STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

APPELLANT,

V.

BRUCE STANLEY JONES,

RESPONDENT

APPELLATE CASE NO. 2018-000224

FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

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APPELLANT'S STATEMENT OF THE ISSUE ON APPEAL

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.

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE ON APPEAL

Did the sentencing judge properly exercise his discretion in examining the facts and inferences to determine that where the arrest and investigation of all of respondent's crimes occurred simultaneously and respondent was continuously confined and at the State's mercy, the court could award 150 days of credit for pre-trial detention from the date of respondent's arrest?

STATEMENT OF THE CASE

Respondent agrees with Appellant's statement of the case.

STANDARD OF REVIEW

"'In criminal cases, the appellate court sits to review errors of law only.'" State v. Vick, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009)(quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is "'bound by the trial court's factual findings unless they are clearly erroneous.'" Id. (quoting Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829). The reviewing court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." State v. Slocumb, 412 S.C. 88, 91, 770 S.E.2d 436, 438 (Ct. App. 2015). "A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support." In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

ARGUMENT

Facts and inferences related to sentencing are within a trial judge's discretion and the sentencing judge properly determined that where the arrest and investigation of all of respondent's crimes occurred simultaneously and respondent was in custody and at the State's mercy, the court could award 150 days' credit for pre-trial detention from the date of respondent's arrest.

The Attorney General asks the South Carolina Court of Appeals to review a trial judge's decision to award 150 days of credit to Bruce Stanley Jones, a fifty-eight year old burglary defendant who may have finished the eleventh grade. R. 5, ll. 17 – 23. Jones entered his guilty plea pursuant to a negotiated sentence. R. 6, ll. 9 – 13. The dates and facts leading up to the trial judge's decision to award Jones credit from the date of his arrest were undisputed below. R. 23, ll. 4 – 12.

Jones faced charges in three jurisdictions that were investigated simultaneously and in cooperation by law enforcement from each jurisdiction. R. 13, ll. 2 – 9. R. 16, ll. 1 – 13. R. 21, ll. 1 – 4. Both the solicitor and the defense agreed on the following relevant dates and facts, placed here into a timeline for this Court's convenience:

June 17, 2016	Jones broke into the Carolina Cigarette Store, which resulted in an indictment for second-degree burglary in York County. R. 10, ll. 16 – 22. R. 7, ll. 21 – 24.
June 30, 2016	Jones broke into the Tienda La Catalana, which resulted in indictments for second-degree burglary and malicious injury to property in York County. R. 7, l. 11 – 8, l. 10.

July 18, 2016	Jones was arrested in Pineville, North Carolina. R. 28, ll. 6 – 8. R. 15, ll. 3 – 12. Jones remained in custody from this date forward. R. 14, ll. 13 – 21.
July 20, 2016	Law enforcement officers from Lancaster County, York County, and Mecklenburg County, North Carolina interviewed Jones in North Carolina and Jones confessed to all crimes in each of these three jurisdictions. R. 21, l. 1 – 22, l. 25.
July 28, 2016	Warrants for Jones' York County crimes were signed by a magistrate judge. R. 22, ll. 5 – 12.
Sept. 16, 2016	The Governor of South Carolina signed a Governor's Warrant for Jones. R. 15, ll. 13 – 21.
Oct. 10, 2016	The Governor's Warrant was served on Jones in North Carolina. R. 20, ll. 16 – 22.
Mar. 23, 2017	Jones finished his sentence in North Carolina and was transported to the Lancaster County jail. R. 21, ll. 15 – 23.
Sept. 12, 2017	Jones pled guilty in Lancaster County before Judge Hall, who also presided over Jones' plea and sentence in this case. R. 23, ll. 14 – 17. R. 6, l. 19 – 7, l. 6. Jones then began serving his sentence in the Department of Corrections for the Lancaster charges while he awaited a date to plead guilty on the York charges. R. 23, l. 22 – 24, l. 3.
Oct. 6, 2017	Over a year after the York County magistrate judge signed Jones' warrants, and over six months after South Carolina authorities obtained physical custody over Jones, these warrants were served on Jones in the

	Department of Corrections. R. 22, ll. 5 – 12.
Feb. 8, 2018	Approximately eleven months after South Carolina authorities obtained physical custody over Jones, he was transported from the Department of Corrections to York County to again plead guilty before Judge Hall. R. 24, l. 18 – 25, l. 2.
Feb. 9, 2018	The York County solicitor argued its motion asking Judge Hall to take away 150 days of credit Judge Hall gave Jones for the time Jones spent in the custody of the State of South Carolina between the date he pled guilty before Judge Hall in Lancaster County and the date he pled guilty in York County before Judge Hall. R. 18, ll. 6 – 19.

The Attorney General seems to suggest that Judge Hall denied the State's motion and awarded credit to Jones because he could "'find no reported case in which the State appealed a granting of time served.'" Br. of App. at 5, quoting R. at 25, ll. 17 – 19. This suggestion ignores Judge Hall's thoughtful and considered analysis following this statement, which covers the final three pages of the transcript of the motion hearing. R. 25, l. 19 – 28, l. 21.

