

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GIBSON A. HALL,	§
	§ No. 389, 2010
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
CARL DANBERG et al.,	§ C.A. Nos. N10C-04-274
	§ N01M-04-123
Defendants Below-	§
Appellees.	§

Submitted: September 8, 2010

Decided: October 13, 2010

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

**ORDER**

This 13<sup>th</sup> day of October 2010, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Gibson A. Hall, filed an appeal from the Superior Court’s May 21, 2010 order dismissing his petition for a writ of mandamus. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the

face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record reflects that Hall is an inmate incarcerated at the James T. Vaughn Correctional Center in Smyrna, Delaware. He is serving a sentence of life imprisonment without benefit of parole,<sup>2</sup> plus 5 years of Level V incarceration, stemming from his 1979 convictions of Murder in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. In April 2010, Hall filed a complaint in the Superior Court alleging that the Department of Correction (“DOC”) had not properly reduced his sentence in accordance with his earned good time credits. His complaint made a 42 U.S.C. §1983 claim for money damages and also requested that the Superior Court order the DOC to apply his earned good time credits to his sentence.

(3) On May 5, 2010, the Superior Court dismissed Hall’s claim for money damages, but did not dismiss his petition for mandamus relief. On May 21, 2010, the Superior Court dismissed his petition for mandamus relief on the ground that, under *State v. Spence*, 367 A.2d 983, 990 (Del. 1976), he was not entitled to good time credits as a matter of law.

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> Del. Code Ann. tit. 11, §4209(a).

(4) In this appeal, Hall claims that the Superior Court erred by dismissing his claims under the *Spence* case. His position is that, while the good time statute, Del. Code Ann. tit. 11, §4381, was “judicially changed” when the *Spence* decision was issued in 1976, the language of the statute itself was not explicitly modified by the Legislature until 1989.<sup>3</sup> Thus, he argues, he is entitled to the benefit of the good time statute as it existed when he committed his crimes in 1979. According to Hall, the good time statute as it existed at that time permitted his life sentence to be reduced by statutory good time credits. Finally, Hall argues, applying his earned good time credits, his sentence is now complete and he must be released from prison immediately.

(5) In *Spence*, this Court dealt with the applicability of good time credits to a sentence of “life imprisonment without benefit of parole” under Del. Code Ann. tit. 11, §4209(a). The Court noted that there was “[n]o statutory base for the computation of ‘good time’ upon such [a] sentence. . . .” and concluded that, “[i]f good behavior credits are to be accorded to [such a sentence], the General Assembly must speak on the subject.”<sup>4</sup> As the Court held, “. . . the provisions of §4371 *et seq.* are not applicable to

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<sup>3</sup> At the time the *Spence* decision was issued, the statute governing earned good time was designated as §4371 of Title 11.

<sup>4</sup> *State v. Spence*, 367 A.2d at 990.

§4209(a); and . . . ‘life imprisonment without benefit of parole’ under §4209(a) means confinement for the balance of the life of the person convicted of first degree murder.”<sup>5</sup>

(6) We conclude that the Superior Court properly dismissed Hall’s claims on the basis of *Spence*. To begin with, the General Assembly has never acted to apply good time credits to life sentences without the benefit of parole. Moreover, Hall fails to cite to any authority, nor do we know of any, supporting his position that a previous version of §4381 permitted a sentence of life imprisonment without benefit of parole to be reduced by good time credits. The law as it was announced in *Spence* in 1976 clearly controls in Hall’s case. Finally, the rationale of *Kennish v. State*, Del. Super., C.A. No. 5089, Bifferato, J. (Dec. 7, 1976), relied upon by Hall in support of his claim, has been expressly overruled by this Court.<sup>6</sup> *Kennish* is factually distinguishable in any case.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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<sup>5</sup> Id.

<sup>6</sup> *Richmond v. State*, 446 A.2d 1091, 1095 (Del. 1982).

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/ Henry duPont Ridgely  
Justice