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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable L. Casey Manning, Circuit Court Judge
Appellate Case No. 2018-002034

THE STATE,

Respondent,

vs.

MATTHEW JAMISON,

Appellant.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

“Should petitioner get credit for time out on appeal bond when it was controlled by many rules and restriction. An appeal bond is rare and nonexistent for a murder charge.”

II.

“Should petitioner get credit for time done on curfew while being monitored by The Department of Probation, Attorney General Office, City of Columbia Police Department, and Richland County Sheriff's Department satisfying section 24-13-40 of South Carolina Code, and Article XII 9. Control of Convicts.”

III.

“Under all the circumstances of this case, would it be fundamental unfair for this court to use the discretion give to the court under section 24-13-40 to fix this miscarriage of justice brought on by South Carolina judicial than can only be fixed by South Carolina Courts.”

IV.

“Did Judge Manning make his decision base on the old 24-13-40 which is an error because it was an amendment.”

V.

“Since S.C. is the original jurisdiction, can this court fix the present legal consequences upon past event tha's making petitioner punishment greater, cruel and unusal”

VI.

“Do South Carolina Constitutional violation done to petitioner in the courts of S.C. [The original jurisdiction] set the course in suport of why Judge Manning should have rule in petitioner favor, and why this court should hear it.”

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Did the circuit court judge have jurisdiction to grant Jamison's motion seeking sentencing credit when it was filed in the circuit court more than six-thousand days after Jamison's voluntary manslaughter sentence was imposed?

II.

Did the circuit court judge correctly deny Jamison's motion seeking sentencing credit for the time Jamison was free from custody on an appeal bond when: (1) no provision of South Carolina law permits sentencing credit to be awarded for such time spent on an appeal bond; and (2) the grant of an appeal bond operated as a stay of Jamison's voluntary manslaughter sentence until he returned to custody and actually resumed serving it?

III.

To the extent Jamison appears to be raising several new constitutional issues on appeal, were those issues properly preserved for appellate review when they were neither raised to nor ruled upon by the circuit court judge at the time he was considering the limited matter presented to him through Jamison's motion seeking sentencing credit?

STATEMENT OF THE CASE

In June of 2000, Appellant Matthew Jamison was arrested shortly after he fatally shot a fifteen-year-old boy at a party. In October of 2000, the Richland County Grand Jury indicted Jamison for murder. On August 27, 2001, Jamison appeared in the Richland County Court of General Sessions and entered a guilty plea to the lesser-included offense of voluntary manslaughter before the Honorable L. Casey Manning, circuit court judge. On the day after Jamison entered his guilty plea, Judge Manning sentenced him to a twenty-year term of imprisonment for that offense.

On January 24, 2002, Jamison—who did not pursue a direct appeal following his conviction—filed an application for post-conviction relief, and, in response, the State filed a return requesting an evidentiary hearing. On April 27, 2005, an evidentiary hearing was conducted in the Richland County Court of Common Pleas with the Honorable G. Thomas Cooper, Jr., circuit court judge, presiding. Subsequent to the hearing, Judge Cooper denied and dismissed Jamison’s post-conviction relief application. Jamison then timely initiated an appeal of Judge Cooper’s ruling.

While that appeal—which did not end in success for Jamison—was ongoing, Jamison filed another application for post-conviction relief on November 28, 2006. In response, the State again filed a return requesting an evidentiary hearing. On June 27, 2008, an evidentiary hearing was conducted in the Richland County Court of Common Pleas with the Honorable William P. Keesley, circuit court judge, presiding. Following that hearing, Judge Keesley awarded Jamison a new trial, and, although the State sought reconsideration of that decision, Judge Keesley confirmed the grant of relief through an order filed on October 14, 2008. The State then timely initiated an appeal.

