

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| DERRICK L. JOHNSON, | § |
| | § |
| Petitioner Below- | § No. 287, 2009 |
| Appellant, | § |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| CARL DANBERG, Commissioner, | § in and for New Castle County |
| DEPARTMENT OF CORRECTION, | § C.A. No. 09M-04-028 |
| and PERRY PHELPS, Warden, | § |
| VAUGHN CORRECTIONAL | § |
| CENTER, | § |
| | § |
| Respondents Below- | § |
| Appellees. | § |

Submitted: July 14, 2009
Decided: August 20, 2009

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 20th day of August 2009, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Derrick Johnson, filed this appeal from the Superior Court's dismissal of his petition for a writ of mandamus. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Johnson's opening brief that the appeal is without merit. We agree and affirm.

(2) Johnson pled guilty in 1984 to second degree murder. He is serving a term of life imprisonment. He filed for a writ of mandamus asking that Commissioner Carl Danberg and Warden Perry Phelps of the Department of Correction be compelled to treat his life sentence as a term of 45 years and to reduce his prison term by good time credits. The Superior Court dismissed his petition as factually and legally frivolous. We agree.

(3) Johnson raised this exact issue in two prior proceedings, which were unsuccessful.¹ As we previously held, Johnson is not eligible for conditional release; therefore, “good time credit may only be applied to Johnson’s sentence to accelerate his parole eligibility date, not [to reduce] the length of his sentence.”² We will not reconsider this settled issue in this proceeding.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹ See *Johnson v. State*, 2006 WL 197178 (Del. Jan. 24, 2006); *Johnson v. State*, 2006 WL 1650802 (Del. June 13, 2006).

² *Johnson v. State*, 2006 WL 1650802 (Del. June 13, 2006).