

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH DICKINSON,	§
	§
Defendant Below,	§ No. 271, 2021
Appellant,	§
	§
v.	§ Court Below–Superior Court
	§ of the State of Delaware
STATE OF DELAWARE,	§
	§ Cr. ID No. 0901009990A (N)
Plaintiff Below,	§
Appellee.	§
	§

Submitted: October 20, 2021

Decided: January 12, 2022

Before **SEITZ**, Chief Justice; **TRAYNOR** and **MONTGOMERY-REEVES**, Justices.

ORDER

After careful consideration of the appellant’s opening brief, the State’s motion to affirm, and the record on appeal, it appears to the Court that:

(1) The appellant, Joseph Dickinson, filed this appeal from the Superior Court’s denial of his motion for correction of illegal sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Dickinson’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, in 2009, a Superior Court jury found Dickinson guilty of attempted first-degree robbery, possession of a firearm during the commission of a felony (“PFDCF”), second-degree burglary, possession of a

destructive weapon, and second-degree conspiracy. Following a presentence investigation, the Superior Court sentenced Dickinson as follows: for attempted first-degree robbery, as a habitual offender under 11 *Del. C.* § 4214(b), to life imprisonment with credit for 106 days previously served; for PFDCF, to five years of Level V incarceration; for second-degree burglary, to one year of Level V incarceration; for possession of a destructive weapon, to one year of Level V incarceration, suspended for one year of Level II probation; and for second-degree conspiracy, to one year of Level V incarceration, suspended for one year of Level II probation. We affirmed Dickinson’s convictions and sentence on appeal.¹

(3) In 2014, Dickinson filed a motion for correction of illegal sentence under Superior Court Criminal Rule 35(a), alleging that, among other things, the consecutive sentences imposed for attempted robbery and PFDCF subjected him to double jeopardy. The Superior Court denied Dickinson’s motion, and we affirmed.² On January 10, 2020, Dickinson filed a “motion to correct the effective date of sentencing pursuant to Superior Court Criminal Rule 36,” seeking credit for the time he spent on home confinement prior to trial. On March 3, 2020, the Superior Court denied the motion, noting that the court’s sentencing order had credited Dickinson for the time he served pending trial. Dickinson did not appeal.

¹ *Dickinson v. State*, 8 A.3d 1166 (Del. 2010).

² *Dickinson v. State*, 2015 WL 783376 (Del. Feb. 23, 2015).

(4) On October 13, 2020, Dickinson filed another motion for correction of illegal sentence, arguing that he had not received proper credit for the time he served pending trial. After directing the State to respond, the Superior Court denied the motion on April 7, 2021. The Superior Court noted that the court had previously denied a similar request and that, in any event, Dickinson had received credit for the time he served pending trial. On April 14, 2021, the Superior Court received Dickinson’s amended motion for correction of illegal sentence under Rule 35(a).³ Dickinson argued that his sentence was illegal because it was “backdated” to the date of his incarceration—that is, prior to his conviction—and because the habitual offender statute under which he was sentenced has since been amended. On May 27, 2021, the Superior Court denied the motion.⁴ This appeal followed.

(5) We review the denial of a motion for correction of sentence for abuse of discretion.⁵ To the extent a claim involves a question of law, we review the claim *de novo*.⁶ A sentence is illegal if it exceeds statutory limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is

³ The record reflects that Dickinson sent his amended motion to the court before he received the Superior Court’s April 7, 2021 order denying his motion for correction of sentence.

⁴ The Superior Court inadvertently did not send Dickinson a copy of this order. After Dickinson asked the court about the status of the motion, the Superior Court re-docketed the order on September 24, 2021.

⁵ *Fountain v. State*, 2014 WL 4102069, at *1 (Del. Aug. 19, 2014).

⁶ *Id.*

internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.⁷

(6) On appeal, Dickinson argues that (i) he has not been properly credited for the time he served pending trial; (ii) the Superior Court's order sentencing him as a habitual offender is illegal because it is backdated to the date he was taken into custody; (iii) his sentencing hearing did not comply with 11 *Del. C.* § 4215; and (iv) he should be resentenced for first-degree robbery under the current version of 11 *Del. C.* § 4214. Dickinson's arguments are unavailing.

