

IN THE SUPREME COURT OF THE STATE OF DELAWARE

L. ROYAL FISHER,	§
	§
Defendant Below-	§ No. 254, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 93002951DI
Petitioner Below-	§
Appellee.	§

Submitted: June 30, 2008  
Decided: September 16, 2008

Before **HOLLAND**, **BERGER**, and **JACOBS**, Justices.

**ORDER**

This 16<sup>th</sup> day of September 2008, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Lee Royal Fisher, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Fisher's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that, in February 1993, Fisher was transferred to Delaware from New Jersey pursuant to the Interstate Agreement on Detainers (IAD). He was placed on work release. On March 22, 1993, he was arrested in

Delaware on a robbery charge and later indicted. He pled guilty on September 15, 1993 to one count each of first degree robbery and possession of a deadly weapon during the commission of a felony. The Superior Court sentenced him to ten years imprisonment followed by six months probation. On September 30, 1993, Fisher was returned to New Jersey in order to face a hearing on whether he had violated the conditions of his New Jersey probation. New Jersey authorities did not return Fisher to Delaware until October 31, 2000.

(3) Since his return, Fisher has filed various petitions challenging the legality of his detention. On October 4, 2007, Fisher filed a motion for “credit time.” On November 15, 2007, the Superior Court modified Fisher’s sentence to reflect credit for 193 days served by Fisher between the time of his arrest by Delaware police in March 1993 and the date of his transfer back to New Jersey in September 1993. The Superior Court rejected Fisher’s contention that he was entitled to credit for time he served in New Jersey between 1993 and 2000. Fisher did not appeal. Instead, on April 17, 2008, Fisher filed a “motion for correction of illegal sentence,” again seeking credit for time he served in New Jersey. The Superior Court denied the motion on the ground that the issue had been previously raised by Fisher and rejected by the trial court. In the trial court’s words, “Your New Jersey time is for your New Jersey crime.” Fisher appeals that ruling.

(4) The narrow function of a motion under Superior Court Criminal Rule 35(a) is to permit the correction of an illegal sentence.<sup>1</sup> Relief under Rule 35(a) is available only “when the sentence imposed exceeds the statutorily-authorized limits, [or] violates the Double Jeopardy Clause.”<sup>2</sup> The substance of Fisher’s motion does not allege any illegality with respect to the terms of his sentence. His claim amounts simply to an assertion that he is entitled to more credit for time he alleges he already served. Credit for time served is not an appropriate basis for relief under the narrow function of Rule 35(a).<sup>3</sup> Moreover, it is clear that Fisher’s request for credit time previously was rejected by the Superior Court. Fisher did not appeal that ruling. Thus, it is the law of the case.<sup>4</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>1</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 579.