

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRANCE D. ALLEN,	§	
	§	No. 357, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0412000925
Appellee.	§	

Submitted: February 13, 2009
Decided: April 27, 2009

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

ORDER

This 27th day of April 2009, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that:

(1) In January 2005, the appellant, Terrance D. Allen, pled guilty to Carrying a Concealed Deadly Weapon (CCDW) and Possession of a Weapon by a Person Prohibited (PDWPP). For the PDWPP conviction, Allen was sentenced to two years at Level V suspended for two years at Level IV, suspended after six months for eighteen months at Level III, suspended after twelve months for six months at Level II. For CCDW, Allen was sentenced to two years at Level V suspended for two years at Level II.

(2) In April 2007, November 2007 and March 2008, Allen was found in violation of probation (VOP) for CCDW. On April 5, 2007, Allen was sentenced to two years at Level V suspended for two years at Level IV Crest, suspended upon successful completion for the balance at Level III. On November 21, 2007, Allen was sentenced to two years at Level V suspended for two years at Level IV VOP Center, suspended after forty-five days for eighteen months at Level III. On March 13, 2008, Allen was sentenced to two years at Level V suspended at the discretion of the Department of Correction for two years at Level IV Crest, suspended upon successful completion for one year at Level III.

(3) In June 2008, Allen moved, pursuant to Superior Court Criminal Rule 35(a) (“Rule 35(a)”) for correction or modification of the March 13, 2008 VOP sentence. Allen argued that the sentence was “too ambiguous to be properly construed” by the Department of Correction. By order dated June 25, 2008, the Superior Court denied Allen’s motion. This appeal followed.

(4) It appears that in July 2008, while this case was on appeal, the attorney who represented Allen at the March 2008 VOP hearing submitted a letter requesting that the Superior Court clarify the March 13, 2008 VOP

sentence.¹ Allen's counsel asked that the Superior Court modify Allen's sentence to include drug treatment at Level V with Allen moving to Level IV Crest upon successful completion of that treatment.

(5) On August 5, 2008, the Superior Court issued an order modifying the March 13, 2008 VOP sentence. The Superior Court provided that Allen should participate in "any Level V treatment program" suspended upon successful completion for Level IV Crest, suspended upon successful completion for one year at Level III.

(6) In his opening brief, Allen argues, as he did in his Rule 35(a) motion, that the March 13, 2008 sentence is ambiguous. In his reply brief, Allen claims that he is entitled to more than five months of credit for time served at Level V while he was incarcerated for his various VOPs.

(7) We conclude that the Superior Court's June 25, 2008 denial of Allen's Rule 35(a) motion must be affirmed. First, the March 13, 2008 sentence, as modified on August 5, 2008, clearly states that Allen is to serve a total of two years at supervision Levels V, IV and III and successfully complete a Level V treatment program and Level IV Crest before moving between levels. Second, Allen did not raise his claim for credit for time

¹ Apparently, Allen's former counsel was unaware that this appeal was pending.

served in the Superior Court.² We decline to address the claim for the first time on appeal.³

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

BY THE COURT:

/s/ Carolyn Berger
Justice

² Credit for time served is not an appropriate basis for relief under the narrow function of Rule 35(a). *Fisher v. State*, 2008 WL 4216365 (Del. Supr.) (citing *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998)).

³ Del. Supr. Ct. R. 8.