

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS W. WHITTEN,	§
	§
Defendant Below-	§ No. 342, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. No. VK94-03-0355-04
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 8, 2000

Decided: January 26, 2001

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

**ORDER**

This 26<sup>th</sup> day of January 2001, upon consideration of the Superior Court's report following remand and the supplemental briefs on appeal, it appears to the Court that:

(1) The defendant-appellant, Thomas W. Whitten, filed an appeal from an order of the Superior Court denying his motion to correct sentence pursuant to Superior Court Criminal Rule 35(a). Whitten claimed that the Level V time he had already served was not properly credited against his sentence. The State filed a motion to affirm, which was denied by this Court. In lieu of an answering brief, the State filed a motion to remand the matter to the Superior Court on the

ground that the record concerning Whitten's sentence was deficient. This Court granted the State's motion to remand and ordered the Superior Court to conduct further proceedings to clarify whether Whitten had received proper credit for Level V time previously served. Following the issuance of a report by the Superior Court on October 25, 2000 and supplemental briefing in this Court, this matter is again before us for decision.

(2) In conducting its investigation following remand, the Superior Court, with the assistance of the Office of Investigative Services, examined Whitten's records from the Multi-Purpose Criminal Justice Facility in New Castle County, the Kent County Prothonotary, DELJIS,<sup>1</sup> the Superior Courts of Kent and New Castle Counties, the Municipal Court and Court of Common Pleas of New Castle County, and the Office of Probation and Parole. The Superior Court also held a hearing on October 25, 2000 at which Whitten and the State were provided an opportunity to be heard. The Superior Court subsequently issued an exhaustive report concerning Whitten's extensive sentencing history, concluding that its original sentencing order was incorrect and that Whitten was entitled to an additional 35 days of Level V credit. In his supplemental brief, Whitten claims that he still has not received proper credit for 27 days of Level V time served

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<sup>1</sup>The Delaware Judicial Information System.

between August 9, 1996 and September 5, 1996 while he was awaiting sentencing on a DUI charge.

(3) We find Whitten's claim to be without merit. The Superior Court specifically addressed Whitten's claim that he was entitled to an additional 27 days of Level V credit between August 9, 1996 and September 5, 1996, both at the hearing and in its report following remand. Based upon its review of the records and testimony presented at the hearing, the Superior Court concluded that Whitten was not entitled to credit for that additional Level V time because it was attributable to another set of charges. The record supports that conclusion.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. The Superior Court is instructed to file an order crediting an additional 35 days of Level V time to the sentence currently being served by Whitten.

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice