

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES VILLAFANE,	§
	§
Defendant Below-	§ No. 420, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 1107001361
Plaintiff Below-	§
Appellee.	§

Submitted: October 19, 2012

Decided: January 7, 2013

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 7th day of January 2013, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Charles Villafane, filed this appeal from the Superior Court's modified sentencing order dated July 13, 2012. Villafane contends that the Superior Court has not properly credited him with all pretrial detention time served on his sentence. We find no support for Villafane's argument on appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Villafane was arrested on February 27, 2011 on charges of carrying a concealed deadly weapon (CCDW) in

Criminal ID No. 1102021519 and theft crimes in Criminal ID No. 1102021278.¹ Villafane posted bond and spent no time in the custody of the Department of Correction (DOC) in either case. On March 12, 2011, while he was free on bond, Villafane was arrested on a charge of DUI in Criminal ID No. 1103010910. He again was able to post bond and spend no time in DOC custody. On July 2, 2011, Villafane was arrested on new charges related to a robbery in Criminal ID No. 1107001361. He was unable to post bond and was held in DOC custody beginning July 2, 2011.

(3) Thereafter, on July 11, 2011, Villafane pled guilty to CCDW in Criminal ID No. 1102021519. The Superior Court sentenced him in that case to two years at Level V incarceration (with credit for eight days served), to be suspended immediately for decreasing levels of supervision. On November 3, 2011, Villafane pled guilty to DUI in Criminal ID No. 1103010910. The Court of Common Pleas sentenced him to 180 days at Level V incarceration, to be suspended after serving 60 days. On December 14, 2011, Villafane pled guilty to robbery in the second degree in Criminal ID No. 1107001361. At that time, Villafane was able to post bail and was released from DOC custody pending sentencing.

¹ The theft charges associated with Criminal ID No. 1102021278 later were dismissed by the State on July 18, 2011.

(4) On January 24, 2012, Villafane was arrested on a violation of probation (VOP) charge associated with his CCDW conviction in Criminal ID No. 1102021519. He has remained incarcerated since that time. On April 13, 2012, the Superior Court found Villafane guilty of the VOP charge and also sentenced him on his second degree robbery conviction to five years at Level V incarceration, with credit for 63 days previously served, to be suspended after serving two years in prison for decreasing levels of supervision.

(5) Since that time, Villafane has filed three separate motions seeking credit for time served toward his robbery sentence. Villafane argued that he was entitled to credit for 123 days he spent in custody in lieu of bail from July 2, 2011, when he was arrested on the robbery charges, to November 3, 2011, when he was sentenced by the Court of Common Pleas on the DUI conviction.² Following his latest motion, the Superior Court issued a modified sentencing order increasing Villafane's credit for time served to 93 days. It is from this order that Villafane now appeals.

(6) In his opening brief on appeal, Villafane contends that he is entitled to 30 days of additional credit time (for a total of 123 days of credit) toward his sentence for second degree robbery. Villafane asserts that this

² The Court takes note that the number of days from July 2, 2011 up to but not including November 3, 2011 is actually 124.

credit time is owed to him for the time that he was held in lieu of bail from July 2, 2011, the date of his arrest, until November 3, 2011, when he was sentenced on the DUI charge. Villafane contends that DOC records establish that he is entitled to this time. Villafane did not provide any records in support of his argument, however.

(7) We review the Superior Court's sentencing of a defendant for abuse of discretion.³ A sentenced defendant is entitled to credit for any period of actual incarceration that was spent awaiting trial.⁴ Concurrent sentences of confinement are not permitted in Delaware, however.⁵ Thus, a single period of confinement may not be credited against more than one sentence.⁶ In this case, Villafane was being held on multiple charges and later was sentenced on those charges. Accordingly, the issue in this appeal is whether Villafane has received credit for his period of confinement against any of his sentences.

(8) The period of confinement at issue in this case began July 2, 2011, when Villafane was arrested on the robbery charges, and ran until

³ *Oakley v. State*, 2008 WL 836598 (Del. Mar. 31, 2008).

⁴ DEL. CODE ANN. tit. 11, § 3901(c) (2007).

⁵ *Id.* § 3901(d).

⁶ *Fraday v. State*, 2008 WL 4286542 (Del. Sept. 16, 2008).

December 18, 2011, when according to the State,⁷ Villafane was released on bail pending sentencing following his guilty plea to second degree robbery. The total period of that confinement was 169 days. The Superior Court gave Villafane credit for 93 days served toward his second degree robbery sentence. The Superior Court also credited eight days toward his sentence for CCDW. Finally, 60 days of Villafane's confinement were credited toward his DUI sentence. Thus, at least 161 days of Villafane's confinement between July 2, 2011 and December 18, 2011 have already been credited toward his various sentences.

(9) While it appears that Villafane might be entitled to eight more days of credit toward his second degree robbery sentence for his period of pretrial detention, we are unable to hold, based on the limited record before us, that the Superior Court abused its discretion in modifying Villafane's sentence to permit only 93 days of credit for time served. The only record before us relates to Villafane's conviction for second degree robbery. While the State represents that Villafane was released from custody on December 18, 2011, the Superior Court docket reflects that Villafane posted bail on December 14, 2011. The Department of Correction print-outs attached to the State's appendix require interpretation and fact-finding and were not

⁷ The docket in Cr. ID 1107001361 reflects that Villafane posted bail and his released was ordered on December 14, 2011.

presented to the Superior Court in the first instance.⁸ Because Villafane has offered no evidence reflecting his entitlement to additional credit time, we find no abuse of the Superior Court's discretion in awarding Villafane only 93 days of credit for time served toward his second degree robbery sentence between July 2, 2011 and his December release date.⁹

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁸ The Superior Court ruled on Villafane's various motions for sentence modification without requesting a response from the State.

⁹ In its answering brief, the State also raises an argument concerning Villafane's right, or lack thereof, to credit for time he served from January 24, 2012 until April 13, 2012. Villafane did not raise this issue in his opening brief. Therefore, we do not address it in this appeal.