After the State filed its notice of appeal, Jamison moved to be released from custody on an appeal bond, and the State opposed that motion. On February 20, 2009, the Supreme Court—over the dissent of a lone justice—issued an order directing Jamison be released from custody during the pendency of the appeal upon the posting of bond in the amount of \$30,000. The appeal bond matter was then addressed at the circuit court level in a manner consistent with the order, and, on February 25, 2009, Judge Manning ordered Jamison’s immediate release from custody after Jamison satisfied the bond conditions set out by the Supreme Court.

Subsequent to Jamison’s release from custody, the State filed a petition for a writ of certiorari in the Supreme Court, Jamison filed a return, and the Supreme Court transferred the matter to the Court of Appeals. Following the transfer, the Court of Appeals granted the State’s petition on February 10, 2011. The State and Jamison then submitted their briefs.

Thereafter, on March 5, 2012, the State moved for Jamison’s appeal bond to be revoked based on his arrests for new charges while out on bond, and Jamison opposed the State’s motion. On March 30, 2012, the Court of Appeals issued an order that: (1) denied the State’s motion to revoke the appeal bond; (2) increased the amount of Jamison’s bond; (3) imposed new conditions, including one directing Jamison “to be in his residence by 10:00 p.m. every night and remain there until 6:00 a.m. each morning[;]” (4) granted Jamison ten days to submit a request if he wished to be heard on the new conditions; and (5) directed a hearing be held in the circuit court to effectuate the modifications unless such a request was submitted. Seven days later, Jamison filed a motion seeking for either the order modifying the conditions of his appeal bond to be set aside or clarification to be provided concerning the new conditions. Shortly after that, the State filed a return. On April 16, 2012, the Court of Appeals revised its earlier order, modified the new curfew condition so it would not be applicable when Jamison was “traveling to

or from work or performing services in connection with his employment,” and directed Jamison to appear before a circuit court judge within fifteen days to effectuate the terms of the latest order. Following that, Jamison requested an indefinite extension of time to appear before the circuit court due to an issue affecting his appellate counsel, and, with the State’s consent, the Court of Appeals granted Jamison’s request on April 25, 2012. Thereafter, once appellate counsel was capable of going forward, the Court of Appeals—on July 20, 2012—directed Jamison to appear before a circuit court judge within fifteen days in connection to the revised appeal bond order. Following that, Jamison again sought an extension of time on the matter, and, on August 6, 2012, the Court of Appeals extended the deadline for an appeal bond hearing by three additional days. However, before that three-day period elapsed, the State moved—due to a change in circumstances—to withdraw its earlier motion requesting Jamison’s appeal bond be vacated and asked the Court of Appeals to rescind the various orders it issued in connection to the appeal bond. On August 20, 2012, the Court of Appeals granted the State’s motion and rescinded its modifications to the original appeal bond order.¹

Meanwhile, after conducting oral argument, the Court of Appeals issued an unpublished opinion unanimously affirming Judge Keesley’s order granting relief. Jamison v. State, Op. No. 2012-UP-437 (S.C. Ct. App. filed July 18, 2012). Thereafter, the State timely petitioned for rehearing. On August 22, 2012, the Court of Appeals denied the State’s petition.

¹ Notably, this Court can and should take judicial notice of its own records in Jamison’s case regardless of whether Judge Manning was provided with a full account of what transpired during the earlier appellate proceedings. See Rule 201(f), SCRE (instructing “[j]udicial notice may be taken at any stage of the proceeding”); Freeman v. McBee, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) (“A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.”).

Following that, the State submitted a petition for a writ of certiorari with the Supreme Court, and Jamison filed a return.² On March 20, 2013, the Supreme Court granted the State’s petition. Thereafter, following briefing and oral argument, the Supreme Court—on October 22, 2014—issued a published opinion reversing the order granting post-conviction relief. Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014). After the decision was issued, Jamison filed a timely petition for rehearing, and that petition was denied. On December 4, 2014, a remittitur was issued.³ A few days after that, Jamison returned to the custody of the South Carolina Department of Corrections.

