

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD L. ANDERSON,	§
	§ No. 559, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 30102683DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 13, 2007
Decided: January 7, 2008

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 7th day of January 2008, upon consideration of the appellant’s opening brief, the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), and the appellant’s response to the motion to affirm,¹ it appears to the Court that:

(1) The defendant-appellant, Richard L. Anderson, filed an appeal from the Superior Court’s October 9, 2007 order denying his motion for correction of an illegal sentence under Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the

¹ On November 14, 2007, the Court granted the appellant’s request to respond to the appellee’s motion to affirm.

judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit.² We agree and AFFIRM.

(2) In June 2007, Anderson was found to have committed a fourth violation of probation (“VOP”) in connection with two convictions of Unlawful Sexual Intercourse in the Third Degree. He was sentenced to 1 year at Level V on the first conviction and to 2 years at Level V suspended on the second conviction.

(3) In this appeal, Anderson claims that his latest VOP sentence does not reflect the proper amount of credit for time served on his previous VOP sentence.³ Anderson contends that he is entitled to credit for an additional 116 days at Level V and requests this Court to “award” this time to him.

(4) The record reflects that Anderson’s motion did not challenge the legality of his sentence, which is the proper purpose of a Rule 35(a) motion. Rather, it sought to have credit for the additional 116 days allegedly owed to him applied to his latest sentence. The proper procedural vehicle for the remedy sought by Anderson is a petition for a writ of mandamus

² Supr. Ct. R. 25(a).

³ At a prior VOP hearing, the Superior Court had given Anderson credit for 139 days previously served at the VOP Center, as ordered by this Court. *Anderson v. State*, Del. Supr., No. 449, 2006, Ridgely, J. (Dec. 5, 2006).

requesting the Superior Court to direct the Department of Correction (“DOC”) to apply the proper amount of credit to his sentence.⁴ Because this remedy is not available by means of a motion for correction of an illegal sentence under Rule 35(a), we conclude that the Superior Court’s denial of Anderson’s motion was proper and must be affirmed.

(5) It is manifest on the face of Anderson’s opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁴ Del. Code Ann. tit. 10, § 564; *Snyder v. Andrews*, 708 A.2d 237 (Del. 1998); *Meades v. Hosterman*, Del. Supr., No. 239, 2006, Ridgely, J. (Aug. 23, 2006); *Clough v. State*, 686 A.2d 158, 159 (Del. 1996) (A writ of mandamus is a means for the Superior Court to compel a public agency such as the DOC to perform a duty where: the petitioner has a clear right to the performance of the duty; no other adequate remedy is available; and the public agency has arbitrarily failed or refused to perform its duty.)