1973 WL 26839 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 14, 1973

***1** Honorable William D. Leeke
Director
South Caroling Department
of Corrections
Post Office Box 766
4444 Broad River Road
Columbia, South Carolina 29202

Dear Mr. Leeke:
Thank you for your correspondence of July 25, 1973, inquiring into the granting of jail time to individuals who are on parole and are reincarcerated prior to a parole revocation hearing.

Section 55-11, Code of Laws of South Carolina (1962), as amended by R-244, S-139, expresses the legislative intention to give full credit to an individual '. . . for time served prior to trial and sentencing'.

Though the word 'parolee', when construed in accordance with its etymology, implies that the prisoner on parole is still in custody, he is in fact released from the bounds of prison and should be accorded the right to have credited to him jail time served prior to the determination that his freedom per se from incarceration should be revoked. Such revocation amounts to a new determination or trial that the individual should be further incarcerated, even though the full trappings of a court trial are limited. For, even though the proceedings in connection with revocation may be considered summary, it has been held that states may not deny on narrowly restrict the individual's right to hearing on revocation of parole. Bearden v. State of South Carolina, 443 F. 2d 1090 (4th Cir. 1971).

Proper construction of a penal statute is that which finds and puts into effect the intention of the law-making body as gathered from reasonable interpretation of the words of the statute. Carolina Amusement Co. v. Martin, 236 S.C. 558, 115 S.E. 2d 273. Further, it is generally held that a statute of this nature is to be liberally construed in favor of the individual who stands in a position to possibly lose his freedom. The failure to grant credit for jail time would in effect result in the loss of freedom inasmuch as the individual's incarceration would be prolonged thereby. As such, it is felt that the pertinent amendatory language of Section 55-11, supra, to wit: 'In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing.', is sufficiently broad to encompass the granting of jail time to those individuals who are on parole and are jailed prior to a parole revocation.

Though Subsection (2) of amended Section 55-11, supra, purports to exclude prisoners serving a sentence for one offense who are awaiting trial and sentence for a second offense, this situation is sufficiently distinguishable, as above noted, from that of a parolee.

The amended statute must be given a reasonable or common sense construction consonant with the objects of the legislation. The above considerations lead inescapably to the conclusion that the legislative intent of R-244, S-139, amending Section 55-11, supra, contemplates the granting of jail time to those individuals who are on parole and are jailed prior to a parole revocation.
Very truly yours,

***2** H. Brent Fortson

Legal Assistant

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