STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Clifton Newman, Circuit Court Judge

Opinion No. 2021-UP-351 (S.C. Ct. App. filed October 13, 2021)

Lower Court Case Nos. 2009-GS-40-01494 and 20090GS-40-01495

THE STATE,

RESPONDENT,

V.

STACARDO GRISSETT,

PETITIONER.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Stacardo Grissett, Appellant.

Appellate Case No. 2018-001525

Appeal From Richland County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2021-UP-351
Submitted September 1, 2021 – Filed October 13, 2021

DISMISSED

Appellate Defender Lara Mary Caudy, of Columbia, for Appellant.

Matthew C. Buchanan, of South Carolina Department of Probation, Parole and Pardon Services, of Columbia, for Respondent.

PER CURIAM: Appellant Stacardo Grissett pleaded guilty to strong armed robbery, kidnapping, and second-degree lynching, and was sentenced to a term of imprisonment of ten years on September 16, 2010. After serving 85 percent of his

sentence, Appellant was released from prison pursuant to the Community Supervision Program (CSP) on August 1, 2017. Approximately two months after Grissett's release, the South Carolina Department of Probation, Parole and Pardon services (the Department) issued a warrant for Grissett's arrest following violations of the terms and conditions of his CSP. Grissett allegedly conspired with another individual to commit armed robbery and kidnapping, while being in possession of a weapon during the commission of a violent crime. The warrant was served on November 1, 2017.

The CSP revocation hearing was held on May 18, 2018, at which time Grissett had 299 days remaining on his CSP. At the hearing, the court revoked Grissett's CSP in full without giving him credit for time served. On May 24, 2018, Grissett filed a motion to vacate and reconsider the sentence, which the circuit court denied. This appeal followed.

Grissett argues the circuit court erred in denying him credit for the 198 days he served in custody between the service of the CSP warrant and his revocation hearing.

Grissett argues the circuit court erred by refusing to give Grissett credit for time served as required by section 23-13-40 of the South Carolina Code (2007), and such refusal was in violation of section 24-21-560(C) of the South Carolina Code (2007). The State counters that section 23-13-40 did not require the circuit court to give Grissett credit for time served because (1) the statute only requires credit for time served prior to trial and sentencing; (2) the CSP revocation hearing was not a trial; and (3) unlike probation, CSP is a part of an offender's active sentence.

This issue is moot because Grissett has completed his sentence and is no longer incarcerated. *See Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy."); *id.* ("Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.").

Grissett concedes that the issue is moot but argues that the court should address the issue because it is capable of repetition but will evade review. *See id.* (indicating one of three exceptions to the mootness doctrine is that: the issue raised is capable of repetition but generally will evade review).

We are disinclined to accept Grissett's request for appellate review under these circumstances. *See Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) ("The utilization of an exception under the mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked.").

We would be more inclined to accept Grissett's request for appellate review if this were a situation in which a defendant was held for an extended period of time before his revocation hearing on a CSP warrant for *solely* technical violations of his CSP conditions. However, in situations such as the current matter, where a defendant was being held concurrently on additional pending violent offenses, we are less apt to address the matter. Therefore, the appeal before us is

DISMISSED.[1]

HUFF, THOMAS, and GEATHERS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

STACARDO GRISSETT,

APPELLANT

APPELLATE CASE NO. 2018-001525

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

Opinion No. 2021-UP-351

PETITION FOR REHEARING

On October 13, 2021, this Court dismissed Appellant's appeal from the revocation of his community supervision program (CSP) as moot in an unpublished opinion. State v. Grissett, 2021-UP-351 (S.C. Ct. App. filed October 13, 2021). Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter based upon the significant points overlooked and/or misapprehended by this Court in reaching its decision.

On appeal, Appellant argued the revocation judge erred by refusing to give Appellant credit for the nearly two hundred days he served in custody between when he was served with the CSP violation warrant and his revocation hearing after the judge revoked Appellant's CSP since (1) credit for time served was mandatory pursuant to S.C. Code Ann. § 24-13-40 and (2)

the judge's refusal to provide credit for time served allowed Appellant's sentence for the revocation to exceed the one year maximum permitted by S.C. Code Ann. § 24-21-560(C).

In a per curiam opinion, this Court held the issue is moot because Appellant has completed his sentence and is no longer incarcerated. The Court declined to accept Appellant's request for appellate review under the circumstances. The Court stated it "would be more inclined to accept [Appellant's] request for appellate review if this were a situation in which a defendant was held for an extended period of time before his revocation hearing on a CSP warrant for solely technical violations of his CSP conditions." However, the Court maintained that "in situations such as the current matter, where a defendant was being held concurrently on additional pending violent offenses," it was "less apt to address the matter." Therefore, the Court dismissed Appellant's appeal.

In so holding, the Court overlooked the fact that the sentencing question here is capable of repetition yet generally evades review in that circuit court judges continue to order defendants found in violation of their CSP not receive credit for the time served to which they are entitled pursuant to § 24-13-40, but due to the short duration of the one year revocation allowed pursuant § 24-21-560(C), the question presented evades review.

On September 16, 2010, Appellant pled guilty to strong arm robbery, kidnapping, and second degree lynching and was sentenced to ten years imprisonment. R. 37-39. On August 1, 2017, after serving eighty-five percent of his sentence, Appellant was released from incarceration and enrolled in a community supervision program (CSP). R. 26. On November 1, 2017, Appellant was arrested for violating the terms and conditions of his CSP. R. 26. The Department of Probation, Parole, and Pardon Services (the Department) alleged Appellant violated the terms of his CSP by failing to provide a current address, moving without permission,

willfully associating with a person whom Appellant knew had a criminal record, and being arrested on several new charges, including armed robbery, kidnapping, and criminal conspiracy. R. 3, l. 18 – 4, 25; See R. 26.

The revocation hearing was held on May 18, 2018. R. 1. At the conclusion of the hearing, the judge found Appellant violated the terms and conditions of his CSP and revoked the remainder of Appellant's CSP. R. 11, ll. 3-15. However, the judge refused to give Appellant credit for the 198 days he had spent in custody since his arrest on the violation warrant. R. 11, l. 7 – 14, l. 8; R. 16-17. On May 24, 2018, Appellant filed a motion to reconsider arguing he was entitled to credit for time served pursuant to S.C. Code Ann. § 24-13-40 and State v. Boggs, 388 S.C. 314, 696 S.E.2d 597 (Ct. App. 2010). R. 18-20. On June 5, 2018, the Department filed a reply to Appellant's motion to reconsider. R. 21-24. By order filed August 7, 2018, the judge denied the motion. R. 25.

I. Despite being Moot, the Issue is Capable of Repetition but Evading Review and this Court Should Address the Merits

As this Court held, because Appellant is no longer incarcerated and has completed his CSP, this issue is moot. However, "an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review." Hayes v. State, 413 S.C. 553, 558, 777 S.E.2d 6, 9 (Ct. App. 2015) (quoting Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001)) (internal quotation marks omitted). As this Court held in Hayes, where the defendant did not receive credit for time served due to the split nature of his sentence, the issue here is capable of repetition but evading review. See Id. It is apparent, based on the record before this Court, that the Department is urging circuit court judges to order defendants, such as Appellant, not receive credit for time served to which they are entitled pursuant to § 24-13-40. Consequently,

defendants, such as Appellant, are being ordered to serve sentences that exceed the one year maximum per revocation allowed pursuant to § 24-21-560(C).

