

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WARD T. EVANS,	§	
	§	No. 67, 2004
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 88K01678DI
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 22, 2004

Decided: November 23, 2004

Before **STEELE**, Chief Justice, **HOLLAND**, **BERGER** and **JACOBS**, Justices, and **HARTNETT**, Justice (Retired),¹ constituting the Court *en Banc*.

Upon appeal from Superior Court. **REVERSED and REMANDED.**

Ward T. Evans, Smyrna, Delaware; *Pro Se* Appellant.

Loren C. Meyers and Gregory E. Smith, Esquires, Deputy Attorneys General, Department of Justice, Wilmington; for Appellee.

Per Curiam:

¹ Sitting by designation pursuant to DEL. CONST. art. IV, § 38 and DEL. CODE ANN. tit. 29, § 5610(a)(2) (2001) and DEL. SUPR. CT. R. 2, 4.

The defendant below, Ward T. Evans, appeals from an order of the Superior Court denying his motion for correction of an illegal sentence. We reverse the Superior Court's denial of Evans' motion and remand the case to the Superior Court for a determination of whether Evans has earned any good behavior or merit credits, and for a recalculation of Evans' conditional release date consistent with our holding that Evans' life sentence should be considered a 45-year term.

Facts

On September 29, 1982, a jury convicted Evans of first degree rape. Evans was sentenced to life in prison with the possibility of parole. The status sheet completed by the Department of Corrections did not give Evans a conditional release date. Rather, it listed Evans' maximum release date as "death" and recites his maximum sentence, less good time, as "life."

In 1993, 1996 and 1999, the Board of Parole denied Evans' requests for parole. On January 8, 2004, Evans filed a motion with the Superior Court, claiming that his sentence was illegal. Evans argued that under the conditional release statute he was entitled to have a conditional release date calculated as if his life sentence were a 45-year term.

The Superior Court denied Evans' motion, and Evans appealed. On appeal Evans maintains that this Court's decision in *Crosby v. State*² requires that his life

² 824 A.2d 894 (Del. 2003).

sentence be calculated as a 45-year term for purposes of determining his qualification for conditional release. We agree.

***The Proper Term of Years for Calculating
Evans' Conditional Release Date***

Evans' appeal presents issues of statutory interpretation, which this Court reviews *de novo*.³ As long as a sentence falls within the statutory maximum, an order of the Superior Court denying a motion for modification of that sentence is reviewed for abuse of discretion.⁴

Under Superior Court Rule 35(a), a defendant is entitled to have an illegal sentence corrected at any time. Evans argues that his sentence, as applied by the Department of Corrections, is illegal, because it does not provide a conditional release date. Evans urges that the conditional release statute⁵ incorporates the definition of a life sentence that is set forth in the parole statute,⁶ and that under that latter definition, his life sentence must be fixed as a 45-year term for purposes of calculating his conditional release date.

Sections 4346 and 4348 of Title 11 establish the rules for the parole and the conditional release of inmates. For purposes of determining eligibility for parole,

³ *State v. Lewis*, 797 A.2d 1198, 1199 (Del. 2002); *Jackson v. Multi-Purpose Criminal Justice Facility*, 700 A.2d 1203, 1205 (Del. 1997).

⁴ *Lewis*, 797 A.2d at 1202; *Mayer v. State*, 604 A.2d 839, 842-43 (Del. 1992).

⁵ 11 *Del. C.* § 4348.

⁶ 11 *Del. C.* § 4346.

Section 4346(c) expressly states that a life sentence should be considered “a fixed term of 45 years.” Section 4348 provides that an inmate is entitled to conditional release at the expiration of the maximum term sentenced, less any merit and good time credits earned. Although Section 4348 contains no separate definition of “life sentence,” it does provide that a person conditionally released shall “be deemed as released upon parole.”

Evans contends that Section 4348 incorporates Section 4346(c)’s definition of a life sentence as a 45-year term. In 1997, in *Jackson v. Multi-Purpose Criminal Justice Facility*, this Court held that Section 4348 did not incorporate the 45-year term defined by Section 4346. In 1998, however, we expressly overruled that holding in *Crosby v. State*, in which we held that Sections 4346(c) and 4348 must be read *in pari materia*, and that as so read, Section 4348 incorporates Section 4346(c)’s definition of a life sentence as a 45-year term.

We noted in *Crosby* that Sections 4346 and 4348 were enacted at the same time and are contained in the same chapter of the Delaware Code. Section 4346(c) provides that a life sentence must be considered as a 45-year term for purposes of both determining eligibility for parole under Section 4346(a) and accelerating that eligibility through merit and good behavior credits. Section 4348 provides that an inmate’s conditional release date can be accelerated by merit and good behavior credits, and that conditional release shall “be deemed as on parole.” On that basis,

we conclude that Section 4348 incorporates Section 4346(c)'s definition of a life sentence as a fixed 45-year term.⁷

Our ruling in *Crosby* controls Evans' life sentence. As such, that sentence is illegal because Evans' maximum release date does not reflect that 45-year term. Although the State urges us to limit our holding in *Crosby* to felons sentenced under the habitual offender statute, there is no principled way to read *Crosby* in that manner. Although the defendant in *Crosby* was sentenced under the habitual criminal statute,⁸ our holding with respect to Sections 4346(c) and 4348 did not in any way turn on that fact.

We limit our holding in this case to crimes committed before June 30, 1990, the effective date of the Truth in Sentencing Act of 1989. That Act prospectively eliminated good time credits for inmates serving a life sentence imposed for a Class A felony.⁹ As we recognized in *Crosby*, by eliminating such good time credits, the General Assembly intended that a life sentence imposed for Class A felonies would no longer be considered a term of 45 years, but rather would be a

⁷ *Crosby*, 824 A.2d at 899.

⁸ 11 *Del. C.* § 4214.

⁹ 11 *Del C.* § 4381(a).

natural life sentence.¹⁰ The Truth in Sentencing Act does not control Evans' sentence, however, because the crime for which he was sentenced was committed before June 30, 1990. Accordingly, Evans is entitled to have his conditional release date accelerated by whatever good time credits he has earned or may earn in the future.

Both parties raise the issue of whether Evans has earned any good time or merit credits.¹¹ The record does not contain sufficient information to permit a calculation of Evans' good time or merit credits. On remand, the Superior Court shall address that issue, so that any credits earned by Evans will be applied to the 45-year term so as to advance his conditional release date.

Conclusion

For the foregoing reasons, the Superior Court's order refusing to modify Evans' sentence was erroneous. The judgment of the Superior Court is therefore reversed and this matter is remanded to the Superior Court for a determination of

¹⁰ *Crosby*, 824 A.2d at 900. The General Assembly, by amending the Delaware Code in this manner, impliedly recognized that before the amendments a life sentence was not for a person's natural life, but rather for a 45-year term.

¹¹ 11 *Del. C.* § 4382 (1987) allows an inmate to earn good behavior ("good time") credits when he has not been guilty of any violation of discipline or any rules of the Department of Corrections. 11 *Del. C.* § 4384 (1987) allows an inmate to earn merit credits by participating in rehabilitation programs offered by the Department of Corrections. Section 4384 was repealed by 67 Del. Laws, c. 130, effective July 17, 1989, and the provisions for "good time" credits are now contained in Section 4381.

whether Evans has earned any good time or merit credits, and for an appropriate adjustment of his “maximum release date.”