

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

JAMIE L. MIFFLIN, : C.A. No. S13M-07-020 RFS
Petitioner, :
v. :
STATE OF DELAWARE, :
Respondent. :

ORDER ON MOTION TO PROCEED *IN FORMA PAUPERIS*
AND DISMISSING PETITION UPON REVIEW

1) Jamie L. Mifflin (“petitioner”) has filed a petition seeking credit for good time served on his sentence in the case of *State of Delaware v. Jamie L. Mifflin*, Def. ID# 1101000090. He also has filed a motion to proceed *in forma pauperis*.

2) The Court grants the motion to proceed *in forma pauperis*. However, the matter does not automatically proceed. Instead, the Court must review the petition and determine whether the petition is legally and/or factually frivolous.¹ A review of the petition shows that petitioner’s claims have been resolved against him in the criminal matter and thus, this petition is barred by the doctrine of *res judicata*.²

¹10 *Del. C.* § 8803(b).

²“*Res Judicata* is defined as ‘an issue that has been definitely settled by judicial decision.’” *Hudson v. Sussex County Bd. of Adjustment*, 2010 WL 716189, * 2 (Feb. 19, 2010)

3) The facts of the criminal case and the decision on the issue at hand are set forth in the Supreme Court's recent order in *Mifflin v. State*:³

(2) The record reflects that, in May 2011, Mifflin pled guilty to a fifth offense of Driving Under the Influence. The Superior Court sentenced him to three years at Level V incarceration, with credit for 124 days previously served, to be suspended after serving nine months at Level V incarceration for one year at the Level IV Crest Program, to be suspended upon the successful completion of the Crest Program for the balance to be served at Level III Aftercare. After the Superior Court sentenced Mifflin for his first VOP in August 2012, this Court remanded Mifflin's sentence to the Superior Court to give Mifflin proper credit for all time served. Following the remand, the Superior Court corrected Mifflin's sentence, effective August 2, 2012, to impose one year and ten months at Level V incarceration, to be suspended upon successful completion of the Level V Key Program for decreasing levels of supervision.

(3) On September 20, 2013, the Superior Court sentenced Mifflin for his second VOP to eight months at Level V incarceration with no probation to follow. Mifflin does not contest the violation. Nonetheless, he filed this appeal arguing that, by sentencing him to all of the remaining time left on his Level V sentence, the Superior Court failed to credit him with all of the good time he previously earned while at Level V incarceration. According to Mifflin, the Superior Court should have applied his previously earned credits and ordered his release date to be November 12, 2013.

(4) We find no merit to Mifflin's contention. Upon finding a defendant guilty of a VOP, the Superior Court is authorized to reimpose any previously suspended prison term.FN1 Moreover, a defendant in the custody of the Department of Correction (DOC) who is convicted of any crime or is found in violation of any DOC rules during the term of his sentence is subject to forfeiture of all good time accrued before the date of the new offense.FN2

FN1. *Gamble v. State*, 728 A.2d 1171, 1172 (Del.1999).

FN2. *Del.Code Ann.* tit. 11, § 4382(a), (b) (2007).

(quoting Black's Law Dictionary 1312 (7th ed. 1999).

³2014 WL 1092283, *1 (Del. March 18, 2014)

(5) In this case, Mifflin admitted that he signed himself out of the Crest Program after only one day because he believed that he did not have enough time remaining on his sentence in order to complete the Crest Program. Under these circumstances, the Superior Court's finding of a VOP is clearly supported by the record. Moreover, Mifflin's VOP sentence properly credited him with Level V time he served while awaiting entrance into the Key Program, as well as the time he spent in the Key Program and the time he was held at Level V pending resolution of his VOP. Mifflin's contention that he was improperly denied good time credit is simply wrong.FN3

FN3. *See Nardini v. Willin*, 245 A.2d 164, 165–66 (Del.1968).

3) In the pending petition seeking a writ of mandamus, petitioner seeks credit time that he thinks is due him.⁴ As the Supreme Court sets forth in its decision above, petitioner has been awarded all credit time to which he is entitled. This issue has been decided and the pending petition is legally barred by the doctrine of *res judicata*.

4) Because *res judicata* bars the pending petition seeking a writ of mandamus, the petition is legally meritless and is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED THIS 17th DAY OF APRIL, 2014.

/s/ Richard F. Stokes

JUDGE

cc: Prothonotary's Office
Jamie L. Mifflin

⁴Petitioner filed this petition while the appeal in *Mifflin v. State, supra*, was pending. This Court, by order dated January 6, 2014, stayed any action on this petition pending resolution of the appeal.