

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
J. Mark Hayes, Circuit Court Judge

Appellate Case No. 2018-000070

THE STATE, ...RESPONDENT

v.

KEVIN MCDANIELS, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

RECEIVED

JAN 11 2019

SC Court of Appeals

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

BARRY J. BARNETT
Solicitor, Seventh Judicial Circuit

180 Magnolia Street
Spartanburg, South Carolina 29306
(864) 596-2959

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
J. Mark Hayes, Circuit Court Judge

Appellate Case No. 2018-000070

THE STATE, ...RESPONDENT

v.

KEVIN MCDANIELS, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

BARRY J. BARNETT
Solicitor, Seventh Judicial Circuit

180 Magnolia Street
Spartanburg, South Carolina 29306
(864) 596-2959

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

	Page
Table of Contents.....	i
Table of Authorities	ii
Respondent's Statement of Issue on Appeal.....	1
Statement of the Case.....	2
Statement of Facts.....	4
Argument:	
I. The circuit court properly denied Appellant's motion for jail credit because: (1) the court had no jurisdiction to consider the motion; (2) the presiding judge had no authority to alter or amend the sentencing order of another circuit court judge; (3) Appellant admitted the sentencing judge had complied with all terms of the negotiated plea in regard to his federal sentence; and (4) Appellant was awarded all the credit to which he was entitled under the clear and unambiguous terms of section 24-13-40 the South Carolina Code.	6
Conclusion	10

TABLE OF AUTHORITIES

Federal Cases:

<i>North Carolina v. Alford</i> , 400 U.S. 25 (1970)	2
--	---

State Cases:

<i>Allen v. State</i> , 339 S.C. 393, 529 S.E.2d 541 (2000)	8
<i>Dep't of Social Services v. Laura D.</i> , 386 S.C. 382, 688 S.E.2d 130 (Ct. App. 2010)	7
<i>Enoree Baptist Church v. Fletcher</i> , 287 S.C. 602, 340 S.E.2d 546 (1986)	7
<i>Hayes v. State</i> , 413 S.C. 553, 777 S.E.2d 6 (Ct. App. 2015)	8
<i>State v. Boggs</i> , 388 S.C. 314, 696 S.E.2d 597 (2010)	8
<i>State v. McCord</i> , 349 S.C. 477, 562 S.E.2d 689 (Ct. App. 2002)	8
<i>Tant v. S.C. Dept. of Corrections</i> , 408 S.C. 334, 759 S.E.2d 398 (2014)	6

Federal Statutes:

28 U.S.C. § 2254	3
------------------------	---

State Statutes:

S.C. Code Ann. § 24-13-40	i, 1, 5, 6, 7, 8
---------------------------------	------------------

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether circuit court properly denied Appellant's motion for jail credit where: (1) the court had no jurisdiction to consider the motion; (2) the presiding judge had no authority to alter or amend the sentencing order of another circuit court judge; (3) Appellant admitted the sentencing judge had complied with all terms of the negotiated plea in regard to his federal sentence; and (4) Appellant was awarded all the credit to which he was entitled under the clear and unambiguous terms of section 24-13-40 the South Carolina Code.

STATEMENT OF THE CASE

Kevin McDaniels (Appellant) was indicted at the March 2008 term of the grand jury of Spartanburg County for one count of first-degree burglary (2008-GS-42-1743), one count of second-degree burglary (2008-GS-42-1744), and two counts of grand larceny. (2008-GS-42-1745 & -1746). He was represented by Robert B. Hall, Esquire. On, August 26, 2008, Appellant appeared before the Honorable R. Markley Dennis, Jr., and pled guilty to the indicted charges pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). Pursuant to a negotiated sentence, Judge Dennis sentenced Appellant to fifteen (15) years' imprisonment for first-degree burglary, fifteen (15) years' concurrent imprisonment for second degree burglary, and five (5) years' concurrent imprisonment for each count of grand larceny, for an aggregate sentence of fifteen (15) years. (R.p. 51-p.62). Appellant did not appeal his plea or sentence; however, in the years following his plea he filed and continues to file applications for post-conviction relief (PCR) in the Spartanburg County Court of Common Pleas and in one instance, the Richland County Court of Common Pleas, (2009-CP-42-3350; 2010-CP-42-2188; 2014-CP-42-0506; 2014-CP-40-3824; & 2017-CP-42-4438). Each Application was either denied and dismissed or, in the case of 2017-CP-42-4438, is still pending in the circuit court.