Subsequently, on March 2, 2018, Jamison filed a motion with the Richland County Court of General Sessions titled, “Petition and Motion for Credit Toward Sentence.” On September 4, 2018, a hearing was conducted on the motion before Judge Manning. At the conclusion of the hearing, Judge Manning took the matter under advisement. Thereafter, Judge Manning denied Jamison’s motion through an order filed on September 17, 2018. Jamison then filed a notice of appeal.

² The records associated with the Supreme Court proceedings in Jamison’s case are currently available through the South Carolina Appellate Court Public Index. Appellate Records for Matthew Jamison v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=52078>.

³ After the remittitur was issued, Jamison sought review from the United States Supreme Court, but his petition for a writ of certiorari was denied. Jamison v. South Carolina, 575 U.S. 1042 (2015). Following that, Jamison sought federal habeas relief, and a federal district court judge granted Jamison partial relief upon concluding “the matter of whether [Jamison] c[ould] establish the right to a new trial under the ‘interest of justice’ test should be brought before a PCR judge for additional proceedings.” Jamison v. Cohen, 211 F. Supp. 3d 754, 769-770 (D.S.C. 2016). Ultimately though, after further review, the Fourth Circuit Court of Appeals vacated the district court judge’s grant of partial relief. Jamison v. Cohen, 756 F. App’x 265 (4th Cir. 2018). Jamison then again sought review from the United States Supreme Court, and, once again, his petition for a writ of certiorari was denied. Jamison v. Cohen, ___ U.S. ___, 140 S. Ct. 251 (2019).

STATEMENT OF FACTS

On the night of June 11, 2000, Jamison, who was then a drug dealer, went to a crowded party that was being attended by “hundreds of people,” including three men with whom Jamison was familiar. (R. p. 49; pp. 67-69). Those men—“Jig,” “Butter,” and “Little Thee”—were also drug dealers and, in the weeks leading up to the party, had been involved in some difficulties with Jamison. (R. pp. 67-68). Perhaps due to those earlier difficulties, things came to the head that night, and Jamison ended up firing several gunshots in the direction of “Jig” and his companions. (R. pp. 68-69). Tragically, a fifteen-year-old partygoer unconnected to the hostilities between Jamison and his rivals was struck and killed by one of Jamison’s bullets. (R. pp. 67-69; p. 80).

In the immediate aftermath of the deadly shooting, Jamison tried to flee from the scene, but he was quickly captured by law enforcement. (R. p. 70). Upon being apprehended, Jamison candidly admitted what he had done.⁴ (R. p. 70). Jamison was then arrested and indicted for the victim’s murder. (R. p. 49; p. 70; pp. 100-103).

Subsequently, following negotiations with the State, Jamison, who was already serving a prison sentence stemming from some unrelated drug convictions, elected to enter a guilty plea to the lesser-included offense of voluntary manslaughter.⁵ (R. p. 49). During the course of the plea proceedings, Jamison freely and voluntarily admitted his guilt for killing the victim, waived his constitutional rights, and indicated he understood he was relinquishing his ability to assert any

⁴ Notably, in doing so, Jamison “did not claim to be acting in self-defense or explain that he fired shots because he was scared for his life when he saw Jig with a gun.” Jamison v. State, 410 S.C. 456, 464, n. 4, 765 S.E.2d 123, 126, n. 4 (2014).

⁵ More specifically, Jamison had been convicted in the preceding year of several counts of possession of cocaine with intent to distribute, and he was sentenced to an aggregate fifteen-year term of imprisonment that was suspended to eight years of incarceration and five years of probation for those crimes. (R. p. 59; p. 70).

defenses to his crime. (R. pp. 53-61; p. 63). Ultimately, Jamison’s guilty plea was accepted, and Judge Manning sentenced Jamison to a twenty-year term of imprisonment in connection to the killing.⁶ (R. p. 66; p. 81; p. 104).

Years later, Jamison sought post-conviction relief on the basis of newly-discovered evidence, and a circuit court judge granted Jamison a new trial after considering the matter. Jamison v. State, 410 S.C. 456, 464, 765 S.E.2d 123, 127 (2014). Following that decision, the State appealed, and, during the pendency of the appeal, Jamison was released on an appeal bond. (R. p. 1). While free on his appeal bond, Jamison completed a term of probation he had received in connection to the unrelated drug convictions. (R. p. 1).

Thereafter, on appeal, the Supreme Court reversed the grant of relief and reinstated Jamison’s voluntary manslaughter conviction and sentence. Jamison, 410 S.C. at 472, 765 S.E.2d at 131. Once that decision became final, the state appellate process came to an end, and a remittitur was issued in December of 2014. Appellate Records for Matthew Jamison v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=52078>.

Subsequently, Jamison was returned to custody and resumed serving his sentence for his voluntary manslaughter conviction. (R. p. 1). Over three years after that, Jamison submitted a motion to the Richland County Court of General Sessions seeking credit toward his voluntary

⁶ Even though Jamison was serving an active term of incarceration stemming from unrelated convictions for a portion of the time leading up to the date of the guilty plea, Judge Manning awarded Jamison with credit for time served going all the way back to the date of his arrest for his victim’s murder. (R. p. 104). By doing so, Judge Manning provided Jamison with *more* sentencing credit than Jamison was entitled to under South Carolina law. See S.C. Code Ann. § 24-13-40 (mandating “credit for time served prior to trial and sentencing *shall not* be given . . . 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” (emphasis added)).

manslaughter sentence for the period of time in which he had been released from custody on an appeal bond.⁷ (R. pp. 43-46). As support for his request, Jamison—while citing to Section 24-13-40 of the South Carolina Code of Laws and its language granting a sentencing judge discretion to award credit for “time spent under monitored house arrest”—argued he should be awarded full credit for his period of appeal bond release, which he contended totaled 2,109 days and included a five-year probationary period completed in connection to an unrelated drug conviction. (R. pp. 43-46).

In response, Judge Manning, who had originally imposed Jamison’s voluntary manslaughter sentence, conducted a hearing on the matter. (R. pp. 81-82; p. 84). During the course of that hearing, Jamison’s counsel conceded the request for sentencing credit for the time Jamison spent on an appeal bond “may be a little bit of a stretch[.]” (R. p. 87). He further conceded he had no case law to support it. (R. pp. 87-89; p. 97). Nevertheless, counsel contended Section 24-13-40’s language permitting discretionary credit for time spent on monitored house arrest “could potentially open the door” for Jamison to be awarded credit for his appeal bond time. (R. pp. 88-89). Counsel then pointed to Jamison’s completion of a five-year probationary term stemming from a drug conviction during the time he was released on an appeal bond, which he alleged demonstrated Jamison “was under supervision” for at least some portion of that time. (R. pp. 88-89; p. 93). In rebuttal, the solicitor noted Section 24-13-40 only permitted credit for time served in actual incarceration or spent under electronic monitoring

⁷ In the motion’s caption, Jamison referenced three other indictment numbers in addition to the one from the murder indictment that related to Jamison’s voluntary manslaughter conviction. (R. p. 43). As reflected on pages 271 through 273 of the appendix from the appellate proceedings in Jamison’s post-conviction relief case, the other referenced indictment numbers related to: (1) a drug offense from September of 1997; (2) a resisting arrest offense from September of 1997; and (2) another drug offense from April of 1999. Appellate Records for Matthew Jamison v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=52078>.

while the time Jamison was free from custody following his release on an appeal bond did not constitute either of those things. (R. p. 94). Furthermore, the solicitor explained our Supreme Court had previously stated individuals released on appeal bond commence serving their sentences on the date they submit to the custody of the Department of Corrections as opposed to on the date their appeals ended. (R. p. 94). As a result, the solicitor argued Jamison was not entitled to receive credit toward his voluntary manslaughter sentence for either the time he spent free on an appeal bond or the time he was out of custody on probation for a completely unrelated offense. (R. pp. 94-96).

Ultimately, after considering the arguments of counsel, Judge Manning denied Jamison's motion for time served credit toward his voluntary manslaughter sentence. (R. pp. 1-2; p. 98). In doing so, Judge Manning found Jamison was not entitled to any sentencing credit for the five-year period he spent on probation following his release from custody on an appeal bond. (R. pp. 1-2).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001); see State v. Branham, 392 S.C. 225, 228, 708 S.E.2d 806, 808 (Ct. App. 2011) (“The appellate court’s review in criminal cases is limited to correcting the order of the circuit court for errors of law.”). Based on that, appellate courts in such cases are generally “limited to determining whether the trial court abused its discretion.” State v. Green, 432 S.C. 572, 582, 854 S.E.2d 626, 631 (Ct. App. 2021). “An abuse of discretion occurs when the trial court’s ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.” State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006).

ARGUMENT

I.

The circuit court judge did not have jurisdiction to grant Jamison’s motion seeking sentencing credit because it was filed in the circuit court more than six-thousand days after Jamison’s voluntary manslaughter sentence was imposed.

In the matter presently before this Court, Jamison is appealing from Judge Manning’s ruling denying his motion seeking credit toward his voluntary manslaughter sentence.

Significantly, Jamison’s motion for sentencing credit was not filed in the circuit court until *years* after Jamison pled guilty to and was sentenced for voluntary manslaughter. In fact, it was not even filed until *years* after the Supreme Court issued the remittitur in Jamison’s post-conviction relief case, which was what triggered Jamison’s return to custody following his time spent free on an appeal bond. Under such circumstances, Judge Manning did not have jurisdiction to modify Jamison’s voluntary manslaughter sentence or award Jamison with any sentencing credit. Therefore, the ruling rejecting Jamison’s motion for sentencing credit was a correct one since Judge Manning did not have jurisdiction to grant it. The ruling on appeal should be affirmed.

Pursuant to South Carolina law, a circuit court judge generally “is without authority to consider a criminal matter once the term of court during which judgment was entered expires.” State v. Warren, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011); see State v. Hinson, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) (“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.”). Significantly, that general rule is inapplicable *only* when either: (1) a timely post-trial motion is filed; or (2) a motion for a new trial based on after-discovered evidence is filed. State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008). Thus, absent the filing of a timely post-trial motion or a specific type of new trial motion, a

circuit court judge lacks the authority to act in a particular matter once the term of court has ended. Id.; see Rule 29(a), SCRCrimP (“Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.”).

In the case sub judice, Judge Manning imposed Jamison’s voluntary manslaughter sentence in the circuit court on August 28, 2001. Over *six-thousand* days later, Jamison filed a motion in the same court seeking credit toward his sentence. Obviously, Jamison’s motion was not filed within ten days—or even ten *years*—of the imposition of his sentence. Cf. Warren, 392 S.C. at 240, 708 S.E.2d at 236 (“Warren’s motion to reconsider her sentence . . . is subject to the ten day time period prescribed in Rule 29; thus, because the motion was filed more than three years after imposition of the sentence, Warren’s motion is not timely.”). Therefore, Jamison’s motion was not a timely one, and, resultantly, Judge Manning did not have jurisdiction to grant Jamison the sentencing credit he was seeking. See Rule 29(a), SCRCrimP (affording ten days from the imposition of a sentence for the filing of post-trial motions in the circuit court); State v. Best, 257 S.C. 361, 368, 186 S.E.2d 272, 275 (1972) (“Under our judicial system the presiding judge in the Circuit Court loses jurisdiction with the adjournment of the term. It follows that after the adjournment of the term of court at which sentence is imposed the judge is without authority to change, amend or modify it.” (citations omitted)). Moreover, had Judge Manning attempted to award such credit, any ruling doing so would have been both improper and null. See Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002) (“A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on.”). Accordingly, Judge Manning did not err by declining to award sentencing credit to Jamison

when he did not have jurisdiction to do so. Cf. Tant v. South Carolina Dep't of Corr., 408 S.C. 334, 342-343, 759 S.E.2d 398, 402 (2014) (“The judge sent the letter two-and-a-half years after sentencing and at that point no longer had jurisdiction over the case. Therefore, Judge Saunders was without jurisdiction to make any subsequent pronouncement concerning Tant’s sentence.” (citation omitted)). The ruling on appeal should be affirmed.

