

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERMAINE L. MALLOY,	§	
	§	No. 605, 2003
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware, in and
v.	§	for Kent County in C.A. No.
	§	03M-012-006.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0202012620

Submitted: March 29, 2004

Decided: June 28, 2004

Before **STEELE**, Chief Justice, **HOLLAND and JACOBS**, Justices.

ORDER

This 28th day of June 2004, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Jermaine L. Malloy, filed this appeal from the Superior Court's order of December 11, 2003, that denied his petition for a writ of habeas corpus. The appellee, State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Malloy's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In March 1998, Malloy pleaded guilty to Unlawful Sexual Intercourse in the Third Degree (Malloy 1). He was sentenced, as modified, to five years at Level V, suspended after thirty months, for one year at Level IV followed by one year at Level III.¹

(3) In February 2002, Malloy was charged with having violated probation in Malloy 1, and he was arrested and charged, in April 2002, with having committed several new offenses (Malloy 2). In Malloy 1, he was found in violation of probation (VOP) and was sentenced, on May 23, 2002, to two years and eight months at Level V, suspended after serving nine months, or upon successful completion of the Level V Key Program. In Malloy 2, he pled guilty and was sentenced on January 2, 2003, to a total of six years at Level V imprisonment, suspended after two years, followed by two years at Level III and two years at Level II.²

(4) On December 10, 2003, Malloy filed a petition for writ of habeas corpus in the Superior Court. Malloy contended that he was being detained past his release date of December 6, 2003. In support of his claim, Malloy

¹*State v. Malloy*, Del. Super., Def. ID No. 9708006741, Vaughn, J. (April 3, 2000).

²*State v. Malloy*, Del. Super., Def. ID No. 0202011903, Witham, J. (Jan. 2, 2003).

alleged that the Department of Correction had refused to credit him with time served from February 16, 2002 on the sentence imposed on January 2, 2003 in Malloy 2.

(5) By order dated December 11, 2003, the Superior Court denied Malloy's petition. The Court determined that the January 2, 2003 sentence in Malloy 2, notwithstanding the February 16, 2002 effective date stated in the sentencing order, did not start until October 28, 2002, after Malloy had finished the nine-month VOP sentence that was imposed on May 23, 2002 in Malloy 1. This appeal followed.

(6) The Court has reviewed the parties' respective positions carefully. We find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's decision dated December 11, 2003.

(7) Malloy is correct that the January 2, 2003 sentencing order in Malloy 2 states that the sentence was "[e]ffective February 16, 2002." Nonetheless, notwithstanding the February 16, 2002 effective date that was provided in the sentencing order,³ Malloy could not begin that sentence until he

³In the event of conflict between the quantum of the sentence imposed and the effective date contained in the sentencing order, the former controls. *Frye v. State*, 236 A.2d 424, 425 (Del. 1967).

had first finished the nine-month sentence that was previously imposed on May 23, 2002, in Malloy 1.⁴

(8) Moreover, Malloy is correct that he is entitled to credit for the time that he spent in prison from February 16, 2002.⁵ According to Malloy's Department of Correction Offender Status Sheet, however, he received that credit on his VOP sentence imposed on May 23, 2002 in Malloy 1. He is not entitled to have the credit applied also on the sentence imposed on January 2, 2003 in Malloy 2.⁶

⁴See Del. Code Ann. tit. 11, § 3901(d) (mandating consecutive sentencing for criminal defendants).

⁵Del. Code Ann. tit. 11, § 3901(c); *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

⁶*Adams v. State*, 2003 WL 1890012 (Del. Supr.).

(9) In Delaware, the writ of habeas corpus provides relief on a very limited basis. Habeas corpus provides only “an opportunity for one illegally confined or incarcerated to obtain judicial review of the jurisdiction of the court ordering the commitment.”⁷ This Court has held that, when reviewing a request for habeas corpus relief, “the only material fact to be ascertained . . . is the existence of a judgment of conviction by a court of competent jurisdiction and a valid commitment to enforce the sentence.”⁸

(10) In this case, Malloy was convicted by a court of competent jurisdiction and is serving a term of imprisonment on a valid commitment that has not expired. As a result, Malloy is not entitled to habeas corpus relief.

(11) It is manifest on the face of Malloy’s opening brief that this appeal is without merit. The issues presented in this appeal are clearly controlled by settled Delaware law.

⁷*Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997) (citing *In re Pitt*, 541 A.2d 554, 557 Del. 1988).

⁸*Skinner v. State*, 135 A.2d 612, 613 (Del. 1957) (citing *Curran v. Woolley*, 104 A.2d 771, 773 (Del. 1954).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the judgment of the Superior Court denying the petition for a writ of habeas corpus is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice