

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRONE HAMMOND,	§
	§
Defendant Below-	§ Nos. 453, 2002 and 505, 2002
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ C.A. No. 02M-07-065
	§ Cr. ID No. 9803012415
Plaintiff Below-	§
Appellee.	§

Submitted: November 25, 2002
Decided: December 20, 2002

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

ORDER

This 20th day of December 2002, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant Terrone Hammond filed these appeals from the Superior Court's order, dated July 23, 2002, denying his petition for a writ of habeas corpus and from the Superior Court's order, dated August 6, 2002, denying his motion for modification of sentence. On appeal, Hammond contends that the Superior Court has improperly denied him credit for time he served at Level V prior to entering boot camp. The State has moved to affirm the Superior Court's

respective judgments on the ground that it is manifest on face of Hammond's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Hammond was arrested and pleaded guilty in October 1998 to one count of trafficking in cocaine. On December 11, 1998, the Superior Court entered a judgment of conviction but deferred sentencing, pursuant to 11 Del. C. § 6712(d), and diverted Hammond to the first offender's boot camp program, consisting of at least six months at a boot camp facility followed by two and a half years of probation supervision. Hammond asserts that he was held at Level V until May 5, 1999, pending space available at boot camp.

(3) In October 2001, Hammond was arrested on new felony drug charges. As a result, he was charged with violating his boot camp probation. As required by 11 Del. C. § 6712(h), the Superior Court sentenced Hammond, in March 2002, on the 1998 trafficking conviction to a mandatory term of three years at Level V incarceration followed by two years of probation. The Superior Court credited Hammond with time he previously served at Level V awaiting space at boot camp. Hammond did not appeal from the VOP adjudication and sentence. Instead, he filed a motion for modification of sentence and also a petition for a writ of habeas corpus.

(4) The gist of Hammond's complaint is that the time he served at Level V awaiting space at boot camp should have been credited against, thereby

reducing, his boot camp follow-up probationary period. Under Hammond's theory, his boot camp probationary period should have ended in early October 2001, three years from the date he was first incarcerated on the trafficking charge. Thus, Hammond argues, he was no longer on probation on October 26, 2001, the day he was arrested on new felony charges.

(5) We find no merit to Hammond's argument. Although Hammond is correct that a defendant is entitled to credit against a sentence for all time served at Level V on that sentence,¹ he misapplies this general rule to his case. In fact, a defendant can only receive credit time when in fact a sentence exists to which the credit can be applied. In Hammond's case, sentencing on his guilty plea for the trafficking conviction was *deferred* in order to permit Hammond the opportunity to successfully complete a more lenient, alternative first offender's program rather than receiving a minimum mandatory prison term for trafficking.² The conditions of the diversion program required Hammond to successfully complete six months at boot camp, followed two and a half years of follow-up supervision at Levels IV and III. As Hammond concedes, he did not begin boot camp until May 1999. His follow-up supervision, therefore, could not have concluded prior to May 2002.

¹ *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

² DEL. CODE ANN. tit. 11, § 6712(d).

(6) Hammond cites no authority for his argument that credit for time spent at Level V incarceration can be applied to reduce a term of probation, and we find that no such authority exists. If, in fact, Hammond had successfully completed the diversion program, the time he spent at Level V awaiting placement in the program would have been a nullity. As it happened, Hammond violated the terms of the diversion program and then received a mandatory prison sentence on the trafficking conviction, to which credit was properly given for the time he had previously served awaiting placement. To the extent Hammond is arguing he also should have received credit for the six months spent at boot camp, he is simply wrong.³ We find no error in the Superior Court's denial of Hammond's petition for a writ of habeas corpus or his motion for modification of sentence.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice

³ See *Whitner v. State*, 762 A.2d 18, 19 (Del. 2000) (holding that a defendant who was diverted to the boot camp program as a first offender under 11 Del. C. 6712(d) is not entitled to credit for time spent at boot camp upon a subsequent VOP adjudication and sentencing).