(7) First, Dickinson's contention that he was not properly credited with the 116 days of time he served—following his arrest on January 13, 2009, until he was allegedly released on bail on May 9, 2009⁸ to home confinement—is not an appropriate basis for relief under Rule 35(a).⁹ Rather, the proper procedural vehicle for the remedy Dickinson seeks is to petition the Superior Court for a writ of mandamus to direct the Department of Correction to apply the proper amount of

⁷ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁸ We note that, despite the State's representations, the record is unclear as to when, in fact, Dickinson was released from prison. In its motion to affirm, the State provides that Dickinson was released on bail on April 29, 2009. But the Department of Correction Level V Time Served Report attached to the motion reflects that Dickinson was released on April 27, 2009. The record also reflects that Dickinson was released to home confinement after posting bail on April 27, 2009, *and was held at Level V incarceration pending availability*. It appears from Docket Entry No. 15—a Department of Correction Progress Report issued in response to an inquiry made by the Superior Court—that Dickinson was released from Level V incarceration on May 14, 2009. Accordingly, Dickinson may, in fact, be entitled to additional credit for time he served, albeit not a significant amount.

⁹ *Fisher v. State*, 2008 WL 4216365, at *1 (Del. Sept. 16, 2008).

time-served credit to his sentence.¹⁰ Accordingly, the Superior Court did not abuse its discretion when it denied Dickinson’s motion on this ground.

(8) Second, Dickinson’s allegation that he should be credited for the time he served on home confinement pending trial is clearly without merit. A defendant is not entitled to credit for the time he served on home confinement.¹¹

(9) Third, Dickinson’s argument that the backdating of the court’s sentencing order somehow renders his sentence illegal is technically an argument that his sentence was imposed in an illegal manner and is subject to Rule 35(b)’s ninety-day time bar.¹² In any event, Dickinson’s argument is unavailing. Section 3901 of Title 11 of the Delaware Code provides, in pertinent part, that “[a]ll sentences for criminal offenses of persons who at the time sentence is imposed are held in custody in default of bail, or otherwise, shall begin to run and be computed from the date of incarceration for the offense for which said sentence shall be imposed...”¹³ A sentencing court may satisfy Section 3901 by either backdating the effective date of the sentence or by crediting the defendant with the time served.¹⁴ Here, given

¹⁰ *Anderson v. State*, 2008 WL 187959, at *1 (Del. Jan. 7, 2008).

¹¹ *Nickerson v. State*, 2012 WL 252402, at *2 (Del. Jan. 26, 2012) (“A defendant ... is entitled to credit for time spent at the Level IV VOP Center, although the defendant is not entitled to credit for time spent at Level IV work release or home confinement.”).

¹² Del. Super. Ct. Crim. R. 35(a) (“The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.”).

¹³ 11 *Del. C.* § 3901(b).

¹⁴ *Beck v. State*, 2019 WL 2153313, at *1 (Del. May 15, 2019).

Dickinson’s two periods of incarceration entitling him to credit for time served, the Superior Court did not err by backdating the sentencing order to the most recent date of Dickinson’s incarceration—August 24, 2009—and separately crediting him with the time he served after his arrest and prior to his release on bail.

(10) Fourth, because Dickinson’s objection to the manner in which the Superior Court proceeded with his sentencing as a habitual offender was not raised below, we ordinarily would not entertain it.¹⁵ In any event, the record reflects that the sentencing proceedings complied with 11 *Del. C.* § 4215: the State filed a motion to have Dickinson declared a habitual offender prior to the sentencing hearing; the Superior Court called upon Dickinson to admit or deny his previous convictions upon which the State relied in its motion; and Dickinson, with the assistance of counsel, admitted the previous convictions.

(11) Finally, Dickinson, who was sentenced in 2010, is not entitled to be resentenced on his attempted first-degree robbery charge under the current version of the habitual offender statute. “Amended § 4214 does not provide for retroactive application of the sentencing and good time provisions to habitual offender sentences imposed before July 19, 2016....”¹⁶

¹⁵ Del. Supr. Ct. R. 8.

¹⁶ *Walker v. State*, 2020 WL 2125803, at *2 (Del. May 4, 2020).

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Tamika R. Montgomery-Reeves
Justice