This Court's mootness analysis in State v. Simpson, 429 S.C. 83, 837 S.E.2d 669 (Ct. App. 2020), reh'g denied (Feb. 14, 2020), demonstrates why the Court should address the merits in the present case. In Simpson, the state appealed Simpson's sentence following his guilty plea to four counts of second degree sexual exploitation of a minor. Id. at 85, 837 S.E.2d at 670. The state argued the lower court erred when it sentenced Simpson to two years of home detention rather than the mandatory minimum two years' imprisonment mandated by S.C. Code Ann. § 16-15-405. Id. On appeal, Simpson argued the issue before the Court was moot because he had already completed his two year home detention sentence. Id. at 88, 837 S.E. at 671-672.

The Court determined "*the question of Simpson's own sentence [was] moot* due to his completion of the determinate home detention portion of the sentence." Id. at 89, 837 S.E.2d at 672 (emphasis added). However, this Court held the state "argued persuasively that the sentencing question here is capable of repetition yet generally evades review in that the suspension of mandatory minimum sentences continues to occur in circuit court, but due to the duration of the home detention or probationary portions of such sentences, the question presented here generally evades review." Id. Accordingly, this Court addressed the merits. Id. at 89, 837 S.E.2d at 672 (citing Nelson v. Ozmint, 390 S.C. 432, 433-434, 702 S.E.2d 369, 270 (2010)) (addressing moot issue of the Department's calculation of the prisoner's sentence as not including good time credits or earned work credits because it was an issue capable of repetition, yet it would usually evade review).

By its nature, the sentencing issue in this case is subject to similar time limitations such as those present in Simpson. In Simpson, the state argued the appeal should be heard on the

merits, despite Simpson having completed his sentence, because home detention sentences are relatively short in duration and are likely to conclude before an appeal can be adjudicated. Id. at 88, 837 S.E.2d at 672. Accordingly, the error committed by circuit court judges in suspending mandatory minimum sentences and allowing home detention was capable of repetition, but generally evaded review. Id. In this case, the maximum Appellant, or any other defendant found in violation of his or her CSP, could be sentenced to for violating the terms of the program was one year, a relatively short duration. Given this short duration, this issue will almost always evade review. Moreover, it is likely that circuit court judges are continuing to not give defendants found in violation of their CSP credit for time served given the Department's stance on the matter.

Respectfully, this Court's reasoning for refusing to apply the "capable of repetition but generally evading review" exception to the mootness doctrine demonstrates the Court's misapprehension of the law. Appellant respectfully requests this Court address the merits.

II. Credit for Time Served is Mandatory Pursuant to S.C. Code Ann. § 24-13-40 Towards a Sentence for a Revocation of Community Supervision

Appellant was entitled to credit for the time he served between when he was served with the CSP violation warrant and the date of his revocation hearing pursuant to S.C. Code Ann. § 24-13-40 because neither exception found in the statute applied. The statute states:

> The 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. . . . 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.**

S.C. Code Ann. § 24-13-40 (emphasis added).

"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) (citing State v. Boggs, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010)). "Thus, a prisoner will receive credit for time served unless either (1) they were an escapee or (2) the prisoner was already serving a sentence on a different offense." Id. at 560, 777 S.E.2d at 10 (citing S.C. Code Ann. § 24-13-40).

In Boggs, the sentencing judge indicated he did not want to give the defendant credit for time served and did not check the box on the sentencing sheet indicating credit for time served. Boggs, 388 S.C. at 316, 696 S.E.2d at 598. The judge acknowledged Boggs was entitled to credit but stated on the record that "when I don't check it off" the Department of Corrections would not give Boggs the credit, concluding, "I am just telling you how it works in the real world." Id. This Court reversed the sentencing judge, holding the statutory credit for time served was mandatory and a "judge's disappointment in the maximum sentence he can impose is not one of the exceptions to the mandatory language" in the statute. Id.

