

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WALTER ALLEN,	§
	§ No. 212, 2011
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
PHIL MORGAN, Warden,	§ Cr. ID No. 0304013214
H.R.Y.C.I.,	§
	§
Respondent Below-	§
Appellee.	§

Submitted: May 26, 2011

Decided: June 22, 2011

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

**ORDER**

This 22<sup>nd</sup> day of June 2011, 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 petitioner-appellant, Walter Allen, filed an appeal from the Superior Court’s April 11, 2011 order dismissing his petition for a writ of habeas corpus. The respondent-appellee, Warden Morgan of H.R.Y.C.I.,<sup>1</sup> has moved to affirm the Superior Court’s judgment on the ground that it is

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<sup>1</sup> The Howard R. Young Correctional Institution.

manifest on the face of the opening brief that the appeal is without merit.<sup>2</sup>

We agree and affirm.

(2) On October 24, 2005, Allen pleaded guilty to Robbery in the First Degree and Possession of a Firearm During the Commission of a Felony. He was sentenced on the robbery conviction to 5 years of Level V incarceration, to be suspended after 2 years for 2 years of probation. On the weapon conviction, he was sentenced to 3 years of Level V incarceration. Allen did not appeal his convictions or sentences to this Court.

(3) In this appeal from the Superior Court's denial of his petition for a writ of habeas corpus, Allen claims that the Superior Court erroneously dismissed his petition. He argues that he is entitled to habeas corpus relief because he has been incarcerated beyond the maximum expiration date of his October 2005 sentence as a result of uncredited Level V time spent incarcerated in Pennsylvania.<sup>3</sup>

(4) The record before us reflects that the Level V time Allen spent incarcerated in Pennsylvania was on a sentence unrelated to the one at issue here. While it is settled Delaware law that an inmate must be credited with any period of actual incarceration when calculating the amount of Level V

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<sup>2</sup> Supr. Ct. R. 25(a).

<sup>3</sup> Allen also argues that, contrary to what is stated in the Superior Court's order, ineffective assistance of counsel was never raised as a ground for his petition.

time he has served,<sup>4</sup> this Court also has ruled that an inmate is not entitled to credit for Level V time served on an unrelated sentence.<sup>5</sup> As such, Allen is not entitled to credit for the time he spent incarcerated in Pennsylvania.

(5) Allen is not entitled to habeas corpus relief in any case. In Delaware, a writ of habeas corpus provides relief on a very limited basis. Habeas corpus only provides an opportunity for one illegally confined or incarcerated to obtain judicial review of the jurisdiction of the court ordering confinement.<sup>6</sup> There is no evidence in the record before us that the Superior Court lacked jurisdiction either to convict Allen or to sentence him. Because Allen's October 24, 2005 sentence is regular on its face, the Superior Court properly denied his petition for a writ of habeas corpus.<sup>7</sup>

(6) 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>4</sup> *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999); Del. Code Ann. tit. 11, §3901(c).

<sup>5</sup> *Brown v. State*, Del. Supr., No. 215, 2009, Jacobs, J. (June 5, 2009); Del. Code Ann. tit. 11, §3901(b).

<sup>6</sup> *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997).

<sup>7</sup> While we agree that Allen's petition was not grounded in a claim of ineffective assistance of counsel, it, nevertheless, was properly denied. *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

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/ Carolyn Berger  
Justice