

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT OF APPEALS

[IN THE SUPREME COURT]

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JAN 22 2021

S.C. SUPREME COURT

APPEAL FROM CHEROKEE COUNTY
COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

THE HONORABLE, J. MARK HAYES, II
CHIEF ADMINISTRATIVE JUDGE, 7TH CIRCUIT

APPELLATE CASE NO. 2020-001192

LOWER CASE NO. 2018 CP 1100268

DATE: 01/20/21

IRVEN L. MYERS #201940

APPELLANT

✓

THE STATE OF S.C.

RESPONDENT

NOTICE OF APPEAL

IRVEN L. MYERS #201410 APPEARS HIS
P.C.R. FOR JAIL CREDIT. HE IS ASKING
THE COURTS TO FIND THE MERITS OF
SEEING THAT HE RECEIVES HIS LEGAL
CONSIDERATION FOR HIS TIME SERVED
WHILE WAITING TO BE PUT ON THE COURT'S
DOCKET IN ORDER TO BE TRIED AS AN
ADULT, BUT THE CRIME HAPPENED AS
A JUVENILE, WITH LOW IQ LEVELS
AND NO UNDERSTANDING OF THE LAWS.
MR MYERS #201410 PRAYS TO THE COURTS TO
CONSIDER HIS TIME SERVED BE GIVING TO HIM.

Respectfully Submitted,
IRVEN L. MYERS #201410
X Myer clown #201410
ATTORNEY PRO SE

STATEMENT:

I RECEIVED MY FINAL ORDER TO DISMISS
AFTER AUGUST 11, 2021, WHICH WAS SENT
TO JUDGE HAYES, II BY THE ASST. ATTY. GEN
CHELSEY E. MARTO, BY LETTER HEAD DATED

AUGUST 11, 2020. MR MYERS #201410 HAS BEEN TRYING TO RESOLVE THIS MATTER, BUT COVID VIRUS HAS THE INSTITUTION ON QUARANTINE AND HE CANNOT GO TO THE LAW LIBRARY. PLEASE JUST LET HIM HAVE HIS TIME CREDITED TO HIS SENTENCE, WHICH WAS NOT GIVEN TO HIM AT THE SENTENCING PHASE. THANK YOU FOR YOUR TIME, PATIENCE AND UNDERSTANDING.

RESPECTFULLY SUBMITTED,
JAVEN L. MYERS #201410
~~X MANDRAUM #201410~~
RIDGELAND CORR. INST.
SAVANNAH GA 31405
P.O. Box 2039
Ridgeland, GA
29936

CC: FILE

CC: CLERK OF CHEROKEE COUNTY

CC: CHELSEA F. MANTO, ASSE. ATTY. GEN

CC: DANIEL E. STEAKHOUSE, CLERK SC. SUPREME CT

HAYES V STATE 413 S.C. 553 7/29/15

OS V ESSICK 554 Fed. Appx. 917

BROWN V STATE 426 S.C. 63

APPELLATE CASE NO: 2016-000526

ALLEN V STATE 339 S.C. 393

CODE 1976 § 24-13-40

GOINGS V. MISSOURI DEPT. OF CORR.

6 S.W.3d 906 (Mo. 1999)

STATE V EMLEDEEN, 1994 WL 162369

(NEB 1994)

PASCAL V STATE Election Comm'n

317 S.C. 434, 454, 582d 890 (1995)

DURHAM V UNITED COMPANIES FINANCIAL
CORP.; 331 S.C. 600, 503 S.E.2d 465 (1998)

People v Robinson, 172 ILL.2d 452, 217

ILL DEC. 729, 667 N.E.2d 1305 (1996)

BLAKENEY V STATE, 339 S.C. 393, 395,
529 S.E.2d 541, 542 (2000)

WILLIAMS V STATE, 306 S.C. 89, 91, 410
S.E.2d 563, 564 (1991)

STATE V LEOPARD, 349 S.C. 467, 471 563 S.E.2d
342, 344 (Ct. App 2002)

TANT V SCDC, 408 S.C. 334, 341, 759
S.E.2d 398, 401 (2014)

ST V ANETTA GRANT 2016 WL 821119
APPELLATE CASE NO. 2014-002425

ST V BENTON, 338 S.C. 151, 157, 526 S.E.2d
228, 231 (2000)

Goodie v ST 2013 WL 8508115.
APPELLATE CASE NO. 2011-197007

US V WILSON, 112 S. CT. 1351 CT. OF APPEALS
6th CIRCUIT, 916 F.2d 1115, 18 U.S.C.A.,
§ 3585 (b), 3621(a); 18 U.S.C. (1982 ED) § 3568

STATE V BOGGS, 388 S.C. 314

ENTITLED TO RECEIVE CREDIT FOR THE
TIME HE SERVED PURSUANT TO SECTION
24-13-40 OF THE S.C. CODE (2007)
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 (2) EXCEPTIONS
APPLIES.