In Hayes, the defendant pled guilty to possession of crack cocaine and criminal conspiracy and was sentenced to five years' imprisonment, suspended to time served and three years' probation. The trial judge ordered Hayes receive credit for 240 days time served. Hayes, 413 S.C. at 555, 777 S.E.2d at 8. Hayes was subsequently charged with various probation violations. Id. The probation revocation judge ultimately revoked his probation, reinstated three years of his suspended sentence, and terminated probation. Id. The judge noted Hayes had previously served 240 days and should receive credit for this time. Id. However, the Department of Corrections refused to apply the 240 days to Hayes' reduced sentence. Hayes

argued on appeal that the plain language of § 24-13-40 required his pretrial detention credit be awarded to his partially revoked sentence. Id. at 558, 777 S.E.2d at 9. He also emphasized that if the Department of Corrections applied the statute in the same way to a full revocation, the result would be a longer sentence than authorized by law. Id.

This Court agreed and held Hayes was entitled to credit for the 240 days time served based on the plain language of the statute. Id. at 560, 777 S.E.2d at 10. The Court emphasized the statute does not make a distinction for split sentences and pretrial detention time should apply against a probation revocation whenever a probationer received a split sentence. Id.

Like the defendants in Boggs and Hayes, Appellant was entitled to credit for the presentence time he served on the CSP warrant while awaiting his revocation hearing as neither of the exceptions found in § 24-13-40 applied. Appellant was not an escapee and he was not already serving a sentence on a different offense. See Hayes, 413 S.C. at 560, 777 S.E.2d at 10 (citing S.C. Code Ann. § 24-13-40). Consequently, credit for time served was mandatory. See Boggs, 388 S.C. at 316, 696 S.E.2d at 598.

In its reply to Appellant's motion to reconsider, the Department argued Appellant was not entitled to credit for time served pursuant to § 24-13-40 because he was not only incarcerated on the CSP warrant, but also on warrants for his new pending charges. R. 21. According to the Department, "the jail time credit that he [Appellant] is seeking credit for is time while he is awaiting trial and sentence [for] another offense." R. 21. Given these circumstances, the Department asserted Appellant was not entitled to credit for time served pursuant to the second exception found in the statute. R. 21-22. However, this argument is based on a misreading of the statute and/or a misunderstanding of Appellant's circumstances.

Again, the exception states in relevant part: "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***. Appellant was incarcerated and serving a sentence for strong armed robbery, kidnapping, and second degree lynching for which he pled guilty to on September 16, 2010. He was also incarcerated on pending charges for which he was awaiting trial and sentence. Appellant's new charges constitute the "second offense" referenced in the statute. Consequently, Appellant is not entitled to credit for the time he served on the CSP warrant and his ultimate CSP revocation if he is convicted of and sentenced for his new pending charges.

As the judge recognized during the revocation hearing: "Well, a person on community supervision is an inmate outside of the institution. You are still serving time. And you are placed outside the institution into the community under community supervision." R. 10, ll. 3-7. It is undisputed that Appellant was still serving his sentence for his 2010 convictions for strong arm robbery, kidnapping, and second degree lynching when he was arrested on new charges. Consequently, Appellant was entitled to credit towards his 2010 sentence for the presentence time he served on the CSP warrant. However, he would not be entitled to credit for the time he served on his CSP revocation towards any sentence he may receive on his new charges.

Additionally, in its reply, the Department argued to give Appellant credit for time served would "undo" the intent of the sentencing judge who desired Appellant serve the remaining 299 days of his CSP in prison. R. 22-23. However, as this Court made clear in Boggs, a "judge's disappointment in the maximum sentence he can impose is not one of the exceptions to the mandatory language" in § 24-13-40. See Boggs, 388 S.C. at 316, 696 S.E.2d at 598. The judge's

desire for Appellant to serve the remainder of his CSP incarcerated is not one of the exceptions to the mandatory language in § 24-13-40. Consequently, regardless of the judge's intent, Appellant was entitled to credit for the time he served presentence.

Moreover, based on the Department's own argument, Appellant was entitled to credit for time served. In its reply to Appellant's motion to reconsider, the Department asserted, "CSP is not like Probation. The supervision is limited to the suspended portion of the sentence or the remaining fifteen percent of a defendant's sentence after serving 85 percent at the Department of Corrections. Consequently, when an inmate begins a term of CSP, the Department calculates the number of days of the program. *Each day the inmate is not absconded reduces that number, whether the inmate is incarcerated or in the community*." R. 22. Based on the Department's own statement, Appellant was entitled to credit for the time he served on the CSP warrant before his revocation hearing since he was not absconded at the time. The 198 days Appellant spent incarcerated presentence had to reduce the amount of time he had remaining on CSP.

Respectfully, this Court should hold Appellant was entitled to credit for time served pursuant to § 24-13-40 because neither exception outlined in the statute applied.

III. Appellant's Sentence Exceeded the One Year Revocation Allowed Pursuant to S.C. Code Ann. § 24-21-560(C)

Pursuant to S.C. Code Ann. § 24-21-560(C), the Department argued in its reply that Appellant was not entitled to credit for time served while in custody awaiting his revocation hearing because this statute states an inmate is not entitled to earn credits that would reduce the sentence for a violation of the community supervision program. R. 22. However, receiving credit for time served would not reduce Appellant's sentence for the violation of his CSP. In

fact, the opposite is true. Not providing Appellant credit for time served extended his sentence longer than allowed by law. Section 24-21-560(C) states in relevant part:

> If the court determines that a prisoner has willfully violated a term or condition of the community supervision program, the court may impose any other terms or conditions considered appropriate and may continue the prisoner on community supervision, or *the court may revoke the prisoner's community supervision and impose a sentence of* ***up to one year*** for violation of the community supervision program. A prisoner who is incarcerated for revocation of the community supervision program is not eligible to earn any type of credits which would reduce the sentence for violation of the community supervision program.

S.C. Code Ann. § 24-21-560(C) (emphasis added).

Because Appellant had already served 198 days of the one year sentence the court could impose pursuant to the statute, he could only serve an additional 167 days in the custody of the Department of Corrections for this revocation. Appellant's sentence, which denied him credit for the time he served between his arrest on the CSP warrant and his revocation hearing, was effectively a 497 day sentence, which is 132 days over the maximum revocation allowed by law. Consequently, Appellant's sentence as ordered by the revocation judge was illegal as it was in clear violation of § 24-21-560(C).

Citing to State v. Scott, 351 S.C. 584, 571 S.E.2d 700 (2002), the Department properly acknowledged that the court cannot terminate CSP. R. 23. Because Appellant was entitled to credit for time served pursuant to § 24-13-40 and because the revocation judge could not terminate Appellant's CSP, Appellant should have been ordered to serve an additional 167 days incarcerated, which was the remainder of the one year revocation permitted by law, and then serve an additional 132 days in the community to satisfy his sentence. The judge's desire to terminate Appellant's CSP cannot trump the law. This avoids Appellant receiving "double credit" as suggested by the Department. See R. 23.

Respectfully, this Court should hold Appellant's sentence violated § 24-21-560(C) because he was ordered to serve 167 days more than one year permitted for a revocation.

Based on the foregoing, Appellant respectfully requests this Court rehear his case pursuant to Rule 221(a), SCACR, due to the significant legal and factual points overlooked and/or misapprehended by this Court in dismissing Appellant's appeal as moot.

Respectfully Submitted,

s/ Lara M. Caudy
LARA M. CAUDY
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of October, 2021.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STACARDO GRISSETT,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above referenced case has been served upon Matthew C. Buchanan, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and Stacardo Grissett, at [redacted], Columbia, SC 29223, this 28th day of October, 2021.

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

v.

Stacardo Grissett, Appellant.

Appellate Case No. 2018-001525

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paula A. Thomas J.

J.

Thomas C. Huff A.J.

Columbia, South Carolina

cc:
Matthew C. Buchanan, Esquire
Lara Mary Caudy, Esquire
The Honorable Clifton Newman

FILED
Feb 14 2022