STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
Clifton Newman, Circuit Court Judge

Appellate Case No. 2018-0001525

THE STATE, ... RESPONDENT

v.

STACARDO GRISSETT,..... APPELLANT

FINAL BRIEF OF RESPONDENT

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1. **Whether the revocation judge erred when he declined to give the Appellant credit for time that the Appellant served in custody pending a Community Supervision Program violation, when he was still serving his active sentence and when S.C. Code Ann. § 24-13-40 only pertains to pretrial credit, and that the judge revoked less than one year in compliance with S.C. Code Ann. § 24-21-560(C)?**

STATEMENT OF THE CASE

On August 23, 2010, the Appellant appeared before the Honorable L. Casey Manning and pled guilty to strong arm robbery, kidnapping, and second degree lynching, but his sentence was deferred. On September 16, Judge Manning sentenced the Appellant to ten years for strong arm robbery and lynching, and eight years for kidnapping, all to be run concurrently. (R.p.31-p.39).

The Appellant maxed out his strong arm sentence while in the Department of Corrections, but after serving eighty-five percent of his sentences for lynching and kidnapping, was released from incarceration. He immediately began a term of supervision under the Community Supervision Program (CSP) upon his release on August 1, 2017, to be supervised by the Respondent. (R.p.29-p.30).

Roughly two months later, on October 3, 2017, probation agents issued a warrant for the Appellant's arrest, alleging, among other technical violations, that he conspired with another individual to commit armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime. The warrant was served on the Appellant on November 1, 2017. (Rp.26-p.27).

The violation hearing occurred before the Honorable Clifton Newman on May 18, 2018. At the hearing, Judge Newman revoked the remainder of the Appellant's CSP, which was 299 days. (R.p. 5, l. 10-11). The attorney for the Appellant requested that he receive credit for time served. (R.p. 11, l. 7-11). However, officials for the Respondent pointed out that if the judge ordered credit for the pre-revocation time that would reduce the amount of the revocation and result in the Appellant being released to another term of CSP. (R.p. 17, l. 8-19). Judge Newman then revoked the Appellant for his remaining 299 days of CSP.

On May 24, the Appellant's attorney filed a motion to reconsider requesting he be given credit for time served. The Responded filed a reply to the motion on June 5, 2018. Judge Newman denied the motion on August 7, 2018.

This appeal follows.

ARGUMENT

The General Sessions court did not err when it revoked 299 days and declined to order credit for time served because South Carolina law only provides for pretrial credit to be applied after trial and sentencing and a revocation of Community Supervision is not a new trial.

I. Pre-revocation credit is not mandatory on an active sentence.

The Appellant claims that the judge erred when he refused to order credit for time served prior to the revocation hearing, saying that South Carolina law requires that the time must be ordered and the judge does not have discretion to refuse.

The Appellant relies on S.C. Code Ann. § 24-13-40 and the opinion of *State v. Boggs*, 388 S.C. 314, 696 S.E.2d 597 (Ct. App. 2010) in his argument, which refers to a different stage of the criminal proceeding and is therefore inapplicable. While the statute does clearly make *pretrial* detention credit mandatory, the time that the Appellant served was not served prior to trial. The relevant portion of the statute says, "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*..." (Emphasis added).

The Appellant's CSP violation hearing was not a trial. It is well settled in South Carolina that probation violation hearings are not trials. See *State v. Hill*, 368 S.C. 649, 658, 630 S.E.2d 274, 279 (2006) and *State v. Franks*, 276 S.C. 636, 638, 281 S.E.2d 227, 228 (1981). "[W]hile

the underlying probation violations may be criminal offenses, the probation revocation proceeding is not a criminal trial of those charges." *Hill*, at 658-659, 279.

Similarly, parole hearings are also not considered trials. The U.S. Supreme Court has held that, "the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations." *Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S.Ct. 2593, 2600 (1972) (citing *Mempa v. Rhay*, 389 U.S. 128, 88 S.Ct. 254 (1967). The Court continues, saying that "Parole arises after the end of the criminal prosecution, including imposition of the sentence." *Id.*

It stands therefore to reason that violation hearings of CSP, being another form of supervision following a conviction that may result in a revocation if its terms and conditions are violated, are not to be considered trials either. Consequently, Section 24-13-40's requirement that pre*trial* detention be applied to the sentence would not apply to time served prior to a revocation hearing for CSP.

Section 24-13-40 also requires pretrial detention be applied to the *sentence*. In a probation matter, "the commencement of the service of the sentence follows the revocation of probation." *Id.* This, however, does not apply after a revocation of CSP, because CSP is a part of the defendant's active sentence.

Community Supervision begins upon the conclusion of at least 85 percent of a "no parole offense" as defined in S.C. Code Ann. § 24-13-100. A sentence for a "no parole offense" must include a term of community supervision, defined in S.C. Code Ann. § 24-21-560. The Department of Probation, Parole and Pardon Services (the Department) operates the CSP and develops the guidelines and requirements of supervision. *Id.*

Although CSP is frequently compared to probation,[1] it is calculated differently. Probation is imposed by the General Sessions court after suspending all or a portion of the sentence.[2] The probation period is limited to five years.[3] The term of probation is therefore unrelated to the sentence, meaning that the term of probation can exceed the maximum incarceration allowed by law. Offenders do not receive credit toward their incarceration while serving probation because the sentence is suspended.

This is not the case with CSP. Offenders on CSP are still prisoners completing their active sentences. Furthermore, CSP includes both the suspended and unsuspended portions of the sentence. "We now definitively state that the "original sentence," as referenced in section 24-21-560(D), includes both the suspended and unsuspended portions of a circuit court's sentence; it is, in fact, the total sentence handed down by the court." *State v. Picklesimer*, 388 S.C. 264, 268, 695 S.E.2d 845, 848 (2010). Therefore, the time a prisoner serves on CSP is counted and applied directly towards his or her sentence. "[U]nder no circumstances shall a defendant be incarcerated, or forced to participate in mandatory CSP or residual probation, stemming from the same conviction, outside of the time given by the trial judge in the original sentence, which encompasses both the suspended and unsuspended portions of the sentence." *Id.* at 270, 848-849.

This is not a novel concept. Parolees facing revocations before the Board of Paroles and Pardons who serve time in county jails awaiting their hearings do not receive "pretrial" credit pursuant to section 24-13-40. Parolees are still serving their active sentence when released to parole, and "shall continue on parole until the expiration of the maximum term or terms specified

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[1] "The CSP is a more stringent, closely monitored form of supervision than normal probation." *State v. Dawkins*, 352 S.C. 162, 167, 573 S.E.2d 783, 785 (2002).
[2] S.C. Code Ann. § 24-21-410.
[3] S.C. Code Ann. § 24-21-440.

in [their] sentence..." S.C. Code Ann. § 24-21-670. Whether the parolee is in the community complying with the terms of parole or in a county jail awaiting a violation hearing, he is serving his sentence until its expiration date.

In light of the foregoing, the Appellant's argument that Section 24-13-40 requires that he receive "pretrial" credit – credit that he accrued while his sentence was active – is misguided. The Appellant served 198 days prior to his CSP revocation hearing, but he was still serving his sentence. Judge Newman correctly stated during the hearing, "[the Appellant's] an inmate from the Department of Corrections in the community supposedly being supervised." (R. p. 10, l. 24-25 – p. 11, l. 1). The CSP is therefore a continuation of an inmate's active sentence.

What the Appellant essentially asked the court was to give him double credit towards his sentence. If the court ordered the 198 days to be applied to his remaining 299 days left of his sentence, the time he served on his sentence would ultimately be applied twice.

The only alternative to double credit, as explained to the court at the hearing,[4] would be to reduce the revocation by 198 days without affecting the original sentence. In that scenario, the Appellant would not serve the remainder of his sentence at the Department of Corrections for the revocation. Instead, he would be released by the same amount of pre-revocation time. Then, pursuant to 24-21-560(D), the Appellant would have to complete a new term of CSP for the remainder of his sentence.

This latter alternative would be unwieldy and contrary to the judge's intent for the Appellant to serve the remainder of his sentence at the Department of Corrections.

[4] The transcript refers to a "Mr. Cannon," but that was likely the Respondent's attorney Matthew Buchanan.

II. The judge did not exceed the one-year revocation limit.

The Appellant argues that the judge exceeded the one-year limit when he revoked his CSP. This is incorrect. The judge revoked the remainder of his CSP, which was 299 days, clearly a period of time less than one year.

The Appellant points out that when his pre-revocation time that he spent in detention is added to his revocation, his total incarceration exceeds one year. While that is true, it still stands that the judge did not revoke more than one year. As explained in Part I above, the Appellant was serving an active sentence and was receiving credit toward his sentence while awaiting his revocation hearing at the county jail. Since that time was already served and applied towards his sentence, the judge could not retroactively order the Appellant to serve that time again. Instead, the judge had only what lay before him: the 299 days which constituted the remainder of the Appellant's sentence.

Offenders on CSP are considered inmates, according to Section 24-21-560. Consequently, every day an inmate spends on CSP is a day served of the sentence, whether in the community or incarcerated awaiting a violation hearing. To follow the Appellant's argument that the judge must consider the inmate's previously-served time, then every day spent on CSP would therefore have to be credited toward a revocation, which strains credulity. In another scenario, if an inmate spends an entire year awaiting a CSP violation hearing, the judge would be powerless to address the violation if Appellant's argument is followed.

While it would certainly be in the court's discretion to consider the time the inmate has served in the county jail while awaiting the revocation hearing, the court is not obligated to award that time to the inmate. As discussed earlier, § 24-13-40 is inapplicable to CSP. The time

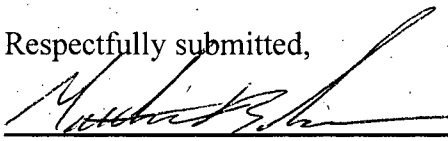
the Appellant is asking for is not pretrial credit, which the statute and Boggs guarantees. That time would have already been applied when the Appellant was first sent to the Department of Corrections after his conviction.

Instead, the Appellant has been serving his active sentence while awaiting his violation hearing. That time he spent in the county jail was already served and credited toward his total sentence, so the only amount the judge had left was the unserved portion of the Appellant's sentence. Had there been more than a year left of his sentence, the judge, per the limitations of § 24-21-560(C), would have been restricted to revoking only one year of his sentence. But because the judge's revocation was less than one year, he did not violate the limitation of § 24-21-560(C).

CONCLUSION

The Appellant's argument and reliance upon § 24-13-40 is misplaced because CSP is an active part of an inmate's sentence and § 24-13-40 only applies to pretrial credit. Furthermore, the judge only revoked 299 days, which is less than the one-year limitation on revocations in § 24-21-560(C). Therefore, this Court should determine that the judge's actions were proper in declining to award pre-revocation credit to the Appellant.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.

Matthew C. Buchanan
General Counsel

June 17, 2019