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IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILBUR MEDLEY, Defendant-Below, Appellant, v. STATE OF DELAWARE, Plaintiff-Below, Appellee.	)))))))))))	No. 315, 2021

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

On March 1, 2019, Wilbur Medley was arrested on burglary and related charges in Criminal ID No. 1903000471; he posted bond and was released 12 days later on March 13, 2019.[1] On April 15, 2019, a Superior Court grand jury charged Medley with burglary in the second degree, conspiracy in the second degree, felony theft, and misdemeanor criminal mischief.[2]

Meanwhile, Medley was serving probation in four cases—Criminal ID Nos. 1008025826, 1009001420, 1009005821, and 1009002175 (the "Probation Cases"). On February 21, 2019, a violation of probation ("VOP") summons was issued in Criminal ID No. 1009002175.[3] On March 4, 2019, Medley was arrested on a VOP administrative warrant in the remaining Probation Cases and was incarcerated in default of cash bail.[4] On March 13, 2019, Medley was released in the Probation Cases in which he was originally imprisoned in default of bail.[5]

Less than a week later, on March 19, 2019, Medley was arrested again for a VOP in three of the Probation Cases—Criminal ID Nos. 1008025826, 1009001420,

[1] A12-13; A1 at D.I. 4.

[2] A12; D.I. 4.

[3] B23 at D.I. 26.

[4] A36 at D.I. 26; A42 at D.I. 26; A49 at D.I. 45.

[5] A36 at D.I. 29; A42 at D.I. 30; A50 at D.I. 49.

and 1009005821—and held in default of cash bail.[6] On March 22, 2019, Medley was found in violation of the terms of his supervision in Criminal ID 1009002175 and sentenced accordingly.[7] The Superior Court eventually reduced Medley's bail to unsecured in his other Probation Cases, resulting in Medley's release from prison on April 28, 2019, after serving 40 days.[8]

Beginning on June 9, 2019, police arrested Medley on new burglary and drug charges in Criminal ID Nos. 1906005528 and 1906005480, a VOP administrative warrant and capiases in the Probation Cases, and capiases in three cases in the Court of Common Pleas involving traffic charges; these arrests again resulted in Medley's incarceration in default of bail.[9] On November 9, 2020, after serving 519 days, Medley posted bail and was released.[10] On June 16, 2021, Medley was arrested on an administrative warrant in the Probation Cases, again resulting in his incarceration.[11]

On June 22, 2021, Medley pleaded guilty to burglary in the second degree in

[6] A36 at D.I. 30; A42-43 at D.I. 31; A50 at D.I. 50; B52.

[7] B23 at D.I. 28.

[8] A37 at D.I. 34-36; A43 at D.I. 35-37; A50 at D.I. 54-56; B52.

[9] A32; A37 at D.I. 40; A43 at D.I. 41; A51 at D.I. 60; B24 at D.I. 32; B34-37; B1 at D.I. 1; B12 at D.I. 1; B53-54. His traffic charges were dismissed on July 25, 2019.

[10] A37 at D.I. 44; A44 at D.I. 45; A51 at D.I. 64; B24 at D.I. 35; B53-54.

[11] A38 at D.I. 45; A44 at D.I. 46; A51 at D.I. 65; B24 at D.I. 36; B54.

Criminal ID No. 1903000471.[12] The Superior Court immediately sentenced Medley to eight years of Level V incarceration, with credit for 210 days previously served, suspended after two years and six months for 18 months of Level III probation.[13] On June 23, 2021, a Delaware Department of Correction ("DOC") Central Offender Records employee contacted the Superior Court requesting clarification about the credit time calculation in the sentence order.[14] On June 25, 2021, after Medley's trial counsel separately contacted the Superior Court, an amended sentence order was issued providing Medley with 576 days of credit for time previously served.[15] On June 29, 2021, after further inquiry by the DOC, the Superior Court issued another amended sentence order that reduced Medley's credit time to 13 days.[16]

Medley thereafter resolved his pending VOPs in the Probation Cases. On July 8, 2021, the Superior Court discharged Medley as unimproved in Criminal ID No. 1009002175.[17] On August 27, 2021, the Superior Court found Medley in violation of the terms of his supervision in the three other Probation Cases.[18] In its VOP

[12] A9 at D.I. 58; A53.

[13] Ex. A to Opening Br.

[14] A66-68.

[15] A62-63; Ex. B to Opening Br.

[16] A64-83.

[17] B24 at D.I. 39.

[18] Ex. E to Opening Br.

sentence order, the Superior Court reduced the balance of the remaining Level V time on one of the charges from a prior VOP sentence order and noted that it had taken into consideration the Level V time previously served.[19]

Between July 28 and September 20, 2021, Medley filed *pro se* motions to modify his sentence or for additional credit time.[20] On September 17, 2021, relying on Superior Court Criminal Rule 35(a), Medley's trial counsel filed a motion for Level V credit time, which the State did not oppose so long as any credit time was not applied more than once.[21] On September 23, 2021, the Superior Court denied Medley's motions because the credit time that Medley sought had been applied to his August 2021 VOP sentence.[22]

On October 7, 2021, Medley filed a Notice of Appeal, which he amended, and he filed an opening brief on January 6, 2022. This is the State's answering brief.

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[19] *Id.*; B38-43.

[20] A9-10 at D.I. 63-69, 73.

[21] A85-89. The rule provides that "[t]he 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." Super. Ct. Crim. ule(a).

[22] A11 at D.I. 76; Ex. D to Opening Br.

SUMMARY OF THE ARGUMENT

I. Medley's argument is denied. Medley has waived appellate review of his constitutional and procedural claims concerning the Superior Court's issuance of an amended sentence order reducing his credit for time previously served by not fairly presenting his arguments to the Superior Court in the first instance. Medley's claims do not demonstrate plain error. The Superior Court did not delegate the reformation of Medley's sentence to its staff or the Delaware Department of Correction. And, Medley's presence was not required for the Superior Court to correctly impose his time served because the court lacked discretion in calculating Medley's credit time, and Medley did not have a constitutionally protected interest in receiving miscalculated credit time. Superior Court Criminal Rule 36 permitted the Superior Court to correct Medley's sentence to conform it to the requirements of Delaware law. To the extent that the court relied on Superior Court Criminal Rule 35 in issuing the amended sentence order reducing Medley's credit time, Medley was not required to be present when the court modified his sentence. Even if the Superior Court committed error, Medley has not established prejudice.

STATEMENT OF THE FACTS[23]

On February 25, 2019, New Castle County Police Detective Phillips investigated the burglary of a residence on Vinings Lane in Wilmington that had occurred on February 22, 2019.[24] As a result of the burglary, three flat-screen televisions, keys, jewelry, and other property were stolen.[25] Police determined that the perpetrator of the crimes entered the residence through an unsecured rear window.[26]

During a neighborhood canvass, one witness told police they heard a loud muffler and saw a black Audi with tinted windows and a Delaware license plate drive twice around the neighborhood before leaving.[27] Another witness saw a black Audi with mismatched wheel rims stop on Vinings Lane and then drive away.[28]

Detective Phillips learned that, in early February 2019, police stopped a black Audi in Wilmington driven by Medley, a probationer who had prior arrests and convictions for committing burglaries.[29] Detective Phillips concluded that the

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[23] Because Medley resolved his charges under a guilty plea, these facts are taken from the affidavit of probable cause in this case.

[24] A19-20.

[25] A20-21, 25.

[26] A20.

[27] A21.

[28] A21-22.

[29] A22.

modus operandi of these burglaries, including the removal of flat-screen televisions and entering through unsecured rear windows, was similar to the burglary on Vinings Way.[30] Police visited the address that Medley had provided for his probation and photographed a black Audi with mismatched wheel rims and tinted windows parked in front of the residence.[31] Detective Phillips reviewed security video footage from a nearby school that depicted a similar Audi driving toward the neighborhood around the time of the burglary.[32]

On March 1, 2019, police surveilled Medley's address and saw a black Audi with a Delaware temporary tag registered to him parked there.[33] Medley climbed into the Audi and drove away.[34] Police conducted a traffic stop of the Audi and arrested Medley as he was driving with a suspended license.[35] Police subsequently obtained a search warrant and found the victim's television and watch inside Medley's residence.[36]

During a post-*Miranda* interview, Medley confessed to committing the

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[30] *Id.*

[31] *Id.*

[32] A23.

[33] A24.

[34] *Id.*

[35] *Id.*

[36] *Id.*

burglary at the Vinings Lane residence with someone named "Billy."[37] Medley said that he dropped Billy off in the area and drove around for approximately 15 minutes until Billy called him to pick him up, and Billy flagged him down once he reached the neighborhood.[38] Medley then backed into the driveway of the residence, and Billy loaded three televisions and other property into the vehicle.[39] Medley said he kept some of the property for himself, but they divided the rest and exchanged it for drugs.[40]

[37] *Id.*

[38] A24-25.

[39] A25.

[40] *Id.*

II. THE SUPERIOR COURT DID NOT PLAINLY ERR BY CORRECTLY ALLOCATING MEDLEY'S TIME SERVED TO HIS SENTENCE.

Question Presented

Whether the Superior Court plainly erred when it amended its sentence order to reduce Medley's credit for time previously served without his presence in court.

Standard and Scope of Review

Generally, this Court reviews the Superior Court's denial of a motion under Superior Court Criminal Rule 35 for abuse of discretion, although a motion for credit time is normally not cognizable under Rule 35(a).[41] Questions of law are reviewed *de novo*.[42] However, if a defendant fails to fairly present a claim in the trial court, it is waived on appeal absent a finding of plain error.[43] "Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[44] It is "limited to material defects which are apparent on the face of the record; which are basic, serious

[41] *Dickinson v. State*, 2022 WL 120997, at *1-2 (Del. Jan. 12, 2022) (citing *Fountain v. State*, 2014 WL 4102069, at *1 (Del. Aug. 19, 2014); *Fisher v. State*, 2008 WL 4216365, at *1 (Del. Sept. 16, 2008)).

[42] *Id.* at *2.

[43] *Id.* at *3; Supr. Ct. R. 8.

[44] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."[45]

Merits of the Argument

On appeal from the denial of his motions for modification of his sentence and additional credit time,[46] Medley argues that the plea agreement "accurately reflected an intent to grant him credit in this case for all the time he was incarcerated since the date of his initial arrest in this case in March 2019."[47] Medley complains that "DOC and court administrative personnel frustrated the intent of that sentence from being carried out."[48] Medley contends that "DOC and Superior Court personnel overstepped their authority" in deciding that a prior sentence providing Medley with 576 days of credit time was improper because the Superior Court could not delegate to the DOC and its administrative staff the reformation of a sentence.[49] Medley

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[45] *Id.*

[46] Medley's original and amended Notices of Appeal refer to the Superior Court's June 22, 2021 sentencing. However, Medley did not file his original Notice of Appeal until October 7, 2021. While Medley's appeal from the Superior Court's denial of his motions for sentence modification and additional credit time is timely, any appeal from the sentencing proceeding itself is not. *See* Supr. Ct. R. 6(a)(iii) (providing that a Notice of Appeal regarding a criminal matter must be filed "[w]ithin 30 days after a sentence is imposed in a direct appeal of a criminal conviction.").

[47] Opening Br. at 12.

[48] *Id.*

[49] *Id.* at 13.

claims that "an administrative court employee amended Medley's sentence and stripped him of 563 days of credit" and that "[w]hile the judge signed off on the order, nothing in the record indicates he was made aware of any communications between the DOC and court personnel or the reason for the amendment"[50] Medley claims that "[d]ue to the relation of the VOP cases and new cases, a reasonable person could conclude that the various permutations of the sentencing schemes played a role in his decision to plead guilty in this case."[51] Medley further contends that the sentencing judge denied Medley his fundamental constitutional and procedural rights to be present during his sentencing, including under Superior Court Criminal Rule 43(a).[52] Medley's arguments are unavailing.

