STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2018-000224

THE STATE, ...APPELLANT,

v.

BRUCE STANLEY JONES, ...RESPONDENT.

FINAL REPLY 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 AND STATEMENT OF FACTS

Appellant (the State) hereby incorporates by reference the Statement of the Case and the Statement of the Facts as set forth in its May 1, 2018, Brief of Appellant, which has been filed with this Court.

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.

As argued in its primary brief, 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. In response, Respondent argues that all facts and inferences related to sentencing are within the plea judge's discretion and therefore the award of credit must be affirmed under this Court's standard of review. He contends the State incorrectly frames this issue as one of purely statutory construction and suggests section 24-13-40 instead provides the sentencing judge with broad discretion to award credit outside the terms of the statute, depending on the facts and inferences of each case. Respondent argues the 150 days he spent in "confinement at the State's mercy" after his Lancaster County conviction but before he pled guilty in York County were not his fault, and therefore the sentencing judge could give him credit for that 150 days. He references the plea judge's consideration of an unpublished from this Court prior to rejecting the State's motion to reconsider, as well as several published

opinions from our Supreme Court which he claims support of his position. (Brief of Respondent, p.6-p.9). However, nothing in the relevant statute gives a sentencing judge discretion to award credit for time served beyond what is specifically authorized by the Legislature, and the State submits the cited cases do not support the existence of such discretion. 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.

Respondent first points to *State v. Suber*, Op. No. 2008-UP-680 (Ct. App. filed December 9, 2008), the unpublished opinion considered by the plea judge during the hearing on the State's motion to reconsider, and argues it support's the judge's decision. However, the plea judge's reliance on *Suber* in interpreting the language of the statue appears to have been misplaced. In *Suber*, the sole issue was whether the plea judge erred in ruling Suber would receive no credit for time spend in custody awaiting trial and/or sentencing. Suber pled guilty to charges in Richland County and during the plea hearing advised the judge he had been in jail on the charges for about a year before the plea. Counsel clarified Suber had originally been arrested on charges from both Richland County and Lexington County, but had been serving a sentence on the Lexington County convictions for the majority of time he had referenced. Counsel noted however, Suber had been incarcerated "about three months" on both the Richland and Lexington County charges prior to the Lexington County convictions. It was this approximate three month period that was the subject of Suber's appeal. This Court found Suber was entitled to credit for time served for this period pursuant to section 24-13-40, but remanded for the plea court to determine the exact amount of time because the record did not contain any evidence of this exact amount. The State does not dispute this was a correct application of the statute because the three months in question was served in pre-trial detention while awaiting trial on charges from both counties. What *Suber*

did not address was whether the statute would allow the plea judge to award credit for time served after Suber began serving his sentence on the Lexington County charges. The State submits that as in Respondent's case, it would not.

Respondent next points to *State v. Kimbrough*, 212 S.C. 348, 46 S.E.2d 273 (1948), in support of his claim that the plea judge's action in giving the 150 days credit fell within the enormous discretion afforded to trial judges related to matters of sentencing. Yet, in *Kimbrough*, even when taking the extraordinary step of setting a sentence aside as manifestly too severe, the Supreme Court recognized it had "no jurisdiction to correct a sentence on the ground that it is excessive when it is *within the limits prescribed by law* for the discretion of the trial Judge . . . ." *Id.* at 354, 46 S.E.2d at 276 (emphasis added). Here, the "limits prescribed by law" include mandatory language that credit "shall not be given" when one of the two statutory exceptions applies. S.C. Code Ann. § 24-13-40 (2007 & Supp. 2017). Because Respondent was serving a sentence on the Lancaster County offense between September 12, 2017, and February 8, 2018, he could not be given credit for time served during that period against his York County sentence. The plea judge ignored statutory limits and attempted to exercise discretion he did not have. *Kimbrough* does not support this attempt.

Finally, Respondent points to *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012) and *Blakeney v. State*, 339 S.C. 86, 529 S.E.2d 9 (2000), in support of his claim that a sentencing court should have unfettered discretion to award credit for time served under section 24-13-40 any time a defendant is "at the mercy of the State" or "under the State's control." *Blakeney*, however, simply addressed the issue of whether computation of time served under section 24-13-40 should commence only upon execution of an arrest warrant for a charged offense, or if it also should commence upon placing that arrest warrant as a "hold" or detainer in another county.

Our Supreme Court held Beaufort County's decision not to execute an arrest warrant until fifteen months after it was issued should not preclude Blakeney from receiving credit on his Beaufort County charges from the date that warrant was placed as a hold in Berkeley County. *Id.* at 88-89, 529 S.E.2d at 11. Again, the State does not dispute this was a correct application of the statute; however, it was an application that only addressed credit for time served in pre-trial detention awaiting trial on the Beaufort County charges. *Blakeney* does not stand for the proposition that credit for time served should be given when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense. Indeed, the statute specifically prohibits the award of credit under these circumstances.

The lines drawn by the Legislature in Respondent's case are clear. Section 24-13-40 prohibits the plea judge from awarding the 150 days Respondent served on his Lancaster County conviction towards his York County sentence. For all of these reasons and the reasons set forth in its primary brief, the award of credit for time served for the150 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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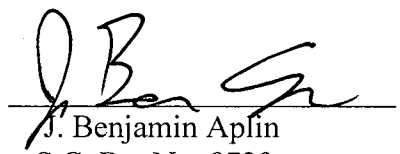
BY: 
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