

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|----------------------|------------------------------|
| MICHAEL J. PASQUALE, | § |
| | § No. 330, 2007 |
| Defendant Below- | § |
| Appellant, | § |
| | § Court Below—Superior Court |
| v. | § of the State of Delaware |
| | § in and for Kent County |
| STATE OF DELAWARE, | § Cr. ID No. 0404005624 |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: August 27, 2007
Decided: October 11, 2007

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

ORDER

This 11th day of October 2007, 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, Michael J. Pasquale, filed an appeal from the Superior Court’s June 7, 2007 order denying his motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). 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 the opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In August 2004, Pasquale pleaded guilty to a third offense of Driving Under the Influence of Alcohol. He was sentenced to 2 years of Level V incarceration, to be suspended after 90 days for 1 year of decreasing levels of supervision. In June 2005, Pasquale was found to have committed a violation of probation (“VOP”). He was sentenced to 21 months of Level V incarceration, to be suspended after successful completion of the Key Program for decreasing levels of supervision.¹

(3) In April 2006, Pasquale committed another VOP. He was sentenced to 21 months of Level V incarceration and, upon successful completion of the Key Program, to 1 year of Level III Aftercare. He also was sentenced for a VOP on a charge of Reckless Driving to 30 days at Level V. Pasquale subsequently filed the instant motion for correction of an illegal sentence under Rule 35(a).

(4) In his appeal, Pasquale claims that: a) he is entitled to statutory good time credits because he already served the minimum mandatory sentence under Del. Code Ann. tit. 21, § 4177(c); b) the Superior Court erred by failing to credit him with good time that was never credited against his first VOP sentence; c) the Superior Court is erroneously placing

¹ This sentence was modified three times. The first time, TASC’s involvement with Pasquale was suspended. The second time, TASC monitoring was ordered. The third time, Pasquale was discharged from the TASC program as unimproved.

responsibility for correcting his good time credits upon the Department of Correction; d) the Superior Court has improperly increased his “quantum of punishment” in violation of his due process rights by not granting him good time; e) the Superior Court has subjected him to “cruel and unusual punishment” by not granting him good time; and f) the Superior Court has refused to acknowledge that only the first 90 days of his sentence is mandatory, thus giving him the benefit of earned good time.

(5) All of Pasquale’s claims, in essence, challenge the Department of Correction’s failure to apply the proper amount of good time credit for time served on his first VOP sentence. The proper procedural vehicle for the remedy sought by Pasquale is a petition for a writ of mandamus.² A writ of mandamus is a means for the Superior Court to compel a public agency such as the Department of Correction to perform a duty where: the petitioner has a clear right to the performance of the duty; no other adequate remedy is available; and the public agency has arbitrarily failed or refused to perform its duty.³ We, therefore, conclude that the Superior Court properly denied Pasquale’s claim.⁴

² *Ortiz v. State*, Del. Supr., No. 645, 2006, Jacobs, J. (July 2, 2007) (citing *Snyder v. Andrews*, 708 A.2d 237 (Del. 1998); *Meades v. Hosterman*, Del. Supr., No. 239, 2006, Ridgely, J. (Aug. 23, 2006); and *Clough v. State*, 686 A.2d 158, 159 (Del. 1996)).

³ *Clough v. State*, 686 A.2d at 159.

⁴ In its order, the Superior Court stated that, “[p]ursuant to 11 Del. C. § 4381, good time credits, both statutory and meritorious, are determined and calculated by the Department

(6) It is manifest on the face of Pasquale's opening brief that his 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, 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

of Correction.” In a letter to Pasquale dated June 27, 2007, the Department of Correction stated that it could not give credit for good time without an order from the Superior Court.