

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2019-000651

RECEIVED

MAY 30 2019

S.C. SUPREME COURT

THE STATE,

Petitioner,

v.

TREY C. BROWN,

Respondent.

REPLY TO THE RETURN TO THE PETITION FOR A WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER

ARGUMENT IN REPLY

Respondent presents outside authority in support of the contention that numerous jurisdictions would reach the result of our Court of Appeals. However, like South Carolina, other jurisdictions expressly differentiate between pretrial confinement in any facility and a commitment purely civil in nature. They are distinguishable. In one scenario charges are pending. In the other, there are no criminal penalties levied against the individual undergoing treatment. Absent the pendency of concurrent criminal charges, the latter does not promote the award of time-served credit.

Again, Appellant's civil commitment does not stem from his criminal adjudication, but rather occurred pursuant to the doctrine of *parens patriae*.

Although a proceeding for the involuntary hospitalization of an individual considered, by those seeking commitment, to be mentally ill and to meet other statutory requirements for compulsory care is similar to a civil action, *in personam*, it is more in the nature of a special proceeding. It 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.

8 S.C. Jur. Mental Health § 22; *e.g.* S.C. Code Ann. § 44-23-410 (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).

During the period in question, Appellant was not accumulating good-time credits in relation to any past or future charge. Presentence time served credit is not appropriate when there are no pending charges. The Supreme Court of South Dakota has "emphasized that even though civil commitments for mental illness necessarily involve involuntary detention, traditional mental illness commitments—such as the one involving [this defendant]—have never constituted criminal punishment." *Closs v. S. Dakota Bd. of Pardons & Paroles*, 2003 S.D. 1, ¶¶ 18-31, 656 N.W.2d 314, 318-20 (S.D. Sup. Ct. 2003) (categorizing differences between criminal sentence and

civil commitment). That court held that an involuntary civil commitment incurred after a parole revocation was not related to punishment on the underlying criminal sentence and, thus, the prisoner was not entitled to any time-served credits for the time spent in civil commitment. *Closs v. S. Dakota Bd. of Pardons & Paroles*, *supra* at ¶ 32, 656 N.W.2d at 321 (jurisdiction with discretionary application of time-served credit). Minnesota likewise has “decline[d] to conflate treatment and punishment” in a case where a defendant pled guilty to making terroristic threats while civilly committed for sex offender treatment at a secure treatment facility. *State v. Johnson*, 744 N.W.2d 376, 378 (Minn. Sup. Ct. 2008). Part of the Minnesota court’s rationale in denying time-served credit for the period of civil commitment included consideration that the conditions of the civil commitment, and thus the confinement at a facility the court found “without dispute the functional equivalent of a jail,” had not been altered after the charges were levied. *Id.* at 380. But that court also found that the purpose of the civil commitment wholly separate from the purpose of the sentence issued for the later charge, noting that the defendant was not *sentenced* to serve time in secure treatment but rather was there “for purposes of treatment.” *Id.*; *but see Asfaha v. State*, 665 N.W.2d 523, 528 (Minn. Sup. Ct. 2003) (holding that when time is spent in a noncorrectional facility such as a residential treatment center with restrictions equivalent to those of a correctional facility, fairness and equity require the award of custody credit for time spent in such a facility).

The rationale supporting distinct treatment of time spent in civil commitment versus that spent serving a sentence on a criminal charge has also been explored by a California court.

Specifically, conduct credit cannot be awarded for pretrial confinement on a finding of incompetency to stand trial, because sentence credits for good behavior are “particularly inconsistent” with the therapeutic goals of treating a defendant so that his competency can be restored. “The purpose of confinement is to restore the mental ability to stand trial. . . . [T]hat goal would be hindered if mere institutional good behavior and participation automatically reduced the therapy period.” In

short, the therapeutic purpose of incompetency confinement in a state hospital has little if anything to do with the statutory conduct credit incentive available to a competent criminal defendant held in jail prior to trial. The therapy must not be artificially shortened by a factor unrelated to psychiatric concerns.

People v. Callahan, 144 Cal. App. 4th 678, 686–87, 50 Cal. Rptr. 3d 677, 682–83 (Cal. Ct. App. 4th 2006), *as modified* (Nov. 9, 2006) (internal citations and quotations omitted). The *Callahan* court found it improper to award good conduct credit for time the defendant spent in a state hospital because his confinement there flowed from an insanity commitment from a crime which occurred prior to the charged offense. *Id.*

Other California appellate courts have emphasized that credit for pre-sentence confinement is warranted only when the defendant “shows the conduct that led to his conviction was the sole reason for his loss of liberty during the presentence period.” *People v. Mendez*, 151 Cal. App. 4th 861, 864, 60 Cal. Rptr. 3d 182, 184 (Cal. Ct. App. 4th 2007) (jurisdiction requiring credit for time served in presentence custody). Another California court has held “that a defendant who is in custody at a locked facility pursuant to a civil commitment of fixed duration is not entitled to presentence credit against a prison term where (1) the term arises from conduct unrelated to the civil commitment, and (2) the restraints associated with such conduct occur after the civil commitment order.” *People v. Libhart*, 186 Cal. App. 3d 1015, 1016-17, 233 Cal. Rptr. 457, 457 (Cal. Ct. App. 3d 1986). In that case, the defendant incurred two criminal charges. Within days, one was dropped, he received a personal recognizance bond on the other, and was thereafter involuntarily placed “in custody at a locked facility pursuant to a civil commitment of fixed duration.” *Id.* at 1017, 233 Cal. Rptr. at 457-58. The dropped charge was later re-filed. *Id.* That court found the cause of the commitment wholly unrelated to the dropped and re-filed charge, and found that the re-filing of the charge had no effect on the defendant’s liberty because he was already confined pursuant to the commitment. *Id.* at 1020, 233 Cal. Rptr. at 460 (relying on *In re*

Rojas 151 Cal. Rptr. 649, 588 F.2d 789 (Cal. Sup. Ct. 1979) (en bank)); *but see id.* at 1019-20, 233 Cal Rptr. at 459-60 (finding the civil commitment stemmed from the charge on which the defendant obtained a personal recognizance bond because the condition of the bond was that he seek psychiatric treatment).

Respondent's record reflects that his mental health began to deteriorate while in pretrial detention, (App. pp. 26-30), which is distinguishable from Respondent's mental state during the conduct that led to the conviction. Absent a specific statutory provision, time-served credit is not guaranteed here. *Closs, supra*; *see State v. Reynolds*, 170 Ariz. 233, 235, 823 P.2d 681, 683 (Ariz. Sup. Ct. 1992) (finding "that the legislature intended the words 'in custody' to mean actual incarceration in a prison or jail and more than simply a restraint on freedom as onerous as jail or prison would be"); *State v. Stafford*, 2002 WL 31859518 at *1, 2002-Ohio-7184, ¶ 4 (Oh. Ct. App. 2002) (unpublished) (per curiam) (no time served credits for period of civil commitment because commitment stemmed from loss of competency and therefore "cannot be treated as confinement arising out of the offense under which he was convicted"). Respondent's circumstance denotes a point of statutory interpretation worth deciding and is more nuanced than the outside authority cited by Respondent due to the State's abandonment of the criminal charge during Respondent's loss of competency.


Respectfully submitted,

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PROOF OF SERVICE

I, Caroline Scrantom, counsel for the Petitioner, certify that I have served the within Reply to the Return to Petition for Writ of Certiorari 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.
The Grose Law Firm, LLC
404 Main Street
Greenwood, South Carolina 29646

I further certify that all parties required by Rule to be served have been served this 30th day of May, 2019.


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