

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS J. LOVE,	§
	§
Defendant Below-	§ No. 607, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0506014881
Plaintiff Below-	§
Appellee.	§

Submitted: February 25, 2008

Decided: May 28, 2008

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

**ORDER**

This 28<sup>th</sup> day of May 2008, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Thomas Love, appeals from the Superior Court's denial of his motion for credit for time previously served on his sentence. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Love's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, on June 16, 2005, Love was serving time on an unrelated violation of probation (VOP) sentence when he walked away from the Morris Correctional Institute (MCI) in Dover. He was

arrested on June 19, 2005 on a charge of second degree escape to which he pled guilty on February 1, 2006. The Superior Court subsequently sentenced him as an habitual offender to four years at Level V imprisonment followed by six months of Level III probation. On June 21, 2007, he filed a motion requesting credit for time served on the second degree escape conviction. The Superior Court denied Love's motion on the ground that he was not entitled to Level V credit for time spent at a Level IV facility. Love appeals that ruling.

(3) After careful consideration of the parties' respective positions on appeal, we conclude that the Superior Court's judgment denying Love's motion for credit for time served should be affirmed, albeit for reasons other than those relied upon by the Superior Court.<sup>1</sup> Love's motion sought credit toward his sentence for second degree escape for time he spent in custody from January 2005 until his transfer to MCI. Love was not arrested on the second degree escape charge until June 2005. Any time spent in custody before his arrest for second degree escape was time he was serving on a prior, unrelated VOP sentence and, thus, cannot be credited toward his sentence for second degree escape. A defendant is only entitled to be

---

<sup>1</sup> *Colon v. State*, 900 A.2d 635, 638 n.12 (Del. 2006).

credited with punishment already exacted on the related conviction, not for punishment exacted on an unrelated conviction.<sup>2</sup>

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

---

<sup>2</sup> See *Weber v. State*, 655 A.2d 1219, 1222 (Del. 1995).