

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES JOHNSON,	§
	§ No. 355, 2013
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 30307654DI
	§ C.A. No. N13M-06-090
Respondent Below-	§
Appellee.	§

Submitted: October 11, 2013
Decided: November 13, 2013

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices

ORDER

This 13th day of November 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The petitioner-appellant, James Johnson, filed an appeal from the Superior Court's June 20, 2013 order denying his petition for a writ of habeas corpus. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that Johnson was indicted on charges of Possession With Intent to Deliver Cocaine and Possession of Cocaine in January 1986. In April 1986, he was indicted on additional charges of Robbery in the First Degree, Conspiracy in the Second Degree, Kidnapping in the Second Degree, Possession of a Deadly Weapon During

the Commission of a Felony and Possession of a Deadly Weapon By a Person Prohibited. Finally, in September 1987, he was indicted on charges of Burglary in the Third Degree, Conspiracy in the Second Degree, Felony Theft and Criminal Mischief.

(3) On November 2, 1987, Johnson pleaded guilty to Robbery in the First Degree, Possession With Intent to Deliver Cocaine and Burglary in the Third Degree in exchange for which the State dismissed the remaining charges in all three indictments. Johnson was sentenced to ten years of Level V incarceration on the robbery conviction. He was sentenced to two years at Level V on the possession with intent to deliver conviction. Finally, he was sentenced to three years at Level V on the burglary conviction.

(4) On January 15, 1993, Johnson was released from prison on parole. In September 1993, he was arrested on new felony charges. In February 1995, Johnson was found guilty in a jury trial of Robbery in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony, Conspiracy in the Second Degree and Possession of a Deadly Weapon By a Person Prohibited. In June 1995, he was sentenced to a total of twenty-four years at Level V, to be suspended after twenty years for decreasing levels of supervision. This Court affirmed Johnson's convictions

on direct appeal.¹ This Court also affirmed the Superior Court's denial of Johnson's motion for postconviction relief.²

(5) On December 24, 1997, as the result of those new convictions, the Board of Parole revoked Johnson's parole and re-imposed the remainder of his previous sentence---seven years, one month and three days at Level V--to be served consecutively to his sentences on the new convictions. Over the next several years, Johnson filed multiple motions for sentence reduction, all of which were denied by the Superior Court. In or about February 2012, the Department of Correction submitted an application for a reduction of Johnson's sentence to the Board of Parole pursuant to Del. Code Ann. tit. 11, §4217. The Board of Parole recommended that the application for sentence reduction be granted.

(6) On May 16, 2012, the Superior Court granted the application for sentence reduction and modified Johnson's sentence to suspend all of his Level V time. The record reflects that Johnson subsequently was placed in the Level IV Crest Program and then in Level IV Work Release. The Superior Court's May 16, 2012 order later was vacated by the Superior Court by order dated August 22, 2012. Johnson did not file an appeal from that order. As the Superior Court explained to Johnson in its February 21,

¹ *Johnson v. State*, 1996 WL 69829 (Del. Feb. 9, 1996).

² *Johnson v. State*, 1996 WL 683779 (Del. Nov. 19, 1996).

2013 letter, the previous order was vacated because an investigation revealed that not all of Johnson's sentences had been brought to the attention of the Board of Parole by the Department of Correction, placing in doubt the Board's recommendation that Johnson's sentence be reduced.

(7) Johnson subsequently filed another motion for sentence reduction, which was denied by the Superior Court on October 3, 2012. The record does not reflect that Johnson filed an appeal from that order. Johnson's two petitions for habeas corpus relief also were denied by the Superior Court. Johnson's instant appeal is from the denial of his second petition for a writ of habeas corpus.

(8) In his appeal, Johnson claims that a) the Superior Court relied on erroneous information when it vacated its May 16, 2012 order suspending his Level V time; and b) the Department of Correction has failed to submit corrected information as directed by the Superior Court.

(9) In Delaware, the writ of habeas corpus provides relief on a very limited basis.³ Habeas corpus only provides "an opportunity for one illegally confined or incarcerated to obtain judicial review of the jurisdiction of the court ordering the commitment."⁴ Habeas corpus relief is not available to "[p]ersons committed or detained on a charge of treason or

³ *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997).

⁴ *Id.*

felony, the species whereof is plainly and fully set forth in the commitment.”⁵ Moreover, the extraordinary writ process may not be used as a substitute for a timely-filed appeal.⁶

(10) In this case, Johnson is being held at Level V pursuant to the Superior Court’s June 5, 1995 sentencing order as well as the Board of Parole’s December 24, 1997 reinstatement of the remaining Level V time on his November 2, 1987 Level V sentences. Although the Superior Court reduced Johnson’s sentence by order dated May 16, 2012, it subsequently vacated that order on August 22, 2012 based upon information that was not originally presented to the Superior Court. Johnson did not file an appeal from the Superior Court’s August 22, 2012 order or its subsequent order dated October 3, 2012, which denied his latest motion for sentence reduction. He instead filed two petitions for habeas corpus relief. Johnson may not use a petition for a writ of habeas corpus as a substitute for a timely-filed appeal. Based upon all of the above, we conclude that the Superior Court properly denied Johnson’s petition for a writ of habeas corpus.

⁵ Id. (quoting Del. Code Ann. tit. 10, §6902(1)).

⁶ *In re Barbee*, 693 A.2d 317, 319 (Del. 1997).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice