

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DENNIS A. ELLIOTT,	§	
	§	
Defendant Below-	§	No. 540, 2003
Appellant,	§	
	§	
v.	§	Court Below – Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. No. IN01-08-0015
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: November 21, 2003
Decided: January 20, 2004

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

ORDER

This 20th day of January 2004, 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, Dennis A. Elliott, filed an appeal from the Superior Court's October 22, 2003 corrected sentencing order. 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 Elliott's opening brief that the appeal is without merit.¹ We agree and affirm.

¹ Supr. Ct. R. 25(a).

(2) On December 19, 2002, Elliott pleaded guilty to Burglary in the Third Degree and Possession of Burglar Tools. He was sentenced to 3 years incarceration at Level V, to be suspended after 18 months for 18 months of probation. The effective date of the sentence was June 17, 2002, reflecting credit for the time the Superior Court judge believed Elliott had spent continuously at Level V awaiting trial.²

(3) The Superior Court subsequently ascertained that Elliott had not been in custody continuously between June 17, 2002 and December 19, 2002.³ On October 22, 2003, the Superior Court issued a corrected sentencing order, which changed the effective date of the sentence to September 24, 2002, the first day of the period Elliott continuously spent at Level V awaiting trial on the burglary charges.

(4) The Superior Court has the authority to correct “errors in the record arising from oversight or omission . . . at any time.”⁴ The effective date in the Superior Court’s original sentencing order was based upon an oversight on the part

² Del. Code Ann. tit. 11, § 3901(b) (2001).

³ It appears that Elliott was arrested on a capias on June 17, 2002, released on bail on July 11, 2002, and arrested on another capias on September 24, 2002.

⁴ Super. Ct. Crim. R. 36.

of the sentencing judge and, therefore, was appropriately corrected by the issuance of a corrected sentencing order.⁵

(5) It is manifest on the face of Elliott's opening brief that the 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:

/s/ Randy J. Holland
Justice

⁵ The sentence also was illegal, since it gave Elliott Level V credit for a period of time he was not incarcerated. Del. Code Ann. tit. 11, § 3901(b) (2001).