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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable R. Kirk Griffin, Circuit Court Judge

QUENTIN D. HARDY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000483

JOHNSON PETITION FOR WRIT OF CERTIORARI

Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred finding petitioner was not being held unlawfully beyond his sentence due to the South Carolina Department of Corrections failure to accurately credit petitioner for time served as ordered by the trial court?

STATEMENT

In January 2019, a Sumter County grand jury indicted petitioner for possession of cocaine, possession of heroin, and possession of marijuana. App. 131-32. On August 9, 2019, petitioner pled guilty to possession of heroin and possession of marijuana before the Honorable Kristi F. Curtis. App. 3-6. Philip Little, Jr. represented petitioner and Tyler Brown, assistant solicitor, represented the state. App. 1. Judge Curtis sentenced petitioner to one year of imprisonment for possession of marijuana and two years' imprisonment for possession of heroin. Judge Curtis also determined petitioner was in violation of the terms and conditions of his probation from previous convictions, and revoked four years of petitioner's probation. App. 18.

Thereafter, petitioner filed an application for PCR on December 6, 2019. App. 21-25. On March 8, 2021, an evidentiary hearing was held before the Honorable R. Kirk Griffin. Timothy Griffith represented petitioner and Michael Neubauer, assistant attorney general, represented the state. App. 36.

On April 27, 2021, Judge Griffin signed an order denying PCR. App. 121-29. Judge Griffin found petitioner failed to show he was being held in custody unlawfully and that the South Carolina Department of Corrections (SCDC) properly calculated petitioner's credit for time served. App. 128.

This petition for a writ of certiorari follows.

ARGUMENT

The PCR court erred finding petitioner was not being held unlawfully beyond his sentence due the South Carolina Department of Corrections failure to accurately credit petitioner for time served as ordered by the trial court.

Relevant facts

On February 10, 2014, prior to petitioner's convictions for possession of marijuana and possession of heroin, he pled guilty to second degree burglary and was sentenced to ten years' imprisonment suspended upon the service of three years' imprisonment and three years' probation and given credit for time served pre-sentencing. App. 12, ll. 5-12. Then on November 17, 2018, while on probation, petitioner was arrested and charged with these drug crimes. App. 10-11.

At petitioner's hearing on August 9, 2019, petitioner pled guilty and was sentenced to two years' imprisonment for possession of heroin and one year of imprisonment for possession of marijuana. The court also determined petitioner was in violation of the terms and conditions of his probation and revoked four years of petitioner's probation. The court gave petitioner "credit on both of those cases" for any time served. App. 18, ll. 2-24.

At the evidentiary hearing petitioner testified he was entitled to a total of 526 days of credit for time served and had only been given credit for 20 days. App. 44, ll. 1-4. First, petitioner spent 265 days incarcerated before he was sentenced for burglary in 2014 and then spent 261 days incarcerated before he was sentenced on these charges in 2019. App. 44, ll. 5-8; 47, l. 16-48, l. 8. Petitioner testified he was "being held illegally" because his time would have expired had he been given credit for the time he served before sentencing in both instances. App. 47, ll. 1-5. Petitioner acknowledged he received credit for the 265 days he was incarcerated prior to sentencing on the burglary charge. App. 48, ll. 9-19.

Phillip Little, defense counsel for petitioner, recalled that petitioner was awarded time served by the plea court in 2019. App. 54.

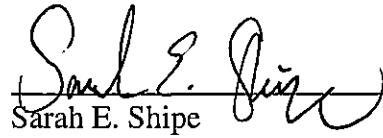
Discussion

“The requirement that a prisoner receive credit for time served is mandatory.” *Hayes v. State*, 413, S.C. 553, 559, 777 S.E.2d 6, 10 (Ct. App. 2015). “[W]hen ... (b) the commencement of the service of the sentence follows the revocation of probation, ... the computation of the time served shall be reckoned from the date of the commencement of the service of the sentence. In every case ... full credit ... shall be given for time served prior to trial and sentencing.” § 24–13–40; *Id.* “The statute does not make a distinction for split sentences; thus, under the plain language of the statute, we find the pre-trial detention time should apply against a probation revocation whenever a probationer receives a split sentence.” *Id.*

Petitioner testified during his PCR hearing that his time served credit was being applied towards the total remaining time of his probation before sentencing which was six and half years instead of the four years active time he was given by the plea court for violating the terms of his probation. App. 46, ll. 8-25. Petitioner’s pretrial detention time should apply against his probation revocation in this case. *Hayes* at 559, 777 S.E.2d at 10. Accordingly, petitioner should be credited for 265 days pre-sentencing on the probation revocation convictions and 261 days pre-sentencing for the drug convictions.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.

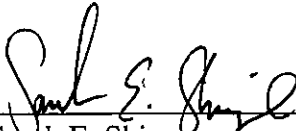

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of November, 2021.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari 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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Appellate Defender

South Carolina Commission on Indigent
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This 29th day of November, 2021.