

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFFREY A. RIBOLLA,	§
	§ No. 140, 2001
Petitioner Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ C.A. No. 01M-03-001
Respondent Below-	§ ID No. 9604011078
Appellee.	§

Submitted: July 5, 2001

Decided: August 2, 2001

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

ORDER

This 2nd day of August 2001, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Jeffrey Ribolla, filed this appeal from the Superior Court's denial of his petition for a writ of habeas corpus. The gist of Ribolla's complaint is that the Superior Court illegally sentenced him to concurrent terms of incarceration, and the Department of Correction lacks authority to interpret his illegal sentences as being served consecutively. The State of Delaware has

moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Ribolla's opening brief that the appeal is without merit.¹

(2) The record reflects that Ribolla pled guilty in January 1997 to one count of first degree conspiracy and one count of first degree criminal solicitation. The plea agreement, which was entered into pursuant to Superior Court Criminal Rule 11(e)(1)(C), reflects that the State and Ribolla agreed to a total sentence on both charges of ten years at Level V incarceration, to be suspended after four years for one year at Level III probation, followed by two years at Level II probation, followed by two years at Level I probation. Following the guilty plea colloquy, the Superior Court accepted the parties' agreement and sentenced Ribolla on each charge to five years at Level V incarceration, to be suspended after serving two years for one year at Level III probation, followed by two years Level II probation, followed by two years at Level I probation.

¹Supr. Ct. R. 25(a).

(3) Ribolla filed unsuccessful petitions for correction of sentence and habeas relief. Ribolla contended that the Superior Court's sentencing order specified that his sentences were to be served concurrently, and concurrent sentence are illegal under 11 Del. C. § 3901(d).² Thus, Ribolla concedes that he agreed to serve four years at Level V pursuant to the clear terms of his guilty plea agreement. He also concedes that the Superior Court could not legally impose the two two-year prison terms to run concurrently. Notwithstanding these concessions, however, Ribolla appears to argue that he should only be required to spend two years in prison and that the Department of Correction is improperly interpreting his two two-year prison terms to run consecutively. We find no merit to this claim.

(4) It is clear from the record that the parties agreed, and the Superior Court intended, to sentence Ribolla to serve four years in prison followed by five years of decreasing levels of supervision. Although inartfully worded, the Superior Court's sentencing order imposed two consecutive two-year prison terms, followed by two concurrent five-year probationary terms. This is exactly

²11 Del. C. § 3901(d) provides, "No sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant."

the sentence that Ribolla bargained for. He has no basis on this undisputed record to argue otherwise.

(5) It is manifest on the face of Ribolla's opening brief that his appeal is without merit because the issues presented in this appeal are clearly 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's motion to affirm is GRANTED The judgment of the Superior Court is hereby AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice