

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WAYNE OLIN REVEL,	§	
	§	
Defendant Below-	§	No. 273, 2003
Appellant,	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for Kent County
	§	Cr.A. Nos. K96-03-0139; 0140;
Plaintiff Below-	§	0142; 0143;
Appellee.	§	0988

Submitted: June 26, 2003
Decided: August 11, 2003

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 11th 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, Wayne Olin Revel, filed an appeal from the Superior Court's May 14, 2003 order denying his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, 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 Revel's opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In March 1996, Revel pleaded guilty to Burglary in the Second Degree, Theft (Senior), Resisting Arrest, and two counts of Misdemeanor Theft. He was sentenced to a total of 4½ years incarceration at Level V, to be suspended after 1½ years for decreasing levels of probation.² Revel filed two motions for reduction/modification of sentence, which the Superior Court denied by order dated October 4, 1996. On January 28, 1997, the Superior Court modified its sentencing order by suspending the Level V time remaining on Revel's burglary sentence for eighteen months at Level III probation, with substance abuse aftercare treatment.³

(3) Revel has committed five separate violations of probation (VOP's) since being sentenced in 1996.⁴ At his latest VOP hearing on September 9, 2002, the Superior Court revoked Revel's probation and reimposed Level V sentences of eight months on the burglary conviction, 6

¹SUPR. CT. R. 25(a).

²Revel's sentence on the burglary conviction was two years Level V incarceration, to be suspended after eighteen months for six months at Level IV. The sentencing order also noted that, upon successful completion of a substance abuse program, the balance of the Level V time would be suspended for Level IV probation.

³At that point, Revel had served eight months of his two-year sentence for burglary.

⁴All of Revel's VOP sentences in connection with his burglary conviction resulted in probation except for a sixty-day sentence imposed on June 21, 2002.

months on the theft conviction, and nine months on the theft (senior) conviction.

(4) In this appeal, Revel claims that the Superior Court should have granted his motion for correction of his burglary sentence because he has already served two years at Level V on that sentence.

(5) We find no merit to Revel's claim. The record does not reflect that Revel has already completed the two-year Level V sentence originally imposed on his burglary conviction. Rather, the relevant sentencing orders, which are dated between May 31, 1996 and September 9, 2002, reflect that Revel has served only 10 months of his original two-year sentence on his burglary conviction.⁵ Thus, the eight-month sentence imposed by the Superior Court on September 9, 2002 in connection with Revel's burglary conviction was within the time remaining on his original sentence and, therefore, proper.⁶

(6) It is manifest on the face of Revel'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.

⁵That is, eight months per the January 28, 1997 order and sixty days per the June 21, 2002 order.

⁶*Ingram v. State*, 567 A.2d 868-69 (Del. 1989).

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:

/s/ Randy J. Holland
Justice