH. The Court of Appeals observed, "According to the probate court's 2009 order finding Brown incompetent to stand trial, Brown was ordered to be committed to the 'forensics unit' at the Department." *Id.* 426 S.C. at 68, 824 S.E.2d at 479, A. 184. It further observed:

> According to the Department's website, "Patients in the [G. Weber Bryan Psychiatric Hospital]'s Forensics Division are primarily referred by jails and criminal courts from throughout the state, and are housed separately from patients in the Adult Services Division in a more secure area of the hospital."

Id. 426 S.C. at 69, fn. 1, 824 S.E.2d at 480, fn. 1 (citing *Hospital/Program Services Directory,* South Carolina Department of Mental Health, https://www.state.sc.us/dmh/dir_facilities.htm#Bryan1 (last visited Feb. 7, 2019)), A. 184.

The Court of Appeals reasoned:

> Thus, for the entire period Brown was committed, he was housed in the secure facility of the forensics division and kept separate from other patients. Further, the probate court's order has a handwritten notation stating, "Should Mr. Brown regain competency, he shall be discharged to the Abbeville County Detention Center, and the Solicitor shall be notified pursuant to state law." According to section 44-23-460 of the South Carolina Code (2018), if the superintendent of a hospital "believes that a person against whom criminal charges are pending no longer requires hospitalization, the court in which criminal charges are pending shall be notified." Although charges were no longer pending against Brown as of October 20, 2009, the State continued to receive information about Brown and was notified, pursuant to the probate court's order, as soon as the Department believed Brown could be released due to his improved condition in early 2014. After the State was notified, it re-indicted Brown for the same charges on February 7, 2014, and requested another

> competency evaluation. Thus, it is clear from the probate court's order and the subsequent actions of the solicitor that the State intended to prosecute Brown as soon as he regained competency.

Id. 426 S.C. at 68-69, 824 S.E.2d at 479-80, A. 184.

The Court of Appeals, therefore, correctly held:

> We find, under the limited and unique facts of this case, Brown is entitled to credit for time served even though there were no charges pending against him. Although the charges were technically dropped, the result was functionally the same as if the charges were still pending against Brown. He was confined before trial as a result of his criminal charges and he pled guilty to those charges when he was later re-indicted. *See State v. Higgins*, 357 S.C. 382, 384, 593 S.E.2d 180, 182 (Ct. App. 2004) ("Generally, penal statutes are to be construed 'strictly against the State and in favor of the defendant.'" (quoting *Williams v. State*, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991))). During this period of time, Brown was held in a secure facility with other criminal patients and never released from custody. Thus, we hold Brown is entitled to credit for time served for the period of time he was civilly committed but no charges were pending against him. We remand to the circuit court to give Brown credit for time served between October 20, 2009, and February 14, 2014.

Id., A. 185. The Court of Appeals did not commit an error of law. This Court, accordingly, should deny the State's petition for a writ of *certiorari*.

3. The result reached by the Court of Appeals is consistent with appellate decisions in every state that has considered this issue.

Other states considering this issue universally reach the same result as the Court of Appeals reached in its opinion in this case. For example, California long ago held that a defendant committed to a state hospital prior to trial is entitled to credit for that time. *People v. Cowsar*, 40 Cal.App.3d 578, 581, 115 Cal.Rptr. 160, 161 (1974) was concerned about the "unconstitutional disparity in treatment between those confined in jail and in a state hospital prior to trial." *And see In re Banks*, 88 Cal.App.3d 864, 152 Cal.Rptr. 111 (1979) (held equal protection and due process of law mandate that, in calculating maximum duration of an incompetency commitment, credit must be given for pre-

commitment confinement attributable to same criminal prosecution). Likewise, the Minnesota Supreme Court requires a defendant receive credit for time served in a secure state hospital facility after a finding of incompetency to stand trial. *State v. Bonafide*, 457 N.W.2d 211 (Minn. 1990). The Kansas Supreme Court explained the rationale for the rule followed in *Bonafide*:

> The physical place of confinement is not important as the appellant technically continued to be in jail while held in custody at the hospitals. He was not free on bail, had no control over his place of custody and was never free to leave the hospitals. For all practical intents and purposes, he was still in jail. The court takes judicial notice that the state mental hospitals have the facilities to enforce confinement of their patients, which brings them within the dictionary definition of a "jail."

State v. Mackley, 220 Kan. 518, 519, 552 P.2d 628, 629 (1976).[3]

Additional states reaching similar results include: *Tal-Masso v. State,* 515 So.2d 738, 739-40 (Fl. 1987) ("there is 'no meaningful distinction ... between incarceration before trial in a county jail, and state enforced confinement in a mental hospital in preparation for trial.'"); *State v. La Badle*, 87 N.M. 391, 534 P.2d 483 (1975) (held that defendant who was ordered confined in state mental hospital under maximum security conditions after he had been found incompetent to stand trial during evidentiary hearing in criminal proceedings which involved felony charges was held in "official confinement on suspicion or charges of the commission of a felony" within meaning of statute providing for credit on sentences for time spent in presentence confinement.);

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[3] In its Final Brief of Respondent in the Court of Appeals, A. 163-65, the State misstated the rules followed by California and Minnesota. The State apparently has abandoned citation to this authority after receiving Mr. Brown's Reply Brief, A. 173-77. The State, nevertheless, continues to argue this Court should treat Mr. Brown's commitment to the DMH like an ordinary civil commitment, thereby ignoring the procedures followed leading up to and during the commitment and the appellate decisions of other states addressing this issue.

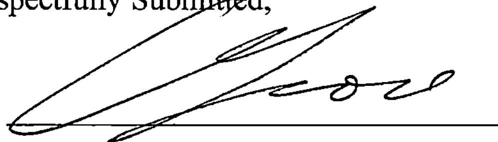
Commonwealth v. Jones, 211 Pa.Super. 366, 236 A.2d 834 (1967) (held that defendant who was charged with arson and committed to state hospital prior to plea of guilty was in custody so that he was entitled to have time spent in hospital credited toward sentence received for crime charged); *State v. Ewell*, 234 Md. 56, 60, 198 A.2d 275, 277 (1964) ("time spent under detention in a mental institution should be counted as a part of the sentence served"); *People ex. rel. Molina v. Noble*, 28 Misc.2d 646, 216 N.Y.S.2d 541 (1961) (held that a prisoner detained in the New York City correctional institution was entitled to credit on his sentence for the time he was incarcerated prior to conviction in the Matteawan State Hospital for the criminally insane); and *Petition of Stearns*, 343 Mass. 53, 175 N.E.2d 470 (1961) (writ of habeas corpus on the ground that if the time spent in a state hospital by the petitioner were deducted from his sentences the petitioner would be entitled to an immediate discharge).

The Court of Appeals did not commit an error of law. This Court, accordingly, should deny the State's petition for a writ of *certiorari*.

CONCLUSION

For the foregoing reasons, this Court should deny the State's petition for a writ of *certiorari*. The Court of Appeals did not commit an error of law. The "facially harsh result" sought by the State is contrary to the statutory scheme.

Respectfully Submitted,

By 

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Certificate of Service

I certify that I have served the Response to State's Petition for Writ of *Certiorari* on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed to:

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May 20, 2019.