DURKIN V DAVIS, 538 F.2d 1037 U.S. CT.
OF APPEALS 4th CIRCUIT OCTOBER 10, 1975

IT SEEMS RECOGNIZED THAT THE RIGHT
TO CREDIT FOR JAIL TIME AWAITING TRIAL
ON A BAILABLE OFFENSE AND PENDING
APPEAL IS NOT A MATTER OF LEGISLATIVE
GRACE BUT IS A RIGHT CONSTITUTIONALLY

(3)

MANDATED AVAILABLE TO STATE
PRISONERS AS WELL AS FEDERAL PRISONERS

SECTION 24-13-40
COMPUTATION OF TIME SERVED BY
PRISONERS

CURRENTNESS

THE COMPUTATION 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) 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 PRIOR TO

TRIAL AND SENTENCING, AND MAY BE GIVEN FOR ~~AND~~ TIME SPENT UNDER MONITORED HOUSE ARREST. PROVIDED HOWEVER THAT CREDIT FOR TIME SERVED, FOR TIME SERVED PRIOR TO TRIAL AND SENTENCING SHALL NOT BE GIVEN; (1) WHEN 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 SENTENCING 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

History: 1962 Code § 55-11, 1952 Code § 55-11
1948 (45) 1808, 1973 (58) 181, 2010 ACT NO.
237, § 67 EFF. JUNE 11, 2010; 2013 ACT NO. 34
§ 1 EFF. JUNE 7, 2013.

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ARGUMENT:

THE DISTRICT COURT FOUND THAT THE
CONDITION IN S. 53-208 PROVIDING THAT
SUCH CREDIT SHOULD BE DENIED IF THE
PRISONER ESCAPES WAS CONSTITUTIONALLY
INVALID. IN REACHING THAT CONCLUSION,
IT REASONED THAT TO DENY THE PETITIONER
HIS CONSTITUTIONAL RIGHTS TO CREDIT ON HIS
SENTENCE FOR JAIL TIME WITHOUT NOTICE
AND WITHOUT ANY HEARING WHATSOEVER
VIOLATED THE EQUAL PROTECTION AND
DOUBLE JEOPARDY CLAUSES OF THE CONSTITUTION.
THE EQUAL PROTECTION VIOLATION
IS FOUNDED ON THE INEQUALITY OF
TREATMENT BETWEEN ONE UNABLE TO
MAKE BAIL AND ONE WHO CAN MAKE BAIL,
IN THE CASE OF PRE-SENTENCE TIME, AS
WELL AS THE INEQUALITY RESULTING BETWEEN
THE DEFENDANT WHO APPEALS AND THE
DEFENDANT WHO DOES NOT, IN THE CASE
OF CREDIT FOR CONFINEMENT PENDING APPEAL,
THE DOUBLE JEOPARDY VIOLATION IS PREMISED

(1)

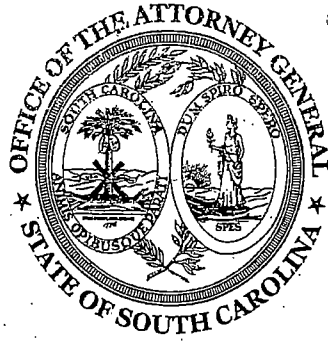
ON THE CONCLUSION THAT "(P) TRIAL
DETENTION IS NOTHING LESS THAN PUNISHMENT,"

PARKER V BOWDERS (D.C. N.C. 1971) 329 F. SUPP.
1400, 1401;

CULP V BOUNDS (D.C. N.C. 1971) 325 F. SUPP.
416, 419.

UNDER THIS PREMISE, SUCH PUNISHMENT IS
CONSIDERED MULTIPLE PUNISHMENT SINCE NO
CREDIT IS GIVEN ON THE SUBSEQUENT
SENTENCE IMPOSED FOR THE SINGLE OFFENSE,
THE DOUBLE JEOPARDY CLAUSE PROHIBITS EQUALLY
MULTIPLE PUNISHMENT AND MULTIPLE CONVICTIONS
FOR THE SAME OFFENSE. EX PARTE LANGRISH
(1873) 85 U.S. 163, 173, 21 L. ED. 872

NCV PEARCE (1969) 395 U.S. 711, 718, 89 S. CT
2072, 23 L. ED. 2D 656. IF PETITIONERS
RIGHT TO CREDIT FOR HIS TIME IS A
RIGHT PROTECTED BY THE EQUAL PROTECTION
AND THE DOUBLE JEOPARDY PROVISIONS OF



ALAN WILSON
ATTORNEY GENERAL

August 11, 2020

Irven Myers, #201410
Dorm-Room-Bunk: SB-0045-A
Ridgeland Correctional Institution
Post Office Box 2039
Ridgeland, South Carolina 29936

Re: Irven Myers, #201410 v. State of South Carolina
2018-CP-11-00268

Dear Mr. Myers:

Enclosed please find a copy of the **Final Order of Dismissal** for the above-captioned post-conviction relief application; signed by the Honorable J. Mark Hayes, II Chief Administrative Judge for the Seventh Judicial Circuit.

Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General

CFM/ec
Enclosure

THE CONSTITUTION, THE DISTRICT
CONCLUDED, IT WAS A RIGHT WHICH COULD
NOT BE FORFEITED OR DENIED BECAUSE
OF ANY LATER CONDUCT; NOR COULD THE
STATE, WHICH WAS OBLIGATED TO GRANT
SUCH CREDIT, ATTACH CONDITIONS TO
THAT RIGHT. AND THIS IS PARTICULARLY
SO WHEN SUCH DENIAL, THE COURT
FOUND, WOULD AMOUNT TO A SENTENCE
IMPOSED WITHOUT TRIAL OR HEARING.