

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARRIUS V. BOYD,	§
	§
Petitioner Below-	§ No. 98, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ C.A. No. 07M-01-116
Respondent Below-	§ Cr. ID 0211001258
Appellee.	§

Submitted: June 8, 2007

Decided: August 15, 2007

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 15th day of August 2007, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Darrius Boyd, filed this appeal from the Superior Court's order denying his petition for a writ of habeas corpus. Boyd sought habeas corpus relief on the ground that the Department of Correction failed to credit him with all the time he has served at Level V incarceration on his sentence. Boyd contended that, if he had been properly credited with all time served on his sentence, he would have been released from custody on January 28, 2007. We find no merit to Boyd's appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Boyd pled guilty in January 2003 to one count of possession of narcotics within 1000 feet of a school. The Superior Court sentenced him to four years at Level V incarceration to be suspended after serving three months for three years and nine months at Level IV supervision, to be suspended after serving nine months for three years at Level III probation. In November 2003, Boyd was convicted and sentenced to two years at Level V incarceration on a new criminal charge of receiving stolen property. As a result of his new conviction, he was found to have violated the terms of his probation associated with his January 2003 sentence. On the VOP, the Superior Court sentenced him to four years at Level V imprisonment to be suspended upon successful completion of the Key or New Hope program for three years at Level IV supervision, to be suspended upon successful completion of the Crest program for 18 months at Level III probation.

(3) In August 2006, the Superior Court sentenced Boyd on his second VOP adjudication to one year at Level V incarceration, thereafter to be discharged as unimproved from further probation. Boyd did not appeal. Instead, he filed several unsuccessful motions seeking correction of his sentence. Then, in January 2007, Boyd filed a petition for a writ of habeas

corpus contending that there were three periods of time, totaling 143 days, between January 2003 and October 2005 when Boyd was held at Level V pending space availability at Level IV. Boyd contends that the Department of Correction failed to give him proper credit for this time served toward his August 2006 VOP sentence. The Superior Court denied the petition for habeas corpus on the ground that the one-year VOP sentence imposed in August 2006 took into account all time that Boyd previously had served on his sentence.

(4) In Delaware, the writ of habeas corpus provides relief on a very limited basis.¹ Pursuant to Section 6902 of Title 10 of the Delaware Code, habeas corpus relief is not available to a petitioner who is “committed or detained on a charge of treason or felony, the species whereof is plainly and fully set forth in the commitment.”² In this case, the Superior Court found Boyd in violation of the terms of his probationary sentence and reimposed a one-year period of incarceration. Boyd’s commitment is valid on its face. To the extent Boyd contends that the Superior Court’s second VOP sentence did not properly credit him with all of the time previously served on his original sentence, we find no merit to this claim. It is clear from the record

¹ *Hall v. Carr*, 692 A.2d 88, 891 (Del. 1997).

² DEL. CODE. ANN. tit. 10, § 6902 (1999).

that Boyd had far more than one year remaining on his original four-year sentence. The Superior Court's imposition of a lesser period of incarceration on Boyd's second VOP implicitly accounted for the time that Boyd already had served.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice