

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEROY NASH,	§	
	§	No. 75, 2005
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	Sussex County in C.A. No.
	§	05M-02-005.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 83003972DI

Submitted: July 19, 2005  
Decided: October 17, 2005

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

**ORDER**

This 17<sup>th</sup> day of October 2005, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) In 1983, the appellant, Leroy Nash, pleaded guilty to one count of Rape in the First Degree, Assault in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony (PDWDCF). Nash was sentenced to life in prison with the possibility of parole after twenty years for rape followed by ten years for assault and five years, mandatory, for PDWDCF.<sup>1</sup>

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<sup>1</sup>*State v. Nash*, Del. Super., Cr. ID No. 83003972DI, Tease, J. (Dec. 9, 1983) (ORDER).

(2) On February 9, 2005, Nash filed a petition for a writ of habeas corpus in the Superior Court. Nash alleged that his short-term release date<sup>2</sup> had elapsed, and that he was being illegally incarcerated.<sup>3</sup> By order dated February 10, 2005, the Superior Court summarily dismissed Nash's habeas corpus petition on the basis that Nash was being lawfully held pursuant to a life sentence. This appeal followed.

(3) On appeal, Nash contends that he has earned the requisite number of good time credits to entitle him to conditional release from his life sentence. Nash also contends that his ten-year sentence for assault and his five-year mandatory sentence for PDWDCF were both "voided" by changes in the law. We conclude that, Nash's claims are either without merit or are not appropriate for habeas corpus review.

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<sup>2</sup>*See Hamilton v. State*, 831 A.2d 881, 883 n. 5 (Del. 2003) (explaining that "short-term release," also known as "conditional release," is determined by reducing the term of incarceration by accrued good time credits); Del. Code Ann. tit. 11, § 4348 (2001) (providing for release from incarceration upon merit and good behavior credits).

<sup>3</sup>*See Del. Code Ann. tit. 10, § 6902* (1999) (providing remedy of writ of habeas corpus to obtain limited judicial review of court's jurisdiction and custodian's authority to hold petitioner in custody).

(4) First, Nash is not entitled to conditional release.<sup>4</sup> Nash's good times credits can apply only to accelerate his parole eligibility date.<sup>5</sup> Unless Nash is granted parole, he must remain incarcerated.<sup>6</sup>

(5) Second, Nash's five-year mandatory sentence was not declared void as he claims.<sup>7</sup> Rather, the sentence was recomputed pursuant to a 1990 administrative addendum to a Department of Correction regulation. The addendum was later found by this Court to be contrary to Delaware statutory law.<sup>8</sup>

(6) Nash's claim that his ten-year sentence is "void" is, at its heart, a claim that the assault conviction underlying the sentence should be reversed. That claim is not a matter subject to habeas corpus review.<sup>9</sup> After a judgment

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<sup>4</sup>See *Evans v. State*, 872 A.2d 539, 558 (Del. 2005) (clarifying that conditional release does not apply to a life sentence with the possibility of parole that was imposed before 1990).

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>Nash's claim that his five-year mandatory sentence is "void" appears to stem from a sentence status sheet dated November 7, 1990 which includes the cryptogram "void 103 dated 12/13/83."

<sup>8</sup>See *Watson v. Burgan*, 610 A.2d 1364 (Del. 1992) (affirming Superior Court decision upholding validity of original regulation).

<sup>9</sup>See *Dorsey v. State*, 2004 WL 2743579 (Del. Supr.) (citing *Curran v. Woolley*, 104 A.2d 771, 773 (Del. 1954) (providing that a writ of habeas corpus is not a substitute for direct appeal or postconviction relief)).

of conviction and sentencing, the only issues to be decided on a petition for a writ of habeas corpus are the existence of a judgment of conviction by a court of competent jurisdiction and a valid commitment of the prisoner to enforce the sentence.<sup>10</sup>

(7) In this case, the Superior Court had jurisdiction to accept Nash's guilty plea. Thereafter, the Superior Court entered a valid order of commitment remanding Nash to the custody of the Department of Correction to serve a prison sentence. Nash has not yet completed that sentence. Therefore, the Superior Court did not err when it denied Nash's petition for a writ of habeas corpus.

(8) It is manifest on the face of Nash's opening brief that this appeal is without merit. The issues presented on appeal are clearly controlled by settled Delaware law.

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/ Carolyn Berger  
Justice

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<sup>10</sup>*Id.*