II.

The circuit court judge correctly denied Jamison’s motion seeking sentencing credit for the time Jamison was free from custody on an appeal bond because: (1) no provision of South Carolina law permits sentencing credit to be awarded for such time spent on an appeal bond; and (2) the grant of an appeal bond operated as a stay of Jamison’s voluntary manslaughter sentence until he returned to custody and actually resumed serving it.

Jamison contends Judge Manning erred by denying him sentencing credit toward his voluntary manslaughter sentence for the time period in which he was free from custody on an appeal bond. In support of that contention, Jamison appears to maintain he should have been granted sentencing credit for that time period because Section 24-13-40’s language permitting credit for time spent “under monitored house arrest” should be construed as permitting credit for the time in which he was released from custody on an appeal bond. Jamison further seems to maintain he should receive sentencing credit for that time period because he was on probation in connection to other unrelated charges for a portion of it. To the contrary, Jamison was not entitled to sentencing credit toward his voluntary manslaughter conviction for time he spent free on an appeal bond because: (1) no provision of South Carolina law permits sentencing credit to be awarded for such time spent on an appeal bond; and (2) the grant of an appeal bond operated as a stay of Jamison’s voluntary manslaughter sentence until he returned to custody and actually resumed serving it. Accordingly, Judge Manning correctly declined to award Jamison sentencing credit for a period in time in which he was not serving his voluntary manslaughter sentence. The ruling on appeal should be affirmed.

In South Carolina, the matter of what constitutes “time served” toward a criminal sentence is entirely controlled by statute. S.C. Code Ann. § 24-13-40. Pursuant to the relevant statutory provision, “[t]he 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.”

Id. (emphasis added); see State v. Higgins, 357 S.C. 382, 385, 593 S.E.2d 180, 181 (Ct. App. 2004) (“Based on the plain and ordinary meaning of the term prisoner, we believe the legislature only intended to award sentencing credit to those who actually spend time confined in a penal institution.”). However, when a conviction or sentence is appealed, when the commencement of a sentence is halted by a period of probation that is subsequently revoked, or when the commencement of a sentence is delayed to a designated time, time served is computed from the actual date service of the sentence is commenced. S.C. Code Ann. § 24-13-40; see S.C. Code Ann. § 24-21-410 (recognizing probation is a form of clemency in which “the imposition or the execution of a sentence” is *suspended*). In addition to that, prisoners are entitled to sentencing credit for time served pre-trial in limited circumstances. S.C. Code Ann. § 24-13-40. Specifically, unless one of a few limited exceptions apply, prisoners *must* be given credit for time served in incarceration prior to trial and *may* be given credit for time spent “under monitored house arrest.” Id.; see Allen v. State, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000) (explaining a criminal defendant must be given credit for time served prior to trial “unless one of two exceptions exist: 1) either the prisoner was an escapee or 2) the prisoner was already serving a sentence on one offense”).

Meanwhile, in cases stemming from criminal convictions, both criminal defendants and post-conviction relief applicants may be released from custody on an appeal bond during the pendency of an appeal. S.C. Code Ann. § 18-1-90; Rule 243(k), SCACR; see State v. Whitener, 225 S.C. 244, 248, 81 S.E.2d 784, 786 (1954) (concluding—in a divided opinion—the Supreme Court could “grant bail, in its discretion, where the sentence exceeds ten years” despite the existence of a statutory provision prohibiting a grant of bail under such circumstances). When granted, an appeal bond operates as a *stay* of the execution of the criminal sentence involved in

the appeal. See Robinson v. State, 329 S.C. 65, 68, 495 S.E.2d 433, 435 (1998) (concluding service of a sentence by a person released on an appeal bond only commences when the person *submits to the custody of the department of the corrections* at the conclusion of the appellate process); see also S.C. Code Ann. § 18-1-70 (instructing the initiation of an appeal in a criminal case operates as a stay of sentence); S.C. Code Ann. § 18-1-80 (explaining a criminal defendant sentenced to imprisonment must “give bail in such sum and with such sureties as to the court shall seem proper” before he or she can be released from confinement during an appeal).