Judge Hall noted he found an unreported Court of Appeals decision and acknowledged it had no precedential value, but attempted to discern this Court's reasoning. R. 26, l. 2 – 27, l. 10. The trial judge noted this Court examined the statute the solicitor contended barred Jones' credit. R. 26, l. 2 – 27, l. 10. Judge Hall drew from the unpublished decision the question of "what is a second offense" under S.C. Code § 24-13-40. R. 27, ll. 3 – 20.

Judge Hall then turned to the statute at issue and the facts of the case before him. R. 27, l. 11 – 28, l. 21. It was undisputed that two days after Jones' arrest in North Carolina, law

enforcement from York and Lancaster (and North Carolina) obtained Jones' confession. R. 27, l. 11 – 28, l. 21. Judge Hall then noted the undisputed fact that Jones remained incarcerated and under the complete control of the authorities during the entire contested period. R. 27, l. 11 – 28, l. 21. Given the undisputed connection of law enforcement's investigation of all of these charges and Jones' confinement at the State's mercy, Judge Hall denied the State's motion to strip Jones of the 150 days he spent in the Department of Corrections waiting for the State to call his case in York County. R. 27, l. 11 – 28, l. 21.

The standard of review controls this appeal. Trial judges are afforded enormous discretion related to matters of sentencing. State v. Kimbrough, 212 S.C. 348, 357, 46 S.E.2d 273, 277 (1948). In Kimbrough, one of the rare cases where our Supreme Court has reversed a sentence as too harsh, the Court explained:

> It is perhaps unnecessary to add that **only under rare and unusual circumstances will this Court interfere with the discretion of the trial judge in the imposition of a sentence.** The difficult duty and weighty responsibility of determining the sentence to be imposed on a defendant is under most of our statutes properly left, within certain limitations, to the trial judge, who is in a much better position than this Court to fix the penalty to be imposed.

Id. (emphasis added).

While the State attempts to frame this issue as one of purely statutory construction, the determination of "second offense" in section 24-13-40 required the plea court to exercise his discretion and make a factual determination on whether he was imposing sentence for a "second offense" given the totality of the circumstances of Jones' situation. As Judge Hall unquestionably understood, solicitors in this State still exercise much control over when cases are called for trial or plea. But see State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012). Terms of court are fixed well in advance and are certainly not under the control of an inmate in the Department of Corrections.

Nothing in this record indicates that the 150 days Jones spent in the Department of Corrections waiting to plead guilty in York to charges to which he confessed **on the same day** he confessed to charges in Lancaster are the fault of Jones. Jones did not even have an attorney until the Court appointed a public defender immediately before Jones' plea. R. 4, l. 23 – 5, l. 3. Judge Hall went through an additional colloquy with Jones to ensure that Jones did not have "any complaints about the way [his lawyers] represented [him] **in the last twenty-four hours**." R. 17, ll. 1 – 21 (emphasis added). Given the totality of the circumstances readily apparent to this trial judge, he acted well within his discretion to award Jones credit.

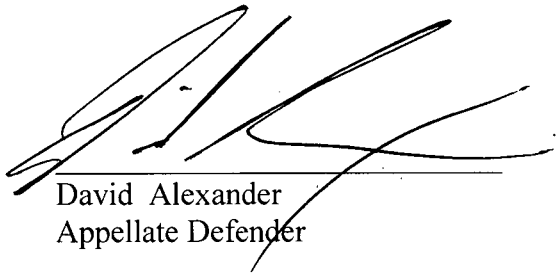
The Supreme Court's decision in Blakeney v. State, 339 S.C. 86, 529 S.E.2d 9 (2000) further confirms the correctness of Judge Hall's decision. In Blakeney, the defendant was arrested in Berkeley County in August 1992. Blakeney at 87, 529 S.E.2d at 10. In September 1992, Beaufort County issued, but did not serve, an arrest warrant for the defendant on unrelated charges. Id. The defendant was not actually arrested on the Beaufort charges until December 1993, after the Berkeley charges had been dismissed. Id. The defendant was later convicted and sentenced on the Beaufort charges. Id.

A PCR judge later granted the defendant credit for time served from the date the Beaufort arrest warrant was issued. Id. at 87-88, 529 S.E.2d at 10-11. On appeal, the Court held the PCR judge properly awarded credit from the date the Beaufort warrant was issued because the county could have executed the warrant whenever it chose and the defendant could have been confined through the resulting hold. Id. Blakeney stands for the proposition recognized by Judge Hall—that a defendant is at the mercy of the State regarding his custody and service of warrants and the calling of cases. Blakeney shows that the court in Jones' case properly considered all of the facts and the duties and powers of the respective parties when it awarded Jones credit. Just like the

defendant in Blakeney, Jones was under the State's control and the service of the warrants were under the State's control. Applying this Court's deferential standard of review, Judge Hall's award of 150 days of credit should be affirmed.

CONCLUSION

For the foregoing reasons, this Court should affirm respondent's sentence.



David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

This 17th day of December, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 17, 2018

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