



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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November 15, 2021

RECEIVED

Nov 15 2021

SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

To: The South Carolina Court of Appeals
From: Deputy Chief Appellate Defender Wanda H. Carter
Re: State v. Derrick J. Miles, Appellate Case No. 2019-000958

On November 5, 2021, this Court requested a memorandum addressing the question of whether the appellant's case cited above is moot due to his pending release from incarceration. Counsel would present the following argument.

Appellant's issue on appeal in this case follows:

The remand sentencing hearing judge erred in denying appellant's request for time served credit accrued during his house arrest/GPS monitoring time per S.C. Code Ann. 24-13-40 on the assumption that the plea judge considered the matter since the sentence was a negotiated sentence because trial counsel admitted during the PCR hearing that he failed to bring the issue of house arrest/GPS monitoring credit to the attention of the plea judge at the plea proceeding.

Note that our courts have addressed sentencing issues where defendants have served their sentences, but questions remained regarding sentencing times served and earned credits not received or applied in those cases as exceptions to mootness because such sentencing matters were capable of repetition yet evading review.

CASE LAW

A criminal case is moot if there is no possibility that any legal consequences will be imposed. State v. Green, 337 S.C. 67, S 22 S.E.2d 602 (Ct. App. 1999). In McClam v. State, 386

SC 49, 686 S.E.2d 203 (2009), the Court held that moot appeals result when intervening events render a case nonjusticiable and when judgement, if rendered, will have no practical effect on the controversy and no effective relief can be granted. In State v. Cohen, Unpublished Opinion No. 2019-UP-162 (2019), the Court listed the following three general exceptions to the mootness doctrine where an appellate court may take jurisdiction:

- 1.) If the issue raised is capable of repetition yet evading review;
- 2.) If there is an imperative and manifest urgency to establish a rule for future conduct in matters of important public interest; and
- 3.) If a decision by the trial court may affect future events or have collateral consequences for the parties, even if the appellate court cannot give effective relief in the present case.

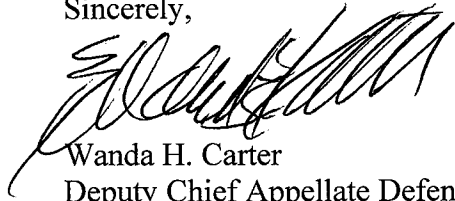
Sentencing credits (home detention, good time credits, and earned time credits etc.) are problems that fall in the category of capable of repetition yet evading review on appeal, and our courts have expressly held this to be so. For example, in Hayes v. State, 413 S.C. 553 777 S.E.2d 6 (Ct. App. 2015), the sentencing issue that was capable of repetition arose where the defendant argued that his reinstated sentence upon revocation of probation exceeded the maximum authorized by law because sentencing credit for time served was not applied by SCDC; and although the issue was moot as the defendant had completed his sentence, nonetheless the Court held that the issue was reviewable as capable of repetition yet evading review. The Hayes Court went on to hold that the defendant who received a split sentence upon revocation of probation was entitled to credit for time served against his reinstated sentence. Certiorari was ultimately dismissed in Hayes as improvidently granted. Moreover, in State v. Simpson, 429 SC 83, 837 S.E.2d 669 (2020), the Court held that an otherwise moot question as to whether the defendant should have been subject to a mandatory minimum sentence rather than sentenced to home detention in a sex case definitely qualified for review as one capable of repetition yet evading review even though the defendant had served his sentence. Additionally, in Nelson v. Ozmint, 390 S.C. 432, 702 S.E.2d 369 (2010), the Court held that the question of calculating good time and/or earned work credits qualified as issues that were capable of repetition yet evading review.

ANALYSIS

Similarly, in the case at bar, appellant's issue on appeal involved a sentencing issue, specifically with respect to whether time served credits were granted as required under S.C. Code Ann. Section 24-13-40. Clearly, this sentencing matter raised by appellant is capable of repetition yet evading review and not deemed moot based on his pending release. Appellant's case falls under the same sentencing vein as Hayes and Simpson, and would constitute an exception to the mootness rule. The unique fact or wrinkle here is that appellant's sentence was a negotiated sentence, but the question surrounding whether appellant's negotiated sentence included home detention credits would qualify his case under the capable of repetition exception as there was no proof that the negotiated sentence included credit for time served. Also, counsel for appellant was ineffective in failing to inquire of the plea judge as to whether the negotiated sentence included time served credit baked therein. Thus, the question of whether the receipt of house arrest credit for time served for appellant had been included in his negotiated sentence is a

sentencing matter capable of repetition yet evading review, particularly since it appears that **negotiated** sentences are bound also by 24-13-40 for credit inclusion therein. Hence appellant's sentencing issue is a sentencing issue that is clearly an exception to the rule of mootness. Appellant's argument on appeal is that there was no proof that his **negotiated** sentence included all house arrest time served credit, and that the inclusion of house arrest credit could not have been assumed absent proof raised by an appropriate inquiry by counsel, which was not done in this case. The omission of such clarification regarding this matter constituted ineffective assistance of counsel due to his failure to so inquire during the plea proceeding. Again, appellant's case involved yet another sentencing credit issue that is not moot, but rather capable of repetition yet evading review.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written in a cursive style.

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/sl