

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD PEREZ,	§
	§
Defendant Below-	§ No. 561, 2001
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ C.A. No. 01M-10-025
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 1, 2002

Decided: April 10, 2002

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

ORDER

This 10th day of April 2002, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Richard Perez, filed this appeal from the Superior Court's dismissal of his petition for a writ of mandamus. Perez sought a writ of mandamus directing Delaware correctional authorities to credit Perez with time he has served in a Delaware prison since January 27, 1996 toward the sentence imposed by the Superior Court on April 24, 1993. The Superior Court dismissed the petition on the ground that Perez had failed to establish a clear legal right to the relief requested.

(2) The record reflects that Perez was sentenced on September 11, 1992 in Hartford County, Maryland to a twenty-year mandatory term of incarceration. The Maryland court's order indicated that the sentence was to run concurrently with any other outstanding or unserved sentence. Thereafter, Perez was transferred to Delaware to stand trial on an open rape charge. He pled guilty to one count of third degree unlawful sexual intercourse, and the Superior Court sentenced him on April 26, 1993 to seven years at Level V incarceration. The Superior Court sentencing order indicated that if Perez was serving another sentence, that sentence was to be suspended until completion of the April 26, 1993 sentence. After the Delaware sentencing proceeding, Perez was transferred back to Maryland to serve his Maryland sentence. On January 27, 1996, Perez was transferred back to Delaware pursuant to an Interstate Corrections Compact Agreement.

(3) In his opening brief on appeal, Perez contends that he was transferred to Delaware in 1996 to begin serving his seven-year Delaware sentence. Perez therefore seeks credit toward his Delaware sentence for all of the time he has served in the Delaware prison system since January 27, 1996. Moreover, Perez appears to contend that the time he has served on his Delaware sentence since January 27, 1996 should also be credited to his Maryland sentence because the Maryland sentencing order expressly

provided that the sentence should be served concurrently to any other sentence. Perez contends that the Superior Court erred in dismissing his mandamus petition because the court misconstrued his petition as a request for credit toward his Delaware sentence for the time Perez served in the Maryland prison.

(4) We have reviewed the record and the parties' respective positions carefully. It appears from the record that the Superior Court may have misconstrued Perez's argument. Nonetheless, we agree with the Superior Court's ultimate conclusion that Perez failed to establish a clear legal right to mandamus relief. The record reflects that Perez was transferred to Delaware in 1996 pursuant to the Interstate Corrections Compact in order to finish serving his twenty-year Maryland sentence.¹ Even though the 1992 Maryland sentencing order permitted Perez to serve his twenty-year Maryland sentence concurrent with any other outstanding sentence, the Delaware sentencing order was not entered until April 1993, a year *after* the Maryland sentencing order was entered. The Delaware sentencing order clearly indicated that Perez's seven-year Delaware sentence was to be served consecutive to any outstanding sentence.

¹ See DEL. CODE. ANN. tit. 11, § 6571 (setting forth the terms of the Interstate Corrections Compact).

(5) Accordingly, it appears from this record that the Department of Correction is correctly interpreting the two sentencing orders to require that Perez serve his Maryland sentence first. Once Perez completes his Maryland sentence, thereafter, he shall begin serving his Delaware sentence. Notwithstanding the concurrent provision in the Maryland sentencing order, the Delaware sentencing order, which was entered later in time, clearly provides that the Delaware sentence must be served consecutive to any other sentence. Accordingly, Perez cannot establish that he is entitled to credit toward his Delaware sentence for time he has served in prison since January 1996 because he has not yet begun serving his Delaware sentence. We therefore find no error of law in the Superior Court's dismissal of Perez's petition for a writ of mandamus.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice