

IN THE SUPREME COURT OF THE STATE OF DELAWARE

COREY CALDWELL,	§
	§
Defendant Below-	§ No. 257, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. No. IK01-10-0501
Plaintiff Below-	§
Appellee.	§

Submitted: July 9, 2003
Decided: August 27, 2003

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

ORDER

This 27th day of August 2003, 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, Corey Caldwell, filed an appeal from the Superior Court's April 23, 2003 order denying his motion for credit for time served. The State of Delaware has moved to affirm the Superior Court's

judgment on the ground that it is manifest on the face of Caldwell's opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) On December 10, 1998, Caldwell was found guilty by a Superior Court jury of Possession With Intent to Deliver Cocaine, Possession of Drug Paraphernalia and Resisting Arrest. On appeal, this Court reversed Caldwell's convictions and remanded the case for a new trial.² The State did not retry Caldwell on those charges.

(3) In October 2001, Caldwell was arrested on six new charges, including Trafficking in Cocaine. On September 17, 2002, the day of trial, Caldwell pleaded guilty to a single count of Possession with Intent to Deliver Cocaine. He was sentenced to 10 years incarceration at Level V, to be suspended after 8 years for 2 years Level III probation. The State dismissed the remaining charges.

(4) In this appeal, Caldwell claims that, because he served approximately 29 months incarcerated at Level V before his 1998 convictions were reversed, he should be given credit for that time on his 2002 sentence.

¹SUPR. CT. R. 25(a).

²*Caldwell v. State*, 770 A.2d 522 (2001). This Court concluded that the prosecution's use of an out-of-court statement by a non-testifying witness was improper.

(5) A defendant sentenced to Level V incarceration is entitled to have his sentence credited with all Level V time previously served in connection with that sentence.³ While the Superior Court may, in its discretion, credit Level V time served on one sentence to another sentence,⁴ a defendant has no entitlement to such credit. Caldwell was not entitled to Level V credit on his current sentence and we find no abuse of discretion on the part of the Superior Court in denying Caldwell's request for such credit.

(6) It is manifest on the face of Caldwell's 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, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

³*Gamble v. State*, 728 A.2d 1171 (1999); *Ricketts v. State*, Del. Supr., No. 419, 2000, Veasey, C.J. (Jan. 2, 2001).

⁴*Stevenson v. State*, Del. Supr., No. 304, 2001, Berger, J. (Sept. 17, 2002) (Superior Court credited 2001 drug sentence with Level V time erroneously served by defendant for violation of probation on 1991 robbery sentence that had already expired.)

/s/ Carolyn Berger
Justice