

The State of South Carolina



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Mr. Michael Cavanaugh, Executive Director
South Carolina Department of Probation, Parole
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Dear Mr. Cavanaugh:

You have asked an opinion of this office as to whether the recently passed statute, Section 24-21-300, CODE OF LAWS (1976), which authorizes the issuance by parole agents of a citation or warrant for violations of parole and other early release statutes, supports a desired position of the South Carolina Department of Probation, Parole and Pardon Services to have the parole term toll upon issuance of the parole arrest warrant charging the violation. It is our opinion that such issuance of a warrant should be deemed to toll the term of parole until a revocation hearing is held and the denial of credit from the issuance of the warrant if the Board revokes the parole order.

Parole, like probation, is a period of conditional release from the custody of the Department of Corrections for service of his term of imprisonment. While on parole, he is in the supervisory custody of the South Carolina Department of Probation, Parole, and Pardon Services. Sanders v. MacDougall, 244 S.C. 160, 135 S.E.2d 836 (1964). The parolee shall continue on parole until the expiration of the maximum term specified in his sentence without deduction of such allowance for good conduct as may be provided for by law. See also Section 24-21-670, CODE OF LAWS (1976).

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See also Section 24-21-690. The law provides "upon failure of any prisoner released on parole under the provisions of this chapter to do or refrain from doing any of the things set forth or required to be done by and under the terms of his parole, the order of parole shall be cancelled and the prisoner shall thereupon and thereafter have the status of an escaped convict" Section 24-21-680. It also provides that any person arrested for violation of the terms of his parole may be released on bond for good cause shown pending final determination of the violation by the Probation, Parole and Pardon Board.

The question then is whether the parole term tolls after issuance of the warrant or citation setting forth the violations. In an earlier official opinion, this office addressed a related situation concerning jail time credit and concluded 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" as a result of his status as a parolee. 1974 OP.ATTY.GEN. 267, 268 (September 6, 1974).

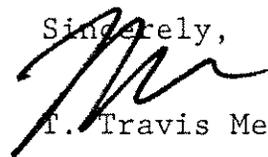
Our research reveals that no state court decisions have addressed the precise question that you are asking. General law is that "in the computation of the time remaining to be served on the sentence of a prisoner whose parole has been revoked, no credit may be given for the time which a paroled prisoner spent at large after a violation of his parole, known colloquially as 'dead time'." 67A C.J.S. Pardon and Parole § 82(b). Denial of street-time credit after a subsequently determined violation makes practical sense. The threat of a lengthy prison term is a valid deterrent which should encourage parolees to obey the conditions of parole (as we currently recognize in the probation situation). If street time credit is given automatically, the deterrent decreases as the offender approaches the end of his sentence, for the maximum sanction for revocation becomes shorter each day. With the issuance of the new statutorily authorized warrant as a triggering factor, potential parole violations near the end of the term will be deterred and the Parole Board will be able to hold parole revocation hearings with the reasonable knowledge that their

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ability to impose a sanction of revocation based upon violations will not be mooted or mitigated by the mere passage of time after the violation or the inability to locate a parole absconder for service of the warrant. The critical factor should be whether the violation occurred and the warrant issued within the parole term. Accord Taylor v. U.S. Marshal, 352 F.2d 232 (10th Cir. 1965). Commonwealth v. Greenlee, 398 A.2d 676, 679 (Pa. Super. 1979). Evans v. Dept. of Corrections, 171 N.W.2d 499 (Mich. 1969). Martin v. State Bd. of Parole, 213 N.E.2d 925 (Mass. 1966); Hignite v. Cardwell, 258 N.E.2d 443 (Ohio 1970); Parham v. Warden, 374 A.2d 137 (Conn. 1976). "The issuance of a violator warrant triggers a process which, as a matter of fundamental fairness, must be pursued with reasonable diligence and reasonable dispatch." Shelton v. U.S. Board of Parole, 388 F.2d 567, 574 (D.C. Cir. 1967). A violator who has succeeded in evading the authorities should not be entitled to benefit from "street time" after he has been shown to have violated the conditions of his release on parole. Common sense dictates no different response.

In conclusion, it is my opinion that the issuance of the new parole arrest process tolls the running of the parole term pending a reasonably diligent revocation hearing. To the extent that dicta from prior opinions in 1974 and 1979 could be construed to express otherwise, they are overruled.

Sincerely,



T. Travis Medlock

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