

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROLAND TARBUTTON,	§
	§
Petitioner Below-	§ No. 38, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
PHILIP MORGAN,	§ in and for New Castle County
	§ C.A. No. N11M-12-070
Respondent Below-	§
Appellee.	§

Submitted: February 13, 2012

Decided: February 23, 2012

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

ORDER

This 23rd day of February 2012, upon consideration of the appellant's opening brief and the appellee's motion affirm, it appears to the Court that:

(1) The appellant, Roland Tarbutton, filed this appeal from the Superior Court's order, dated January 3, 2012, denying his petition for a writ of habeas corpus. The State of Delaware, on behalf of the appellee as the warden of the Howard R. Young Correctional Institution, has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Tarbutton's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Tarbutton was convicted in 1985 of two counts of second degree rape. The Superior Court sentenced him to a total period

of forty years at Level V imprisonment, to be suspended after serving thirty years for a ten-year period of probation. Tarbutton was placed on conditional release under the Level II supervision of the Board of Parole (“the Board”) on May 1, 2002. In April 2010, the Board found Tarbutton had violated the terms of his conditional release and re-paroled him to Level III supervision. On June 29, 2010, the Board issued a parole violation warrant for Tarbutton. A preliminary revocation hearing was held, and Tarbutton has been incarcerated since April 29, 2011, pending the disposition of a final revocation hearing. The final revocation hearing is scheduled for March 6, 2012. On December 20, 2011, Tarbutton filed a petition for a writ of habeas corpus. The Superior Court denied his petition on January 3, 2012. This appeal followed.

(3) Tarbutton argues in his opening brief on appeal that the Superior Court erred in denying his petition because he has been incarcerated for over nine months without having been brought before the Board for a final revocation hearing. The State contends that Tarbutton is scheduled for his final revocation hearing on March 6, 2012 and argues that Tarbutton is not entitled to habeas relief because he is legally detained.

(4) We are concerned about the length of time that Tarbutton has been held without being brought to the Board for a final revocation hearing. It is unclear from this record what has caused such a lengthy delay. Nonetheless, we do

not find Tarbutton entitled to a writ of habeas corpus under the present circumstances.

(5) In Delaware, the writ of habeas corpus is very limited and only provides relief to obtain judicial review of the jurisdiction of the court ordering the prisoner's commitment.¹ In this case, the Superior Court had jurisdiction to sentence Tarbutton and the Board had jurisdiction to set the terms of Tarbutton's parole and to arrest him pursuant to a parole violation warrant. At the present time, Tarbutton is being held pursuant to the Board's preliminary finding of a parole violation, and he will continue to be held pending the final hearing scheduled for March 6, 2012. Tarbutton's commitment is valid on its face.² Thus, we find no error in the Superior Court's denial of habeas corpus relief.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

¹ *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997).

² Del. Code Ann. tit. 10, § 6902(1) (1999).