

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRAD T. KIMBLE,	§	
	§	No. 335, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 1203022175
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 10, 2013

Decided: November 26, 2013

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

ORDER

This 26th day of November 2013, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Brad T. Kimble, appeals from the Superior Court's June 10, 2013 denial of his second motion seeking credit for time served. The appellee, State of Delaware, moves to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) On February 9, 2012, Kimble was arrested for the federal offense of possessing a firearm involved in interstate commerce in violation of 18 U.S.C. § 922(g)(1). On February 14, 2012, the U.S. District Court for the District of

Delaware ordered Kimble detained in federal custody while awaiting trial on that charge. The federal action against Kimble was dismissed on April 24, 2012.

(3) On April 2, 2012, a Superior Court grand jury indicted Kimble for Possession of a Firearm by a Person Prohibited, a violation of 11 *Del. C.* § 1448. Kimble alleged that he was transferred to State custody and arraigned on April 26, 2012.

(4) On June 28, 2012, Kimble pled guilty in the Superior Court to Possession of Firearm Ammunition by a Person Prohibited (“PFABPP”). Kimble was sentenced, effective April 2, 2012, the date of his indictment, to eight years at Level V imprisonment, suspended after three years, for one year at Level III probation.

(5) On August 2, 2012, Kimble filed a motion to have credit applied to his sentence for time served—from February 9, 2012, the date of his arrest on the federal firearm charge, to April 2, 2012, the date of his grand jury indictment. By order dated August 16, 2012, the Superior Court denied Kimble’s motion as without merit.

(6) On May 21, 2013, Kimble filed a motion reiterating his request for credit for time served. By order dated June 10, 2013, the Superior Court denied the motion as time-barred and repetitive under Superior Court Criminal Rule 35(b) (“Rule 35(b)"). This appeal followed.

(7) Having carefully considered the parties' positions on appeal, the Court has concluded that Kimble's appeal is without merit. Kimble is not entitled to credit on his sentence for PFABPP for the time he spent in pretrial detention on the federal firearm charge.¹ Absent evidence that Kimble was not given credit for all of the Level V time to which he is entitled, or that the Superior Court abused its discretion when denying Kimble's second motion for credit time as repetitive and time-barred under Rule 35(b), we conclude that Kimble is not entitled to relief.²

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹ See 11 *Del. C.* 3901(b) (2010) (providing that "[a]ll sentences for criminal offenses of persons who at the time sentence is imposed are held in custody in default of bail, or otherwise, shall begin to run and be computed from the date of incarceration for the offense for which said sentence shall be imposed").

² See *Bible v. State*, 2011 WL 252903 (Del. Jan. 24, 2011) (affirming Superior Court's denial of motion for credit time that was determined to be time-barred and repetitive under Superior Court Criminal Rule 35(b)).