

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL E. OBERLY,	§	
	§	No. 179, 2002
Petitioner Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County in 02M-03-
	§	012.
STATE OF DELAWARE,	§	
	§	
Respondent Below,	§	
Appellee.	§	

Submitted: April 25, 2002  
Decided: June 10, 2002

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

**ORDER**

This tenth day of June 2002, upon consideration of the appellant’s opening brief and “Motion for Expedited Briefing Schedule and Oral Argument,” and the appellee’s motion to affirm and response to the appellant’s “Motion for Expedited Briefing Schedule and Oral Argument,” it appears to the Court that:

(1) The appellant, Michael E. Oberly, filed this appeal from the Superior Court’s March 21, 2002, denial of Oberly’s petition for a writ of habeas corpus. The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face

of Oberly's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) On June 17, 1997, Oberly pleaded guilty to Offensive Touching, Driving Under the Influence (fourth offense) and Failure to Stop. Oberly was sentenced on the Offensive Touching offense to 30 days at Level V pursuant to title 11, section 4204(k) of the Delaware Code. For Driving Under the Influence (DUI), Oberly was sentenced to five years at Level V, suspended after six months for six months at Level IV home confinement. For Failure to Stop, Oberly was sentenced to fines and restitution.<sup>1</sup> Oberly was found guilty of violation of probation (VOP) on February 20, 1998 and September 1, 2000. On November 20, 2001, Oberly was again found guilty of VOP and was sentenced to 18 months at Level V.<sup>2</sup>

(3) In his habeas corpus petition and now on appeal, Oberly contends that the Superior Court's November 20, 2001, VOP sentencing order, enlarged his original Level V sentence "by more than [12] months." According to Oberly, his Level V sentence, totaling 61 months, started on March 17, 1997, when he was arrested and held on the original charges, and ended five years later on March 17, 2002. Oberly contends that the Superior

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<sup>1</sup> *State v. Oberly*, Del. Super., No. 9703009612, Lee, J. (June 17, 1997).

<sup>2</sup> *State v. Oberly*, Del. Super., No. 9703009612, Stokes, J. (Nov. 20, 2001).

Court “lacked the authority [on November 20, 2001] to extend the term of imprisonment beyond the March 17, 2002, expiration date.”

(4) Oberly’s claim is not a proper subject for habeas corpus review. Under Delaware law, habeas corpus is unavailable to “[p]ersons committed or detained on a charge of treason or felony, the species whereof is plainly and fully set forth in the commitment.”<sup>3</sup> This Court has held that, when reviewing a request for habeas corpus relief, “the only material fact to be ascertained . . . is 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>4</sup>

(5) In this case, it is clear that the Sussex County Superior Court had jurisdiction over the November 20, 2001, adjudication of, and sentencing for, Oberly’s VOP.<sup>5</sup> As a result, Oberly is not entitled to habeas corpus relief.

(6) Moreover, Oberly’s claim appears to be without merit. The Superior Court originally sentenced Oberly to a total of 61 months at Level V, suspended after seven months. Oberly himself states that he spent a total

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<sup>3</sup> *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997) (quoting Del. Code Ann. tit 10, § 6902(1) (1999)).

<sup>4</sup> *Skinner v. State*, 135 A.2d 612, 613 (Del. 1957) (citing *Curran v. Woolley*, 104 A.2d 771, 773 (Del. 1954)).

<sup>5</sup> Del. Code Ann. tit. 11, § 4334(c) (2001).

of 45 months at Level V custody.<sup>6</sup> Consequently, upon the November 20, 2001 finding of VOP, the Superior Court was authorized to reimpose, as it did in a modified sentencing order on November 28, 2001, the 16 unserved months that remained on Oberly's original Level V sentence.<sup>7</sup>

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

NOW, THEREFORE, IT IS ORDERED that the appellee's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. Oberly's "Motion for Expedited Briefing Schedule and Oral Argument" is denied as moot.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>6</sup> In his opening brief, Oberly states that he was released from Level V custody on September 16, 1997, returned on February 14, 1998, released on May 16, 2001, and returned on November 1, 2001. Appellant's Opening Br. at 4.

<sup>7</sup> Del. Code Ann. tit. 11, §4334(c) (2001).