

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARTHUR L. WATERS,	§
	§
Petitioner Below-	§ No. 4, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ C.A. No. 02M-12-006
Respondent Below-	§
Appellee.	§

Submitted: January 23, 2003

Decided: March 6, 2003

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

**ORDER**

This 6<sup>th</sup> day of March 2003, 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, Arthur L. Waters, filed an appeal from the Superior Court's December 10, 2002 order denying his petition for a writ of habeas corpus. The State of Delaware, as the real party in interest, has moved to affirm the judgment of the Superior Court on the ground that it is

manifest on the face of Waters' opening brief that the appeal is without merit.<sup>1</sup>

We agree and AFFIRM.

(2) On February 22, 2002, Waters was found to be in violation of probation ("VOP") for the fifth time on a 1998 kidnaping charge. The sentencing order issued on that date revoked Waters' probation and reimposed a sentence of 34 months incarceration at Level V, with credit for 2 years, 10 months and 11 days previously served. The order further provided that, while at Level V, Waters was to enter and complete the Short Term Key Program and, upon successful completion of the Program, serve the remainder of his sentence at Level III. The Department of Corrections was directed to notify the Superior Court if Waters failed to complete the Program.

(3) At some point after February 22, 2002, and prior to April 17, 2002, the Superior Court became aware of an error in its VOP sentencing order. On April 17, 2002, the Superior Court issued a modified order, which sentenced Waters to 6 years of incarceration at Level V,<sup>2</sup> with credit for 2 years, 10 months and 11 days previously served. The order further provided that, while at Level V, Waters was to enter and complete the Short Term Key Program. If

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<sup>1</sup>SUPR. CT. R. 25(a).

<sup>2</sup>The Superior Court noted that Waters had been sentenced originally to 6 years incarceration at Level V.

he successfully completed the Program, Waters would serve the remainder of his sentence at Level III, but if he failed to complete the Program, he would serve the remainder of his sentence at Level V. Waters did not file a direct appeal from the Superior Court's modified sentencing order. On May 1, 2002, Waters filed a motion for reduction of sentence, which the Superior Court denied. Waters did not appeal the Superior Court's denial of the motion.

(4) In this appeal, Waters claims that his February 22, 2002 sentence was a nullity because the credit he was given for time previously served essentially canceled out the prison term that was imposed. Waters further claims that the Superior Court had no authority to modify his sentencing order on April 17, 2002 without his being present.<sup>3</sup> Waters claims that these defects render his confinement illegal and entitle him to immediate release.

(5) In Delaware, the writ of habeas corpus provides relief on a very limited basis.<sup>4</sup> Habeas corpus only provides "an opportunity for one illegally confined or incarcerated to obtain judicial review of the jurisdiction of the court ordering the commitment."<sup>5</sup> "Habeas corpus relief is not available to '[p]ersons

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<sup>3</sup>SUPER. CT. CRIM. R. 43.

<sup>4</sup>*Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997).

<sup>5</sup>*Id.*

committed or detained on a charge of treason or felony, the species whereof is plainly and fully set forth in the commitment.”<sup>6</sup>

(6) Waters does not claim that his 1998 kidnaping charge was defective or that the Superior Court lacked jurisdiction. Moreover, Waters failed to file a direct appeal of the Superior Court’s modified sentencing order<sup>7</sup> and his habeas corpus petition may not be used as a substitute for a direct appeal.<sup>8</sup> The Superior Court, thus, correctly determined that there was no basis for the issuance of a writ of habeas corpus in this case.

(7) It is manifest on the face of Waters’ opening brief that his appeal from the Superior Court’s December 10, 2002 order denying his petition for a writ of habeas corpus 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.

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<sup>6</sup>Id. (quoting DEL. CODE ANN. tit. 10, § 6902(1)).

<sup>7</sup>Waters also failed to appeal the Superior Court’s denial of his motion for reduction of sentence. To the extent Waters argues that the Superior Court’s modified sentence constituted a substantive legal change rather than a mere correction to reflect the actual sentence imposed in Waters’ presence in open court, he has provided no record support for that argument. *Jones v. State*, 672 A.2d 554, 556 (Del. 1996).

<sup>8</sup>*Curran v. Woolley*, 104 A.2d 771, 773 (Del. 1954).

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh  
Justice