

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|---------------------|--------------------------------|
| JEROME K. HAMILTON, | § |
| | § |
| Defendant Below- | § No. 427, 2001 |
| Appellant, | § |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for New Castle County |
| | § Cr.A. Nos. IN76-08-0906 |
| Plaintiff Below- | § IN76-08-0907 |
| Appellee | § |

Submitted: January 8, 2002

Decided: March 5, 2002

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

ORDER

This 5th day of March 2002, 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, Jerome K. Hamilton, filed an appeal from the Superior Court's August 14, 2001 order denying his motion to correct a clerical mistake pursuant to Superior Court Criminal Rule 36. The plaintiff-appellee State of Delaware has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Hamilton's opening brief that the appeal is without merit. We agree and **AFFIRM**.

(2) Hamilton is currently serving sentences for several felonies.¹ In this appeal, Hamilton claims that his sentences for Robbery in the First Degree (IN76-08-0906) and Conspiracy in the Second Degree (IN76-08-0907) are illegal because: a) the sentencing order for those convictions is dated September 2, 1988, but the sentence commitment is dated October 13, 1988; and b) while the Superior Court's order below states that he was sentenced on December 14, 1988, a letter from a court reporter states that there were no court proceedings on that date.

(3) Hamilton's claim that his sentences for Robbery in the First Degree and Conspiracy in the Second Degree are illegal is without any factual basis. At most, all Hamilton has done is point to apparent inconsistencies, first, between the date of the sentencing order and the date of the sentence commitment and, second, between the sentencing date reflected in the Superior Court's order below and a letter from a court reporter stating there were no court proceedings on that date. These apparent inconsistencies are insufficient to establish that Hamilton is currently serving an illegal sentence.² Moreover, Hamilton has

¹See *Hamilton v. State*, 769 A.2d 743, 745 (Del. 2001) for a complete explication of Hamilton's various sentences.

²SUPER. CT. CRIM. R. 35; *Tatem v. State*, 787 A.2d 80, 81(Del. 2001).

failed to demonstrate any prejudice to him as a result of these apparent inconsistencies.³

(4) It is manifest on the face of Hamilton'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:

/s/ Myron T. Steele
Justice

³DEL. CODE ANN. tit. 11, § 4501(1953); SUPER. CT. CRIM. R. 52(a).