1974 WL 27464 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 6, 1974

***1** Mr. William D. Leeke
Director
South Carolina Department of Corrections
P. O. Box 760
Columbia, South Carolina 29202

Dear Mr. Leeke:
You have requested the opinion of this Office as to whether or not the recent amendment of Section 55-11, Code of Laws of South Carolina, 1962, relating to presentence jail time contemplates the granting of jail time to those individuals who are on parole and are incarcerated prior to a parole revocation hearing.

As you are aware this Office previously issued an opinion concerning this amendment dated March 27, 1974. In general it is the clear intent of the statute to eliminate service of 'dead time' by prisoners in this State. All prisoners presently incarcerated are to receive credit for their jail time except where such is prohibited. The two exceptions in the amendment reflect that it was also the legislature's intent that they should in no instance receive double credit.

The word parole means leave of absence from prison during which the prisoner remains in legal custody until the expiration of his sentence; and while he is on parole he continues to serve his sentence outside the prison walls. Sanders v. MacDougall, 244 S.C. 100, 135 S.E.2d 836. In other words parole only changes the location where a prisoner serves his sentence and generally every day is a day of credit against the unserved portion of his sentence. It therefore follows that if a parolee is charged with a violation of the conditions of his parole and is incarcerated awaiting a revocation hearing, he should receive credit against the unserved portion of his sentence for every day spent in jail. This is a result of his status as a parolee and is not the result of the operation or effect of Section 55-11, as amended.

A question may arise where the violation of his parole is a result of an independent criminal offense for which he is ultimately tried, convicted and sentenced. In that case, subsection 2 of the amendment's proviso stating that
when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense . . . he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense

insures that the prisoner does not receive double credit. He would, of course, be entitled to credit against the unserved portion of the sentence which he was at the time serving. Cf. U. S. ex rel Collins v. Claudy, 106 F.Supp. 367.

The other possible exception would arise where a prisoner is paroled and an order for violation of his parole is thereafter issued and the prisoner cannot be found. Section 55-616, Code of Laws of South Carolina, 1962, states that in such a situation the parolee has the status of an escaped convict. From the date the order is issued until he is again taken into the custody of the authorities of this State, the running of his sentence is suspended and he is not entitled as a matter of law to credit against his unserved sentence, whether he is a fugitive, or in the custody of another state or the Federal government as a result of conviction for another crime. See Taylor v. U. S. Marshall, 352 F.2d 232; U. S. v. Dumeur, 214 F.Supp. 293; Vaughn v. Commonwealth, 307 F.Supp. 688.

***2** It is the opinion of this Office that Section 55-11 as amended, does not apply to the usual situation of a paroled inmate who is awaiting a revocation hearing. Due to his status as a parolee, he would be entitled to receive full credit for all time whether incarcerated or not, except in those situations to which I have previously referred. I hope this provides sufficient guidance and information to assist you. If there is anything further, please let me know.

Yours very truly,

Emmet H. Clair
Assistant Attorney General

P. S. After writing this opinion, the request for which was hand delivered by will Lucius on July 15, 1974, it was called to my attention this this Office previously answered the same request on August 14, 1973. Both opinions reached the same result.

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