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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2018-000224

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SC Court of Appeals

THE STATE,APPELLANT,

v.

BRUCE STANLEY JONES,RESPONDENT.

FINAL BRIEF OF APPELLANT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the plea court abused its discretion and erred as a matter of law when it refused to comply with the clear terms of section 24-13-40 of the South Carolina Code and instead awarded Respondent 150 days of credit for time served prior to Respondent's plea, where Respondent was already serving a sentence on a different offense during the 150 days at issue.

STATEMENT OF THE CASE

Bruce Stanley Jones (Respondent) was indicted at the January 18, 2018 term of the grand jury for York County for two counts of second-degree burglary (violent) (2018-GS-46-00431 & -00435) and one count of malicious injury to property, third or subsequent property crime (2018-GS-46-00432). He was represented by Mark T. McKinnon of the Sixteenth Circuit Public Defender's Office. Appellant (the State) was represented by Ryan R. Newkirk of the Sixteenth Circuit Solicitor's Office. On February 8, 2018, Respondent pled guilty as indicted. He was sentenced by the Honorable Daniel D. Hall to six (6) years' concurrent imprisonment on each of the three charges. On each sentencing sheet, the plea judge checked the box indicating: "The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections" and then wrote "Begin time July 18, 2016." (R.p.17-p.18; R.p.34-p.42).¹

On the day of the plea, the State served and filed a motion to reconsider which raised a challenge to the court's award of credit for time served. (R.p.30- p.31). The following day, on February 9, 2018, the plea judge reconvened the case to hear and rule upon the State's motion. (R.p.18, lines 6-20). At the start of the hearing, the State submitted an Amended Motion to Reconsider specifically challenging a portion of the court's award of credit for time served. (R.p.32-p.33). Respondent was again represented by Assistant Public Defender McKinnon, and the State was again represented by Assistant Solicitor Newkirk. At the conclusion of the hearing, Judge Hall denied the State's motion. (Tr.p.25, lines 16-25). No written order beyond the original sentencing sheets followed. The State timely filed a notice of intent to appeal the sentence. This Brief of Appellant now follows.

¹ An "Inmate Search Detail Report" for Respondent which was obtained from the South Carolina Department of Corrections website on April 26, 2018, indicates Respondent's "Start Date" for these York County convictions is indeed July 18, 2016, as ordered by Judge Hall. (R.p.54).

STATEMENT OF FACTS

Before being indicted on the York County charges which are the issue of the appeal now before this Court, Respondent was indicted at the June 22, 2017 term of the grand jury for Lancaster County for one count of second-degree burglary, violent. (2017-GS-29-906). On September 12, 2017, Respondent pled guilty as indicted in Lancaster County. He was sentenced by the Honorable Daniel D. Hall to three (3) years' imprisonment. On the sentencing sheet, the plea judge checked the box indicating: "The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections" and wrote "420 days." (R.p.43-45). Respondent's Inmate Search Detail Report from SCDC indicates a sentence start date of July 19, 2016, for this Lancaster County conviction, which is exactly 420 days before the date of the plea. (R.p.54).

Respondent was subsequently indicted at the January 18, 2018, term of the York County grand jury for two counts of possession of tools used in the commission of a crime (2018-GS-46-00429 & 2018-GS-46-00434), two counts of petit larceny, third or subsequent property crime (2018-GS-46-00430 & 2018-GS-46-00433), two counts of second-degree burglary (violent) (2018-GS-46-00431 & 2018-GS-46-00435), and one count of malicious injury to property, third or subsequent property crime (2018-GS-46-00432). (R.p.46-53). On February 8, 2018, Respondent appeared before Judge Hall to enter a guilty plea. At the outset of the guilty plea proceeding, the solicitor described the plea negotiations in the case, which included a recommendation for a six (6) year active sentence to be served concurrently with the sentence Respondent was currently serving, as well as the dismissal of the petit larceny and possession of burglary tools charges. The solicitor noted that although the parties agreed on the terms of the plea, there was a dispute in regard to the appropriate credit for time served and that the court

would need to rule on it at the end of the plea. (R.p.5-p.6). The plea judge then engaged Respondent in a standard plea colloquy before listening to a factual summary of the crimes presented by the solicitor. (R.p.6-p.12). The plea court found there was a factual basis for the plea and then heard facts in mitigation from Respondent, including the fact that the York and Lancaster charges were handled as part of the same investigation, along with similar charges from Pineville, North Carolina. (R.p.12-p.13).