Under Supreme Court Rule 8, this Court will "generally decline to review contentions not raised below and not fairly presented to the trial court for decision unless [this Court] find[s] that the trial court committed plain error requiring review in the interest of justice."[53] "This standard requires an error so clearly prejudicial to [a defendant's] substantial rights as to jeopardize the very fairness and integrity of the trial process."[54]

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[50] *Id.* at 12.

[51] *Id.* at 17.

[52] *Id.*

[53] *Hoskins v. State*, 102 A.3d 724, 729 (Del. 2014); *see* Supr. Ct. R. 8.

[54] *Hoskins*, 102 A.3d at 729.

Here, Medley did not file a timely direct appeal of his sentence;[55] instead he moved in the Superior Court for modification of his sentence or additional credit time. It does not appear that Medley fairly presented his constitutional or procedural arguments to the Superior Court in either of his *pro se* motions or in the motion filed by his counsel.[56] Although Medley raises allegations about the conduct of the sentencing judge and the Superior Court's staff, Medley did not allow for an adequate factual record to be developed by fairly presenting his claims to the Superior Court in the first instance. Medley has therefore waived his arguments on appeal absent plain error.

Medley has not demonstrated plain error. The Superior Court did not delegate the reformation of his sentence to its staff or the DOC, nor did the court violate Medley's constitutional and procedural rights. And, even if the court committed any error, Medley has not established prejudice.

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[55] *See* footnote 46, *supra*.

[56] As a technical matter, although the Superior Court acknowledged Medley's *pro se* requests in declining to provide him with additional credit time, because Medley was represented by counsel and the record does not indicate that he had received permission to participate with counsel, his *pro se* requests were a nullity. *See* Super. Ct. Crim. R. 47.

The Superior Court did not plainly err in applying Medley's time served.

Medley's argument that the reformation of his sentence was delegated to the Superior Court's administrative staff or the DOC lacks merit. Medley signed a Plea Agreement and Truth-In-Sentencing Guilty Plea Form (the "TIS Form"). Medley agreed to plead guilty to one count of burglary in the second degree, and, in exchange, the State agreed to enter a *nolle prosequi* on the remining charges.[57] Although the parties requested a pre-sentence investigation, they agreed to a sentence recommendation of eight years of Level V incarceration, suspended after two and one-half years for 18 months of Level III probation and monitoring by the Treatment Access Center ("TASC").[58] In completing the plea documents, Medley attested that he "freely and voluntarily decided to plead guilty" to the charge in his Plea Agreement, he had not "been promised anything that is not stated in [his] written plea agreement," and that no one "promised [him] what [his] sentence will be."[59] The Plea Agreement was silent as to credit time.

During his plea colloquy, the State recited the Plea Agreement, and Medley's counsel confirmed that the State had correctly recited it.[60] Medley confirmed that

[57] A53.

[58] *Id.*

[59] A55.

[60] A56.

he had signed the plea paperwork and that he had ample time to discuss the plea offer with his attorney and "enough time to consider the plea."[61] Medley confirmed that "everything contained in that agreement is what [he] understood to be the basis of the agreement."[62] Medley confirmed that no one was "forcing [him] to plead guilty," and he admitted his guilt to the charge in the indictment.[63] The judge accepted Medley's plea as "knowing, intelligent, and voluntarily offered."[64] When the judge asked if there was "[a]nything before sentencing" and indicated that he would follow the parties' recommendation, Medley only requested a few days to get his affairs in order, which the judge denied.[65] The judge proceeded to sentence Medley:

> Anything else before sentencing?
> [THE PROSECUTOR]: Nothing from the State.
> THE COURT: [Case manager], what's his effective date?
> THE CLERK: We will make it effective today with 210 days of credit.
> THE COURT: I'm sorry. How many days' credit?
> THE CLERK: 210.
> THE COURT: All right. Mr. Medley, this is the sentence of the Court. You'll pay the costs of the prosecution. You'll pay all statutory surcharges. On the charge of Burglary Second Degree, you will be sentenced to eight years Level V suspended after two years, six months, for 18 months Level III. You will have TASC monitoring, and there

[61] A57.

[62] *Id.*

[63] A58.

[64] *Id.*

[65] A58-59.

> will be a GPS monitor in addition. You will undergo substance abuse evaluation. You'll follow recommendations for treatment. You'll have no contact with [the victim] or his property, and the State will submit a restitution memo within 90 days of this sentence.
>
> Just so I'm clear. I don't think I mentioned it. You have credit for 210 days previously served. The sentence is effective today. All right?
>
> Yes, sir.
>
> THE DEFENDANT: I'm sorry. Is there any way, if there's no objection from the State—I know sometimes it can take a couple weeks for the GPS monitor. Is it all right if I get held at Level III until GPS monitoring is available?
>
> THE COURT: What's the recommended hold level?
>
> [THE PROSECUTOR]: The State would have no objection to a hold at Level III for GPS, Your Honor.
>
> THE COURT: Okay. So we'll hold at Level III for GPS. All right. Thank you.
>
> Is there anything else that we can do at this time?
>
> [THE PROSECUTOR]: Nothing from the State.
>
> [TRIAL COUNSEL]: Thank you.
>
> THE COURT: We'll stand in recess.[66]

On June 23, 2021, a DOC Central Offender Records employee emailed the Superior Court prothonotary's criminal managers asking for clarification because, according to the DOC's calculation, Medley had only earned 12 days of credit time based on his incarceration from March 1 through March 13, 2019.[67] The DOC employee noted that Medley was currently incarcerated on VOPs from Superior Court.[68] On the same day, the chief deputy prothonotary forwarded the email to the

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[66] A59.

[67] A73.

[68] *Id.*

Superior Court case manager who was present during Medley's sentencing and asked him to review the DOC's inquiry and to provide clarification.[69] It does not appear that the DOC received a response to its inquiry until days later.[70]

On June 25, 2021, trial counsel separately emailed the case manager and claimed that Medley was entitled to 576 days of credit time (approximately one year and seven months) because the court had miscalculated the period of time that Medley was incarcerated from June 9, 2019 through November 9, 2020 (a total of 519 days).[71] In his response, the case manager agreed and noted that he had mistakenly used November 9, 2019 as the end date instead of November 9, 2020.[72] The case manager said that he would modify the sentence order to include the extra credit time, and the Superior Court issued an amended sentence order the same day.[73]

On June 28, 2021, a DOC employee emailed the Superior Court's chief deputy prothonotary and the prothonotary's criminal managers and noted that the DOC had received an amended sentence order changing the credit time from 210 to 576 days; however, the DOC could only account for Medley's incarceration from March 1

[69] A72-73.

[70] *See* A72

[71] A62-63.

[72] A62.

[73] *Id.*; Ex. B to Opening Br.

through March 13, 2019, which it calculated as 13 days.[74] The message was forwarded to the case manager, who subsequently advised that the credit time of 576 days was calculated based on Medley's incarceration from March 1 through March 13, 2019 (12 days), March 19 through April 28, 2019 (40 days), June 9, 2019 through November 9, 2020 (519 days), and June 16 through June 22, 2021 (5 days).[75] The DOC employee responded with a calculation showing that, except for March 1 through March 13, 2019, Medley was being held on other cases during the other time periods constituting the court's calculation.[76] The DOC "thought that the offender could only earn time served on the particular case in question not while being held on other cases," but apologized if the belief was incorrect.[77]

Until this point, the emails indicate that the exchange was between Superior Court and the DOC. However, when the case manager next responded to the DOC, he included trial counsel on the email and noted that "[t]he Court defers to [the DOC] in terms of where credit time is applied."[78] The case manager said that he "will amend the Order to reflect that 13 days . . . is owed for this particular case."[79] On

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[74] A72.

[75] A71-72.

[76] A71.

[77] *Id.*

[78] A70.

[79] *Id.*

June 29, 2021, copying trial counsel, the DOC asked the case manager to let it "know when the order has been amended."[80] In his response, the case manager copied trial counsel and said, "I will. I sent a draft to [the judge] and am waiting on approval."[81] A few hours later, the case manager said that "[t]he Amended Order has been approved."[82] Trial counsel then emailed the case manager inquiring about whether the period of time from June 9, 2019 through November 9, 2020 was included.[83] The case manager responded that only 13 days of credit time could be included because "[p]er DOC policy, [t]hey can only credit him with the time pertaining [to] the case on the plea agreement."[84] The case manager said that when he looked in the database maintained by the Judicial Information Center, it only gave him "dates, not case numbers of courts" related to Medley's custody status and that the DOC "has the specific information pertaining to custody status for each case/court."[85] The amended sentence order reflecting 13 credit days was issued on the same day.[86]

Thereafter, on August 27, 2021, the Superior Court found Medley in violation

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[80] *Id.*

[81] *Id.*

[82] A64.

[83] A69.

[84] *Id.*

[85] *Id.*

[86] Ex. C to Opening Br.

of the terms of his supervision in three other cases. At the time, Medley was already serving a VOP sentence from March 5, 2019 for, among other charges, robbery in the first degree.[87] That sentence required Medley to serve 16 years of Level V incarceration, suspended for two years of probation on the robbery charge.[88] In its August 2021 VOP sentence order, the Superior Court sentenced Medley to serve 14 years and two months of Level V incarceration, suspended for 18 months of probation.[89] The Superior Court considered the Level V time Medley had been serving by reducing the balance of the time on that charge by one year and 10 months.[90]

Medley subsequently filed *pro se* motions for modification of his sentence, and his trial counsel filed a motion for additional credit time under Rule 35.[91] In its September 23, 2021 order denying Medley's requests, the Superior Court found that "[t]he credit time that Defendant seeks was already credited to him in a previous sentence dated August 27, 2021."[92] The court concluded that "[t]he only time for which [he] was held on [this] case was 13 days 3/1/19 – 3/13/19 for which he was

[87] B38-43.

[88] B38-43.

[89] B38-43.

[90] B38-43.

[91] A9-10 at D.I. 63-69, 73.

[92] Ex. D to Opening Br.

given credit."[93]

Contrary to Medley's assertions, the Superior Court did not delegate any reformation of Medley's sentence to its administrative staff or the DOC. This is not a situation where the sentencing judge left out a necessary component in Medley's sentence for others to decide. Title 11, Section 3901 of the Delaware Code imposes certain mandates on the Superior Court in sentencing defendants. Section 3901(a) provides that, "[w]hen imprisonment is part of the sentence, the term shall be fixed, and the time of its commencement and ending specified."[94] Section 3901(b) states 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."[95] Section 3901(c) provides that "any period of actual incarceration of a person awaiting trial, who thereafter before trial or sentence succeeds in securing provisional liberty on bail, shall be credited to the person in determining the termination date of sentence."[96] "A sentencing court may satisfy Section 3901 either by 'backdating' the effective date of the sentence to the date of

[93] *Id.*

[94] 11 *Del. C.* § 3901(a).

[95] 11 *Del. C.* § 3901(b).

[96] 11 *Del. C.* § 3901(c).

incarceration or by crediting the defendant with the time served."[97] Moreover, Section 3901(d) provides the court with broad discretion, except in limited circumstances, to impose concurrent and consecutive sentences, and the statute requires the court to "direct whether the sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently or consecutively with any other sentence of confinement imposed on such criminal defendant."[98] Under this Court's precedent, a sentencing court is prohibited from awarding double credit for time served[99] or from giving a defendant credit for time the defendant was not actually incarcerated on a case.[100]

Here, the Superior Court judge's sentence orders met Section 3901's

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

[98] 11 *Del. C.* § 3901(d).

[99] *See, e.g.*, *Counts v. State*, 2014 WL 3530821, at *1 (Del. July 15, 2014) (concluding that defendant was "not entitled to receive double credit for time served"); *Ross v. State*, 2009 WL 2054562, at *1 (Del. 2009) (noting that Ross's claim of a different effective date was "based upon a faulty factual premise" and that modifying the effective date as Ross suggested "would, in effect, give Ross double credit for the Level V time served during that period, an anomalous result under Delaware law"); *Brisco-Bey v. State*, 1993 WL 78216, at *1 (Del. Mar. 15, 1993) (in the context of the Interstate Agreement on Detainers, concluding that, because the defendant was serving a New Jersey sentence, "as a matter of law, he was not entitled to credit for time served on another sentence" under Section 3901(b)).

[100] *Elliott v. State*, 2004 WL 120526, at *1 n. 5 (Del. Jan. 20, 2004) (upholding modifying the effective date of the defendant's sentence because he would have otherwise received credit for serving time when he was not incarcerated, in violation of Section 3901).

requirements by stating that Medley's sentences of confinement were to be served consecutively and by providing the quantum of Level V time that Medley had to serve for each offense.[101] Although the sentence orders were effective as of June 22, 2021, they stated the number of days that Medley was to be credited for time previously served.[102] Medley's arguments that the judge was unaware of the reasons for amending his sentence order to reduce his credit time amount to speculation.[103] And, Medley did not fairly present his arguments regarding reformation to the Superior Court in the first instance. Nonetheless, Medley appears to presume that the judge mechanically approved the modified order at the behest of court staff without performing adequate due diligence and did not understand the reasons for reducing Medley's credit time.[104] The case manager sent a draft order to the sentencing judge, and a few hours passed before the case manager confirmed that the amended order had been approved.[105] Then, when the judge revisited the issue of credit time based on Medley's motions for modification of his sentence and

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[101] *See* Exs. A-C to Opening Br.; *Dorn v. State*, 2003 WL 22227554, at *1 (Del. Sept. 24, 2003) (sentence is not illegal where the Superior Court specified a term of imprisonment in "days, months, and/or years," although sentence does not identify beginning and end dates).

[102] Exs. A-C to Opening Br.

[103] *See* Opening Br. at 12, 15.

[104] *See id.*

[105] A64, 70, 75.

additional credit time, the judge informed Medley that he was providing credit for the time that Medley was actually held on this case.[106] The record establishes that the sentencing judge acted diligently and knowledgeably and assiduously adhered to the statutory credit-time mandate.[107] "[I]n the absence of evidence to the contrary, a sentencing judge is presumed to know the state of sentencing law."[108] Deferring to the DOC's calculation in determining how much credit time to provide is not equivalent to delegating the task.

The instances where this Court has found an impermissible delegation of the reformation of defendants' sentences are inapposite. In *Brown v. State*, the Superior Court found the defendant in violation of the terms of his supervision and, after asking the DOC for guidance about "the date of incarceration for purposes of the new sentence order," the court sentenced him to Level V "for the unserved balance of his sentence."[109] This Court found that "Brown's sentence is deficient under section 3901 because the trial judge failed to specify either the length or the ending

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[106] Ex. D to Opening Br.

[107] 11 *Del. C.* § 3901.

[108] *United States v. Moody*, 381 F. Appx. 113, 116 (2d Cir. 2010); *see Kurzman v. State*, 903 A.2d 702, 709 (Del. 2006) (in the context of a VOP hearing, noting the "presumption that the VOP judge made his decision only on the admissible evidence before him and disregarded the allegedly inadmissible and improper prosecutorial statements").

[109] 793 A.2d 306, 307-08 (Del. 2002).

date of Brown's prison term."[110] This Court held that, in the context of VOP sentences, Delaware judges are required to provide the commencement and termination dates of a sentence, and they could not delegate the function "to be performed administratively by correctional authorities."[111]

In reaching this conclusion, this Court relied on *James v. State*.[112] In *James*, the Superior Court imposed a sentence of imprisonment for robbery that specified beginning and end dates.[113] However, the defendant subsequently escaped while serving the sentence, but was returned to the DOC's custody over three years later.[114] The DOC then administratively adjusted the sentence's expiration date to account for the defendant's escape.[115] This Court found that the defendant's sentence had been reformed and concluded that such reformation, "after return from an escape, remains a judicial function which may not be delegated by the Court to be performed administratively by the Correctional Authorities."[116]

In imposing Medley's sentence, the Superior Court judge clearly announced

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[110] *Id.* at 308.

[111] *Id.*

[112] *Id.* at 308, nn. 5,6, 9 (citing *James v. State*, 385 A.2d 725, 727 (Del. 1978)).

[113] *James*, 385 A.2d at 726.

[114] *Id.*

[115] *Id.*

[116] *Id.* at 727.

the term of incarceration that Medley must serve for each offense and provided the effective date of his sentence.[117] The changes to Medley's credit time did not alter these components or the structure of his sentence. Medley's credit time was not an open-ended issue for others to decide but was a finite term included within court orders.[118] The record establishes that the judge was aware of the need to reduce Medley's credit time because it had been miscalculated and that he thereby entered the amended sentence to remedy the miscalculation. A failure to do so would have, inconsistent with this Court's precedent, provided Medley the same time served credit on multiple sentences.

This Court's decision in *Faircloth v. State* is instructive.[119] After the Superior Court sentenced the defendant to serve over five years of imprisonment on various offenses, he escaped, but was captured 41 days later.[120] The defendant pled guilty to escape after conviction, and the Superior Court sentenced him on that charge to serve four years of incarceration, and it also ordered the release dates on his prior convictions extended by 41 days.[121] The DOC determined that the defendant's sentence for escape after conviction would not begin until after he had served his

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[117] *See* Exs. A-C to Opening Br.

[118] *See id.*

[119] 522 A.2d 1268, 1272 (Del. 1987).

[120] *Id.* at 1269.

[121] *Id.* at 1269-70.

other sentences.[122] The defendant filed a postconviction motion arguing that the Superior Court had not specified a date for his escape conviction to commence but had improperly permitted the DOC to decide, allegedly incorrectly, that the sentence began when he completed his prior sentences.[123] The court denied the motion, and, on appeal, the defendant argued that the court had improperly delegated the reformation of his sentence to correctional authorities.[124] In rejecting the argument, this Court concluded that *James* "presented an unusual factual situation."[125] This Court determined that the Superior Court had not delegated the reformation of the defendant's sentence because the court had stated the number of days that the original sentence was extended by, or the quantum of the sentence, and the "form of sentence satisfied the requirement of the sentencing statute" under Section 3901.[126]

Similarly, Medley's sentence order reducing his credit time stated the quantum of incarceration that he had to serve, which was not changed in correcting the sentence, and the form of his sentence otherwise met the requirements of Section 3901. The Superior Court correctly determined that Medley could only be credited for the time he actually spent incarcerated in this case and that the credit time could

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[122] *Id.* at 1270.

[123] *Id.*

[124] *Id.* at 1270-71.

[125] *Id.* at 1270.

[126] *Id.* at 1271.

not be doubly applied.[127] The Superior Court did not err because it did not delegate the reformation of his sentence.

The Superior Court did not err by adjusting Medley's sentence to reflect his time served under 11 Del. C. § 3901; in any event, Medley has not demonstrated prejudice from any error.

Trial counsel initially obtained a favorable increase in the amount of Medley's credit time by working with the case manager and not directly contacting the sentencing judge about the issue; nonetheless, Medley now complains that his "right to be present with his counsel" was violated.[128] Medley is incorrect, and his claims do not amount to plain error. The Superior Court did not violate Medley's rights, and, even if any error occurred, Medley has not demonstrated prejudice.

The Superior Court did not violate Medley's rights.

In the context of sentencing proceedings, certain norms exist: (1) "a defendant has a right to be present at the imposition of final sentence," (2) "he has a right to counsel at that time," and (3) "the Trial Judge is required to address a defendant personally at that time and to ask him if he wishes to make a statement in his own behalf and/or present any information in mitigation of punishment."[129] In *Hooks*, this Court did not definitively attribute the origins of these norms, but it found that

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[127] *See Counts*, 2014 WL 3530821, at *1; *Ross*, 2009 WL 2054562, at *1; *Brisco-Bey*, 1993 WL 78216, at *1; *Elliott*, 2004 WL 120526, at *1 n. 5.

[128] Opening Br. at 17-18.

[129] *Hooks v. State*, 429 A.2d 1312, 1313 (Del. 1980).

they potentially stemmed from common law or the constitution and noted that they are codified under Superior Court Criminal Rules 32 and 43.[130] Rule 43(a) requires the defendant to be "present at arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence."[131] Rule 32(a) encompasses the norms *Hooks* identified regarding sentencing.[132]

There are exceptions to the rule, however. The Superior Court did not violate Medley's rights because it lacked discretion regarding the calculation of his credit time, and Medley did not have a constitutionally protected interest in misapplied or miscalculated credit time. Further, Rule 36 permitted the Superior Court to correct Medley's sentence to conform to Delaware law, and, to the extent the court relied on Rule 35 to modify Medley's sentence, Medley was not required to be present under the rule. Accordingly, Medley has not demonstrated plain error.

The Superior Court lacked discretion in calculating Medley's credit time.

Medley's right to notice and to be present in court when the amended sentence order was issued did not extend to his recalculated credit time because the Superior Court lacked discretion regarding his credit time. In the context of resentencing,

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[130] *Id.*

[131] Super. Ct. Crim. R. 43(a).

[132] *See* Super. Ct. Crim. R. 32(a).

Hooks found that the right to be present did not apply where the Superior Court lacked discretion in imposing the sentence.[133] In *Hooks*, the defendants' death sentences were vacated as unconstitutional, and the Superior Court subsequently issued a written order sentencing them to life imprisonment without a hearing.[134] In concluding that their right to be present at a hearing was not violated, *Hooks* stated that the "defendants were present in the Superior Court with counsel for sentencing and each had an opportunity to be heard personally and through counsel as required by the [Criminal] Rules."[135] Because the Superior Court judge had no alternative but to impose life sentences, "any requirement of attendance of defendants and their counsel would be a formality at best."[136]

In *Bryant v. State*, relying on *Hooks*, this Court concluded that the defendant's procedural due process rights were not violated when the Superior Court, 12 years after sentencing the defendant for murder in the first degree, corrected the sentence order to conform the sentence to Delaware law by providing that the defendant was ineligible for parole.[137] On appeal, the defendant argued that the Superior Court had increased the quantum of his sentence and that the court had violated his

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[133] *Hooks*, 429 A.2d at 1314.

[134] *See id.* at 1312.

[135] *Id.* at 1313.

[136] *Id.* at 1314.

[137] 1993 WL 22040, at *1, 3 (Del. Jan. 8, 1993) (citing *Hooks*, 429 A.2d at 1313).

constitutional rights by not providing him with notice and an opportunity to be heard regarding the correction.[138] This Court found that the right to notice and an opportunity to be heard did not apply where the judge did not have discretion in correcting a defendant's sentence and that "to require the presence of the defendant and his counsel before the court would amount to no more than a hollow formality."[139]

In imposing Medley's sentence, the Superior Court did not have discretion in calculating Medley's credit time. The court was required to follow Section 3901's framework by backdating the sentence's effective date or by crediting Medley with the time he actually served.[140] The court could not provide Medley with double credit[141] or give Medley credit for time he was not actually incarcerated on his charges.[142] Medley was arrested in this case on March 1, 2019, and he posted bail after serving 12 days of incarceration;[143] his subsequent arrests and incarceration were on different cases. Requiring Medley's appearance at a hearing with counsel present to correct the calculation would have been nothing more than a hollow

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[138] *Id.* at *1-3.

[139] *Id.* at *3.

[140] *Beck*, 2019 WL 2153313, at *1.

[141] *See Counts*, 2014 WL 3530821, at *1; *Ross*, 2009 WL 2054562, at *1; *Brisco-Bey*, 1993 WL 78216, at *1.

[142] *Elliott*, 2004 WL 120526, at *1 n. 5.

[143] A12; A1 at D.I. 4.

formality.[144] Moreover, Medley's due process rights were satisfied during his plea and sentencing hearing when the court provided the parties with ample opportunity to address the court before it imposed Medley's sentence.

Medley did not have a constitutionally protected interest in misapplied or miscalculated credit time.

Another exception to the rule is based on the Third Circuit's decision in *Evans v. Secretary Pennsylvania Department of Corrections*:[145] a defendant does not have

[144] In the Rule 35(a) motion that Medley's trial counsel filed in the Superior Court, Medley relied on *McNair v. State*, 2011 WL 3964585 (Del. Sept. 8, 2011), in arguing that the defendant was credited with time on a case that was dismissed and that the credit time was applied in connection with a plea agreement in another case. *See* A87. However, Medley misread this decision. In *McNair*, the defendant was arrested in March 2008 on robbery and related charges. *See* B26 at D.I. 1. These charges were dismissed 39 days later, but an amended indictment was filed in the same case charging him with burglary and other offenses instead. *See* B26 at D.I. 2, 3. He was held in default of bail in that case from May 2008 until he pled guilty to burglary and was sentenced in June 2009. *McNair*, 2011 WL 3964585, at *1. Meanwhile, the defendant was arrested in May 2008 and held in default of bail in a separate case including, among other charges, possession of drug paraphernalia. *Id.* He pled guilty to possession of drug paraphernalia in December 2008, and the sentence was made effective from when he was arrested in May 2008. *Id.* When the defendant was sentenced in the burglary case in June 2009, the Superior Court credited him with the time he was incarcerated, including the aforementioned 39 days, less the credit time already applied to his sentence in the drug paraphernalia case. *Id.* The defendant filed a motion for credit time, which the Superior Court denied. *Id.* On appeal, this Court upheld the Superior Court's denial of the motion absent evidence that the defendant had not been credited for all Level V time he was entitled to. *Id.* Here, the record does not indicate such substantial overlap. Instead, before Medley's sentencing in June 2021 for burglary in the second degree, he had served no more than 13 days in relation to that case because he had posted bail. His arrests after posting bail pertained to different matters.

[145] 645 F.3d 650 (3d Cir. 2011).

"a constitutionally protected interest in his expectation of release based on the misapplied credit for time served" and therefore does not have a procedural due process right to notice and a court hearing in correcting any miscalculation.[146] In *Evans*, a federal habeas case, the petitioner resolved two criminal cases in 1994 by pleading guilty in two Pennsylvania counties, but, later that year, correctional authorities realized that he was being provided double credit for time served, which violated Pennsylvania law.[147] Eleven years later, correctional authorities adjusted the petitioner's release date by over four years.[148] In the Pennsylvania courts, the petitioner sought to retain the additional credit time, but his request was denied.[149] The petitioner also unsuccessfully moved for postconviction relief in the Pennsylvania courts.[150] However, when he subsequently petitioned for habeas corpus relief in the federal district court, the court granted the petition.[151] On appeal, the Third Circuit reversed the district court's decision.[152] The Third Circuit concluded that the petitioner had not acquired a substantive due process right in a

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[146] *Id.* at 666.

[147] *Id.* at 653-54, 664.

[148] *Id.* at 654.

[149] *Id.*

[150] *Id.* at 654-55.

[151] *Id.* at 652, 655.

[152] *Id.* at 666.

"shorter, but incorrect sentence" and found that the government's actions were not "'so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience' and hence constitute a substantive due process violation."[153] In determining that the petitioner's procedural due process rights were not violated when correctional authorities had administratively corrected the petitioner's sentence without notice and a hearing, the Third Circuit found that "[t]he answer is straightforward: while the administrative correction increased the period [the petitioner] was confined beyond what he had expected, it did not at all change the conditions under which he was confined."[154] The Third Circuit concluded that "time is a feature of a sentence of incarceration, not in itself a condition of confinement, and the passage of time in this case had no effect on the conditions [the petitioner] was required to endure."[155] The Third Circuit found that "because [the petitioner] lacks a constitutionally protected interest in his expectation of release based on the

[153] *Id.* at 662 (quoting *County of Sacramento v. Lewis*, 523 U.S. 523 U.S. 833, 847 n.8 (1998)).

[154] *Id.* at 665.

[155] *Id.* at 665-66.

misapplied credit for time served, no procedural due process violation could have occurred."[156]

This Court's decision in *Bryant* is consistent with *Evans*. Had the defendant's original sentence in *Bryant* remained unaltered, he would have potentially been eligible for parole and had received a windfall not authorized under Delaware law.[157] This Court rejected the defendant's claim in *Bryant* that his due process rights were violated simply because the Superior Court destroyed his expectations of an early release.[158] This Court found that his sentence was not enhanced by making it conform to Delaware law.[159] This Court concluded that "[m]ere passage of time, however, does not give rise to the level of a constitutional violation. Instead, there must be prejudice and harm well beyond a defendant's frustrated expectations before the error becomes constitutionally redressable."[160]

In reducing Medley's credit time, the Superior Court did not violate Medley's constitutional rights. Medley did not have a constitutionally protected interest in

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[156] *Id.* at 666.

