

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RODNEY NESMITH,	§	
	§	
Petitioner Below-	§	No. 538, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
THOMAS CARROLL and	§	in and for New Castle County
REBECCA McBRIDE,	§	C.A. No. 04M-10-061
	§	
Respondents Below-	§	
Appellees.	§	

Submitted: January 7, 2005  
Decided: February 3, 2005

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

**ORDER**

This third day of February 2005, 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 petitioner-appellant, Rodney Nesmith, filed an appeal from the Superior Court's November 17, 2004 order dismissing his petition for a writ of mandamus. The respondents-appellees, Thomas Carroll and Rebecca McBride,<sup>1</sup> have moved to affirm the Superior Court's judgment on the ground that it is

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<sup>1</sup> Both are prison officials.

manifest on the face of Nesmith's opening brief that the appeal is without merit.

We agree and AFFIRM.

(2) In November 1999, Nesmith pleaded guilty to Burglary in the Second Degree, and acknowledged that he was eligible for sentencing as an habitual offender.<sup>2</sup> He was sentenced on that charge to 8 years incarceration at Level V and was simultaneously sentenced for a violation of probation to one year incarceration at Level V, to be suspended for one year at Level III probation.

(3) In October 2004, Nesmith filed a petition for a writ of mandamus in the Superior Court, claiming that the Department of Correction had not properly credited him with 276 days of statutory good time.<sup>3</sup> The Superior Court summarily dismissed the petition on the ground that the claim was repetitive.

(4) The Superior Court properly dismissed Nesmith's petition as repetitive. The record reflects that Nesmith made the same claim in a petition for a writ of habeas corpus, which was denied by order of the Superior Court dated September 1, 2004. The Superior Court determined at that time that Nesmith's claim was factually incorrect, since the short term release date on his sentence status sheet was October 6, 2006, reflecting that credit for 276 days of statutory

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<sup>2</sup> Del. Code Ann. tit. 11, § 4214(a).

<sup>3</sup> Del. Code Ann. tit. 11, § 4381.

good time already had been applied to his sentence's maximum expiration date of July 9, 2007.

(5) It is manifest on the face of Nesmith'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 appellees' motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice