

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HOWARD S. WEAVER,	§
	§ No. 58, 2006
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. IN81-03-0131
	§ IN81-03-1258
Plaintiff Below-	§
Appellee.	§

Submitted: May 12, 2006

Decided: July 10, 2006

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 10<sup>th</sup> day of July 2006, 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 defendant-appellant, Howard S. Weaver, filed an appeal from the Superior Court's January 19, 2006 order denying his motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Weaver's opening brief that the appeal is without merit. We agree and **AFFIRM.**

(2) In July 1981, Weaver was found guilty by a Superior Court jury of Rape in the First Degree and Kidnapping in the First Degree. He was sentenced to two consecutive terms of life imprisonment, with the possibility of parole. Weaver's convictions and sentences were affirmed by this Court on direct appeal.<sup>1</sup>

(3) In this appeal, Weaver claims that the Superior Court erred when it denied his motion for correction of illegal sentence. He argues that, under *Crosby v. State*, 824 A.2d 894 (Del. 2003), his life terms should be converted to 45-year terms and a conditional release date should be set by the Department of Correction.

(4) Weaver's argument is incorrect as a matter of law. Under *Evans v. State*, 872 A.2d 539 (Del. 2005), Weaver is not eligible for conditional release and must remain incarcerated until his death, unless he is granted parole. Moreover, good time credit may be applied to Weaver's sentence only to accelerate his parole eligibility date, not to shorten his sentence. Weaver's attempt to argue that *Crosby* is a binding precedent, while *Evans* is not, is unavailing. The factual situation presented in *Crosby* is simply different from that presented in *Evans*. It is clear that *Evans* represents the relevant precedent governing Weaver's sentence.

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<sup>1</sup> *Weaver v. State*, Del. Supr., No. 308, 1981, McNeilly, J. (June 22, 1982).

(5) It is manifest on the face of Weaver's opening brief that the 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 State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Carolyn Berger  
Justice