

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES A. BIGGINS,	§	
	§	No. 365, 2004
Petitioner Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware,
v.	§	in and for Sussex County in
	§	C.A. No. 00M-02-0160.
DEPARTMENT OF CORRECTION	§	
OF THE STATE OF DELAWARE,	§	
	§	
Respondent Below,	§	
Appellee.	§	

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

Submitted: February 18, 2005
Decided: April 22, 2005

ORDER

This 22nd day of April 2005, upon consideration of the briefs submitted by the parties and the Superior Court record, it appears to the Court that:

(1) The appellant, James A. Biggins, is an inmate incarcerated at the Delaware Correctional Center. In 2000, Biggins filed two petitions for writ of mandamus. The first petition was filed in the Superior Court in Sussex County; the second petition was filed in the Superior Court in Kent County. By order dated February 21, 2001, the Superior Court in Sussex County consolidated the two cases.

(2) By memorandum opinion dated September 26, 2001, the Superior Court dismissed Biggins' mandamus petitions.¹ In dismissing the petitions, the Superior Court found that the Kent County petition was frivolous and malicious because Biggins filed it knowing that the same claim that was under review in the Sussex County petition. As a consequence for the unnecessary burden that Biggins imposed on the system, the Superior Court ordered the forfeiture of a portion of Biggins' good time credits. Moreover, the Superior Court warned Biggins that if he repeated the claim, or if he filed with the Superior Court another proceeding that was later deemed to be frivolous or malicious, the Court would again order the forfeiture of his good time credits. On appeal, this Court affirmed the Superior Court's September 26, 2001 decision.²

(3) Notwithstanding the Superior Court's admonition, on June 21, 2004, Biggins filed a motion requesting "de novo review" of the mandamus petitions.³ By decision dated August 9, 2004, the Superior Court dismissed Biggins' motion as frivolous. Moreover, because the motion was filed in

¹*Biggins v. Dep't of Correction*, 2001 WL 1628315 (Del. Super.).

²*Biggins v. State*, 2002 WL 87726 (Del. Supr.).

³Although Biggins labeled his motion as filed under Superior Court Civil Rule 60(b)(6), the Superior Court determined that the motion sought reargument under Superior Court Civil Rule 59(e). Ultimately, the Superior Court concluded that the motion did not meet the threshold procedural requirements of either rule and was untimely.

violation of the September 26, 2001 decision, the Superior Court ordered the forfeiture of five days of Biggins' good time credit. This appeal followed.

(4) We find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated August 9, 2004. The Superior Court did not err when it concluded that Biggins' motion was frivolous. Moreover, we find no abuse of discretion in the Superior Court's order to forfeit five days of Biggins' good time credits.⁴

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

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴See Del. Code Ann. tit. 10, § 8805 (permitting order forfeiting portion of good time credits upon finding that prisoner has filed a frivolous or malicious action).