Respondent then addressed the disputed issue in regard to the appropriate amount the plea court should award for credit for time served. He argued he should get credit from the date he was arrested in Pineville, NC, on July 18, 2016, until the date of the plea in York County, on February 8, 2018, or approximately five hundred and seventy (570) days. This total would include the four hundred and twenty (420) days from the arrest in Pineville until the plea in Lancaster, as well as the one hundred and fifty (150) days Respondent served in the Lancaster County Detention Center and/or SCDC following his Lancaster conviction in July 19, 2017. (R.p.13-p.15). The State responded by arguing credit for time served was controlled by statute and that Respondent should not get credit against his York County sentence for any time served following his Lancaster County conviction. (R.p.15). The plea court sided with Respondent and awarded credit for the entire time requested, directing that the sentencing sheets reflect a start date of July 18, 2016. (R.p.16-p.18).

As noted above, the State filed a motion to reconsider on the day of the plea and then filed an amended motion to reconsider the following day. (R.p.18, lines 6-20; Motion to Reconsider; Court's Exhibit #1). At the ensuing hearing, the solicitor provided additional details regarding the timeline surrounding Respondent's arrests and convictions from the multiple

jurisdictions.² (R.p.18-p.21). After some minor clarifications, the parties agreed to the timeline. (R.p.21-p.23). The solicitor then asked the plea court to reconsider the award of credit for time served, asking the court to deny credit for the one hundred and fifty (150) days between Respondent's Lancaster County conviction and his York County plea. The State specifically referenced section 24-13-40 of the South Carolina Code and the mandatory language in that statute. (R.p.23-p.25). The plea judge denied the motion to reconsider and noted: "In my research last night I could find no reported case in which the State appealed a granting of time served." (R.p.25, lines 17-19).

ARGUMENT

I.

The plea court abused its discretion and erred as a matter of law when it refused to comply with the clear terms of section 24-13-40 of the South Carolina Code and instead awarded Respondent 150 days of credit for time served prior to Respondent's plea, because Respondent was already serving a sentence on a different offense during the 150 days at issue.

The State contends the plea judge abused his discretion and erred as a matter of law when he refused to comply with the clear, mandatory terms of section 24-13-40 and instead awarded Respondent 150 days of credit for time served prior to his York County plea, despite the fact Respondent was undisputedly serving a sentence on his Lancaster County conviction during that 150 days. The award of credit for time served for the 150 days should be reversed and vacated and SCDC should be ordered to adjust the start date of Respondent's York County sentence accordingly.

² This included noting Respondent was actually serving a sentence in North Carolina for at least a portion of the time between his arrest in Pineville and his subsequent plea in Lancaster. Under the relevant statute, Respondent also should not be given credit for the time he was serving this sentence in North Carolina; however, the State has limited its challenge in this appeal to the time Respondent was serving a sentence due to his Lancaster County conviction because there was no challenge when that credit was awarded as part of the Lancaster County plea.

S.C. Code § 24-13-40

In regard to credit for time served, the South Carolina 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, Respondent is not entitled to credit for the time served on his York County sentence between September 12, 2017, and February 8, 2018, because he was serving a sentence on the Lancaster County offense. *Allen v. State*, 339 S.C. 393, 396, 529 S.E.2d 541, 542 (2000). Indeed, the statute specifically prohibits the plea court from awarding such credit under the circumstances of this case. Thus, the award of credit for time served for these 150 days should be reversed and SCDC should be ordered to adjust the start date of Respondent's York County sentence accordingly.

CONCLUSION


For all of the foregoing reasons, the State respectfully requests that the plea court's award of credit for time served for the 150 days at issue be reversed and that SCDC be ordered to adjust the start date of Respondent's York County sentence accordingly.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

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

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