

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD L. RICKETTS,	§
	§
Defendant Below-	§ No. 419, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN99-02-0034
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 23, 2000

Decided: January 2, 2001

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

ORDER

This 2nd day of January 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Donald L. Ricketts, filed an appeal from the August 15, 2000 order of the Superior Court denying his motion for credit for time previously served. We find no merit to the appeal. Accordingly, we **AFFIRM**.

(2) In this appeal, Ricketts claims that the Superior Court violated his constitutional and statutory rights in denying his motion for credit for Level V time previously served. He contends that, because the effective date of his current

sentence interrupted a previous sentence, all the Level V time he had served on the previous sentence should be credited against his current sentence.

(2) On February 1, 1999, Ricketts was indicted on 3 counts of second degree forgery, 2 counts of misdemeanor theft and 1 count of attempted misdemeanor theft (the “1999 charges”). On January 18, 2000, Ricketts pleaded guilty¹ to 1 count of second degree forgery and was sentenced to 2 years incarceration at Level V, to be followed by 6 months probation at Level III. At the time of his guilty plea, Ricketts was serving another sentence for a violation of parole on unrelated charges and had been held at Level V pending space availability at Level IV since June 6, 1999. On February 3, 2000, the Superior Court entered an order declaring Ricketts an habitual offender.² At the sentencing hearing on April 28, 2000, Ricketts requested credit for the time he had served at Level V since June 6, 1999.³ The Superior Court denied Ricketts’ request and sentenced him to 2 years incarceration at Level V in accordance with his plea agreement, to begin on April 28, 2000.

¹Pursuant to Super. Ct. Crim. R. 11(e) (1) (C).

²11 Del. C. § 4214(a).

³According to Ricketts, he should have received credit for 10 months and 28 days previously served at Level V.

(3) Ricketts' claim that he was improperly denied credit for Level V time previously served is without merit. The Superior Court properly acted within its discretion in denying Ricketts' request for a sentence reduction due to time spent at Level V while awaiting space availability at Level IV on unrelated charges. Ricketts' reliance on *Gamble v. State*, Del. Supr., 728 A.2d 1171 (1999) is misplaced. Ricketts is correct that in *Gamble* the defendant received a reduction of his current Level V sentence⁴ in accordance with time previously spent at Level V while awaiting space availability at Level IV, but, unlike in Ricketts' case, all of the defendant's Level V time was in connection with the same charges.⁵

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

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁴The sentence was imposed following a finding of a violation of probation.

⁵*Gamble v. State*, 728 A.2d at 1172.