In regard to 2014-CP-42-0506, an evidentiary hearing was convened at the Spartanburg County Courthouse before the Honorable R. Ferrell Cothran, Jr. Appellant participated in the hearing via telephone and was represented by J. Brandt Rucker, Esquire. The State was represented by Assistant Attorney General Alicia A. Olive of the South Carolina Attorney General's Office. In an Order of Dismissal dated April 29, 2016, Judge Cothran denied and dismissed the Application with prejudice. (R.p. 38-p.50). Appellant timely served and filed a notice of appeal and a *Johnson* petition for a writ of certiorari was submitted on his behalf by

Assistant Appellate Defender Katherine H. Hudgins of the South Carolina Office of Appellate Defense. In an order dated September 5, 2018, the Supreme Court denied the petition and on September 27, 2018, sent the remittitur to the lower court.¹

On December 1, 2017, plea counsel Robert B. Hall, Esquire, filed a motion on Appellant's behalf in the Spartanburg County Court of General Sessions captioned as a "Motion to Give Jail Credit." (R.p. 36). On December 12, 2017, Appellant filed a *pro se* "Motion for Sentence Reduction based upon Substantial Assistance to SLED and SCDC." On December 14, 2017, a hearing into the matter was convened before the Honorable J. Mark Hayes at the Spartanburg County Courthouse. Appellant was present and was represented by Robert B. Hall, Esquire. The State was represented by Assistant Solicitor Derrick Bruce Bulsa of the Seventh Circuit Solicitor's Office. At the conclusion of the proceeding, after hearing arguments from both parties, Judge Hayes took the matter under advisement. (R.p. 22-p.35). On December 27, 2017, Judge Hayes issued and filed an "Order Denying Jail Credit." (R.p.37) The Order was served on Mr. Hall on January 9, 2018, and on January 11, 2018, he filed a notice appeal on Appellant's behalf with this Court. On October 23, 2018, Appellant submitted a brief in support of his appeal. This Brief of Respondent now follows.

¹ Appellant has also filed a *pro se* petition for a writ of habeas corpus in the United States District Court for the District of South Carolina pursuant to 28 U.S.C. § 2254. (*Kevin Wayne McDaniels, #254398, Petitioner, v. Charles Williams, Warden, Respondent*, C/A No.: 1:18-2611-TLW-SVH).

STATEMENT OF FACTS

At the August 26, 2008, guilty plea proceeding before Judge Dennis, the judge repeatedly stated that, pursuant to the terms of the negotiated sentence, he would run Appellant's sentence concurrently with his federal sentence, and would give Appellant credit for time served. (R.p.5-p.7; p.10; p.18). Judge Dennis never stated he would start Appellant's sentence from "the beginning of his federal sentence" and no one present at the plea indicated this was a term of the negotiations. Although Appellant said: "I've served approximately two and a half years already," he did not specify whether this was as a pre-trial detainee or as a post-sentence inmate. (R.p.6, lines 1-2). Later, when issuing the sentence itself, Judge Dennis stated as to the first charge: "You're given credit for time served, and they will make that computation at the Department of Corrections. This sentence is also to run concurrently with the federal sentence you're presently serving, and I have written that on the sentencing sheet." (R.p.19). He made similar comments about each sentence imposed, saying Appellant would get credit for time served. (R.p.19-p.20).

At the December 14, 2017, motion hearing convened before Judge Hayes, Mr. Hall gave a brief procedural history, explaining that when Appellant pled in 2008, it was pursuant to negotiations with the State that he be sentenced to fifteen years' imprisonment concurrent with his other state sentences and with his federal sentence. Mr. Hall further explained that Appellant was now before the court because he was asking it to award him credit for time served from the time Spartanburg County issued the arrest warrants in his case until date they were served, alleging the warrants were not served for approximately fifteen months. He relied in part on an administrative order issued by our supreme court in *State v. Hall*,² and complained that this delay by Spartanburg County was similar to the practice of the South Carolina Department of

² *Hall v. State*, Order 2015-01-28-01 (Filed January 28, 2015).

Corrections (SCDC) to hold arrest warrants for service, which resulted in unfairness to inmates. Appellant asked that the court issue an order “backdating the start date for his credit to March of 2006,” calling it a “fairness argument.” (R.p.4-p.6).

In response the solicitor objected to the motion on three grounds. First, the State objected to the hearing proceeding at all where the sentencing judge was still active on the bench and could be available to hear the motion instead. Second, the State argued the computation of time served was an issue for SCDC rather than the court, arguing it was controlled by the terms of Section 24-13-40 of the Code. Finally, the State argued that under those terms, Appellant was not entitled to credit for the requested time served because he was already serving a sentence for another offense. (R.p.6-p.7).

Appellant responded that the sentence start date was an issue for the Court, not SCDC, and therefore he believed his request was proper. He continued to emphasize he was simply asking the court to give him an additional fifteen months credit from the date the Spartanburg warrants were issued until they were served. (R.p.7-p.9). As the parties continued to argue their respective positions, Mr. Hall noted Appellant’s big concern at the time of the plea was that his sentence run concurrent with the federal case “and everybody worked with us to get that done.” (R.p.11, lines 10-14). Mr. Hall specifically said:

It was – the big concern was does it run with his federal time. And I specifically remember reading Judge Dennis, saying I can order it but I can’t do anything about the federal system and the bureau of prisons. I hope they do run it together with you. *And that’s what happened. He went in federal custody, and then got released and he’s doing the remainder of his state time.*

(R.p.11, line 12-p.12, line 6) (emphasis added). He argued Appellant was not asking the court to change the sentence, only the start date, which the State argued was “the same thing.” (R.p.12,

lines 20-22). Judge Hayes took the motion under advisement, denying it by written order dated December 27, 2017.

ARGUMENT

I.

The circuit court properly denied Appellant's motion for jail credit because: (1) the court had no jurisdiction to consider the motion; (2) the presiding judge had no authority to alter or amend the sentencing order of another circuit court judge; (3) Appellant admitted the sentencing judge had complied with all terms of the negotiated plea in regard to his federal sentence; and (4) Appellant was awarded all the credit to which he was entitled under the clear and unambiguous terms of section 24-13-40 the South Carolina Code.

Appellant argues the lower court erred when it failed to award him the time-served credit he was entitled to because he and the State agreed he would receive credit for time-served from the beginning of his federal sentence and the plea judge pronounced on the record he would get credit for time served. (Brief of Appellant, p.4-p.9). The State submits Appellant's argument should be denied and dismissed for several reasons.

First, the circuit court properly denied Appellant's motion for jail credit because it no longer had jurisdiction over the case and therefore could not have granted the relief requested. *Tant v. S.C. Dep't of Corrections*, 408 S.C. 334, 342-43, 759 S.E.2d 398, 402 (2014) (recognizing the long-standing rule of law that a trial court is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires, except for post-trial motions filed within ten days pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure).

Second, the circuit court properly denied Appellant's motion for jail credit because the presiding judge, Judge Hayes, had no authority to alter, amend, set-aside, or ignore the

sentencing order of the sentencing judge, Judge Dennis. In South Carolina, one circuit court judge may not set aside or ignore the order of another circuit court judge. *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986); *Dep't of Social Services v. Laura D.*, 386 S.C. 382, 386, 688 S.E.2d 130, 132-33 (Ct. App. 2010). This is essentially what Appellant was asking Judge Hayes to do—award time-served credit that Appellant claims was not awarded by Judge Dennis when the sentence was imposed. Judge Hayes had no authority to make such an award.