In the case at bar, Jamison completed a portion of his voluntary manslaughter sentence by serving time in a detention facility prior to the entry of his guilty plea and by serving time in the Department of Corrections following his conviction. However, in February of 2009, Jamison—at his own request—was freed on an appeal bond. Following his release, Jamison did not return to the custody of the Department of Corrections until his appeal bond terminated at the conclusion of the appellate process in December of 2014.

Now, Jamison has sought—and continues to seek—full sentencing credit toward his voluntary manslaughter sentence for the post-conviction period of time he spent free from custody on an appeal bond.⁸ Significantly though, by requesting and obtaining release on an appeal bond, Jamison ceased serving his voluntary manslaughter sentence, which was stayed by

⁸ Since the time period for which Jamison has sought credit constituted *post-conviction* time, the statutory language dealing with *pre-trial* time served credit was not and is not applicable to Jamison’s case notwithstanding the fact he was not “under monitored house arrest” while free on an appeal bond. See S.C. Code Ann. § 24-13-40 (“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.” (emphasis added)).

the grant of the appeal bond. See Ryan v. State, 42 N.E.2d 1019, 1025 (Ind. Ct. App. 2015) (recognizing an appeal bond operates as a stay such that “the defendant shall not earn credit time toward” his sentence while free on one). As a result, Jamison was no longer accruing credit for time served toward that sentence pursuant to South Carolina law *until* he subsequently returned to the custody of the Department of Corrections years later and again commenced serving his sentence.⁹ See S.C. Code Ann. § 24-13-40 (explaining how “time served” toward a criminal sentence must be computed in South Carolina and containing no language authorizing credit to be awarded for time a defendant is free on an appeal bond); Robinson, 329 S.C. at 68, 495 S.E.2d at 435 (“[F]or purposes of calculating credit for time served, persons released on appeal bond commence service of their sentences *when they submit to the custody of the SCDOC*, and not upon affirmance of their convictions.” (emphasis added)). Accordingly, since no provision of South Carolina law entitled Jamison to sentencing credit for time in which he was *not* serving his sentence while free on an appeal bond, Judge Manning correctly denied Jamison’s motion seeking sentencing credit that could not properly be awarded to him. Cf. Bloomgren v. Belaski, 948 F.2d 688, 691 (10th Cir. 1991) (finding Bloomgren was not entitled to sentencing credit for

⁹ Moreover, the fact Jamison completed a period of probation in connection to some unrelated drug convictions during the time he was free on an appeal bond in no way entitled to him to sentencing credit toward his voluntary manslaughter sentence for that time because— notwithstanding the fact Jamison’s voluntary manslaughter sentence was not itself suspended to a probationary term—criminal defendants in South Carolina are *not* statutorily entitled to time served credit toward their sentences for time spent on probation. See S.C. Code Ann. § 24-13-40 (explaining the amount of time served must be computed from the date of the commencement of actual service of the sentence when “the commencement of the service of the sentence *follows the revocation of probation*” (emphasis added)); S.C. Code Ann. § 24-21-460 (instructing a circuit court judge can revoke a defendant’s probation following a violation and require the defendant to serve *all* of the suspended portion of the sentence imposed); see also Hayes v. State, 413 S.C. 553, 560, 777 S.E.2d 6, 10 (Ct. App. 2015) (recognizing a defendant must be given credit for actual time already served—as opposed to credit for the time served on probation—when a defendant is ordered to serve a previously-suspended term of incarceration following a probation violation).

time he “was out on appeal bond” when the relevant statutory provision controlling time served credit did not include time when a defendant was free on bond); United States v. Insley, 927 F.2d 185, 185-186 (4th Cir. 1991) (finding Insley was not entitled to credit for time served while she was released on an appeal bond because the controlling statutory provision did not permit credit to be awarded under such circumstances); Mashek v. State ex rel. Mitchell, 940 S.W.2d 1, 3 (Mo. Ct. App. 1997) (“Mr. Mashek is not [statutorily] entitled to credit for the time he was free from custody on bail [while his case was on appeal]. The trial court, therefore, as a matter of law, could not have ruled in favor of Mr. Mashek.”). The ruling on appeal should be affirmed.

III.

To the extent Jamison appears to be raising several new constitutional issues on appeal, those issues were not properly preserved for appellate review because they were neither raised to nor ruled upon by the circuit court judge when he was considering the limited matter presented to him through Jamison’s motion seeking sentencing credit.

In addition to contending Judge Manning erred by denying him sentencing credit for the time that followed his release from custody on an appeal bond, Jamison seemingly raises a number of new constitutional issues. Specifically, Jamison appears to allege: (1) the Supreme Court violated his due process rights through its decision in his post-conviction relief case; (2) an ex post facto violation of some kind occurred in his case; and (3) his constitutional right to be free from cruel and unusual punishment was violated under the circumstances involved. Importantly though, none of Jamison’s new constitutional issues were raised to or ruled upon by Judge Manning. Therefore, those issues were not properly preserved for appellate review and cannot appropriately be considered or addressed on appeal. The ruling on appeal should be affirmed.

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is “to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review.” Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). For an issue to be preserved for appellate review pursuant to them, it must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Therefore, if an issue is not presented to and ruled upon by the circuit court judge, it cannot be

raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005).

In Jamison’s case, Jamison appears to be raising a number of new constitutional issues through his appeal of Judge Manning’s ruling on the motion for sentencing credit. Critically though, the limited issue raised to Judge Manning in the circuit court solely revolved around whether any provision of law entitled Jamison to sentencing credit for the time he was free on an appeal bond. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (explaining an appellant is limited on appeal to the grounds raised at trial). And, in addressing that limited issue, Judge Manning solely considered the arguments and claims presented to him, which did *not* include any constitutional issues related to purported violations of Jamison’s due process rights, the occurrence of any *ex post facto* violations, or the imposition of cruel and unusual punishment. See In re Care and Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) (“Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal.”); cf. State v. Baker, 390 S.C. 56, 65, 700 S.E.2d 440, 444 (Ct. App. 2010) (“Baker cannot now add a constitutional claim on appeal because he cannot raise one ground to the trial court and a different ground on appeal.”). As a result, Jamison’s new constitutional issues concerning those matters were not properly preserved for appellate review pursuant to well-established South Carolina law and cannot now appropriately be considered or addressed on appeal. See State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) (“Only matter that has been ruled on below can be reviewed[.]”); State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court “cannot address unpreserved errors”). The ruling on appeal should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the ruling on appeal should be affirmed.

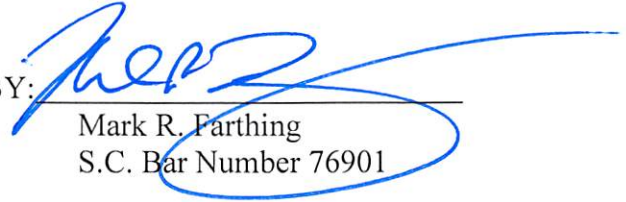
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September 10, 2021

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable L. Casey Manning, Circuit Court Judge
Appellate Case No. 2018-002034

THE STATE,

Respondent,

vs.

MATTHEW JAMISON,

Appellant.

CERTIFICATE OF COUNSEL

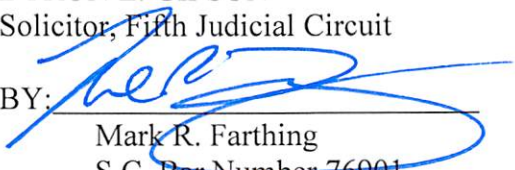
The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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