Third, the circuit court properly denied Appellant's motion for jail credit for the grounds set forth in this appeal ("credit for time-served from the beginning of his federal sentence"), because Appellant admitted the sentencing judge had in fact complied with all terms of the negotiated plea in regard to his federal sentence. At the motion hearing, Appellant emphasized he was simply asking the court to give him credit from the date the Spartanburg warrants were issued until they were served. He never argued he should get credit for time served from the beginning of his federal sentence. Indeed, Mr. Hall twice assured Judge Hayes that the only concern with the federal sentence at the time of the plea was Appellant's demand to have his Spartanburg sentences run concurrent with that federal sentence. Mr. Hall explained that demand was met by Judge Dennis at the time of sentencing.

Fourth, the circuit court properly denied Appellant's motion for jail credit because Appellant was awarded all the credit to which he was entitled under the clear and unambiguous terms of section 24-13-40 the South Carolina Code. In regard to credit for time served, the Code provides:

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. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the

commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. *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, and may be given for any time spent under monitored house arrest. Provided, however, that credit for time served prior to trial and sentencing shall not be given:* (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) *when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.*

S.C. Code Ann. § 24-13-40 (2007 & Supp. 2017) (emphasis added). Thus, a prisoner will receive credit for time served unless either (1) the prisoner was an escapee or (2) the prisoner was already serving a sentence on a different offense. *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (2010); *Hayes v. State*, 413 S.C. 553, 560, 777 S.E.2d 6, 10 (Ct. App. 2015), *cert. dismissed as improvidently granted*, 418 S.C. 362, 792 S.E.2d 907 (2016). The matter of credit for time served under this statute is not discretionary with the trial court. *State v. McCord*, 349 S.C. 477, 487, 562 S.E.2d 689, 694 (Ct. App. 2002). Indeed, because the language of section 24-13-40 is mandatory, a judge cannot deny a defendant credit for time served prior to trial unless one of the two exceptions applies. *Boggs*, 388 S.C. at 316, 696 S.E.2d at 598.

Similarly, the language which prohibits the award of credit for time served is also mandatory, providing that credit “shall not be given” when one of the two statutory exceptions applies. Under the plain, unambiguous terms of the statute, Appellant is not entitled to credit for the time served on his Spartanburg County sentence “from the beginning of his federal sentence” because he was serving a sentence on a federal offense when Judge Dennis imposed the Spartanburg sentence. *Allen v. State*, 339 S.C. 393, 396, 529 S.E.2d 541, 542 (2000). Indeed,

the statute specifically prohibits either the plea court or the motion court from awarding such credit under the circumstances of this case. Thus, the motion for the award of jail credit beyond what was given by Judge Dennis at the time of sentencing was properly denied.

Finally, the circuit court properly denied Appellant's motion for jail credit because it was, in effect, merely another attempt at an application for PCR, where Appellant's prior application was denied and dismissed with prejudice in a prior proceeding. Appellant could have attempted to raise his current allegations in his prior PCR. Thus, his motion was untimely, filed in the wrong forum, and was properly dismissed by the court of general sessions.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the circuit court's decision to deny and Appellan't motion to give jail credit be affirmed.

Respectfully submitted,

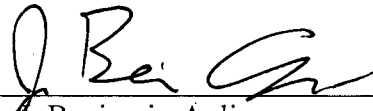
ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

BARRY J. BARNETT
Solicitor, Seventh Judicial Circuit

180 Magnolia Street
Spartanburg, South Carolina 29306
(864) 596-2959

BY:


J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
January 11, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
J. Mark Hayes, Circuit Court Judge

Appellate Case No. 2018-000070

THE STATE,.....RESPONDENT

v.

KEVIN MCDANIELS,.....APPELLANT.

CERTIFICATE OF COUNSEL

“The undersigned certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.”

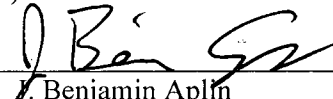
ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

BARRY J. BARNETT
Solicitor, Seventh Judicial Circuit

180 Magnolia Street
Spartanburg, South Carolina 29306
(864) 596-2959

BY:


J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

RECEIVED

JAN 11 2019

SC Court of Appeals

Columbia, South Carolina
January 11, 2019