[157] *Bryant*, 1993 WL 22040, at *1.

[158] *Id.* at *3.

[159] *See Bryant v. State*, 2007 WL 2049781, at *2 (Del. July 18, 2007) ("As this Court previously held, the Superior Court did not enhance Bryant's sentence in [correcting the sentence order], but merely corrected the sentencing order to conform to the dictates of Delaware law.").

[160] *Bryant*, 1993 WL 22040, at *3.

miscalculated or misallocated credit time. Medley's thwarted expectation of early release does not amount to a constitutional violation. The court's amended sentence order did not change the conditions under which Medley was serving his sentence because the effective date and the quantum of Level V time Medley was required to serve on his charges did not differ.

The Superior Court could correct Medley's sentence under Rule 36 without him present.

As a further exception, Rule 36 allows the court "at any time and after such notice, if any, as the court orders" to correct "[c]lerical mistakes in judgments, orders or other parts of the record."[161] This Court has found that "[t]he defendant's presence is not always necessary, however, when a sentence is corrected" and that "its provisions for notice to the parties are optional."[162]

This Court has relied on Rule 36 in upholding corrections to sentences in order to conform them to the requirements of Delaware law. In *Browne v. State*, this Court affirmed the Superior Court's conclusion that Rule 36 permitted the Court of Common Pleas to amend a sentence order to strike credit time that the defendant was not entitled to.[163] And, this Court has affirmed the Superior Court correcting a

[161] Super. Ct. Crim. R. 36.

[162] *Jones v. State*, 672 A.2d 554, 555 (Del. 1996).

[163] *See* 1993 WL 189564, at *2 (Del. May 11, 1993) (Ridgely, J.) (on appeal from the Court of Common Pleas), *aff'd*, 1993 WL 557949, at *1 (Del. Dec. 30, 1993).

sentence's effective date because that court's "oversight" resulted in an illegal sentence under Section 3901(b) by improperly giving "Level V credit for a period of time he was not incarcerated."[164] In relying on the rule in *Bryant*, this Court determined that "[i]n Delaware, it is well recognized that a trial court may correct its records to the facts and truth of the case even when such correction occurs after commencement of the sentence."[165] Therefore, this Court concluded that correcting the defendant's sentence to address a "fundamental error mandating correction" was consistent with its precedent.[166]

In *Jones*, this Court found that the defendant must be present for resentencing where the Superior Court had separately sentenced him to two years of imprisonment because he was a habitual offender, while the court also imposed a sentence of imprisonment on his drug trafficking offense.[167] This Court concluded that Rule 36 did not apply where the Superior Court corrected "an error of law when [his] sentence was pronounced, not a clerical mistake in transcription."[168] Because the Superior Court had discretion to impose a more severe sentence for the trafficking

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[164] *Elliott*, 2004 WL 120526, at *1 nn. 4, 5.

[165] 1993 WL 22040, at *2.

[166] *Id.*

[167] *Jones*, 672 A.2d at 554-55; Opening Br. at 17 n.53.

[168] *Id.* at 555.

offense, the defendant had the right to be present.[169] Similar discretion is absent here.

While the Superior Court did not specify that it was proceeding under Rule 36, that rule supports the issuance of the order without Medley's presence. Based on the judge's comments during the sentencing hearing about the amount of credit to provide Medley for time previously served, the language in the amended sentence order, and the denial of Medley's motions, it is evident that the Superior Court intended to provide Medley with credit for the time he actually served on this case as required under 11 *Del. C.* § 3901.[170] The amended sentence order brought Medley's sentence into conformity with Delaware law. Unlike *Jones*, the amended sentence order did not affect the structure of Medley's sentence; rather, the order corrected a factual error in the calculation of credit time. Left unchecked, Medley's initial sentence violated Section 3901.[171] Time is a feature of Medley's incarceration, not a condition of his confinement.[172] Therefore, the court could amend Medley's sentence under Rule 36 without prior notice and a hearing.

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[169] *Id.* at 556.

[170] *See* A59; Exs. C and D to Opening Br.

[171] *See Counts*, 2014 WL 3530821, at *1; *Ross*, 2009 WL 2054562, at *1; *Brisco-Bey*, 1993 WL 78216, at *1; *Elliott*, 2004 WL 120526, at *1 n. 5.

[172] *See Evans*, 645 F.3d at 665-66.

The Superior Court could modify Medley's sentence under Rule 35 without him present.

Under Rule 35(a), the Superior Court "may correct an illegal sentence at any time," while Criminal Rule 35(c) provides that "[t]he court, acting within 7 days after the imposition of sentence, may correct a sentence that was imposed as a result of arithmetical, technical, or clear error."[173] Rule 43(c)(4) provides that a defendant does not need to be present "[a]t a reduction of sentence under Rule 35," although the rule does not appear to have expressly adopted the federal rule's language permitting the defendant's absence in a proceeding concerning "the correction . . . of sentence under Rule 35."[174] Moreover, a court's ability to modify sentences under the rule is not unlimited. This Court has remanded cases where sentencing courts had substantively changed the terms of sentences without conducting hearings with defendants present.[175] In analyzing the scope of Rule 35(a), this Court has concluded that a court may not modify other legal sentences in the process of correcting an illegal one.[176]

However, it does not appear that this Court has specifically addressed the

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[173] Super. Ct. Crim. R. 35(a), (c).

[174] *Compare* Super. Ct. Crim. R. 43(c)(4) *with* Fed. R. Crim. P. 43(c)(4).

[175] *See, e.g.*, *Owens v. State*, 2013 WL 85185, at *1 (Del. Jan. 7, 2013) (neither counsel nor defendant present when the court modified the defendant's sentence for possession of a firearm by person prohibited from 18 months at Level V, without the benefit of any early release, to the statutory maximum of eight years at Level V, suspending all but 18 months of the sentence); *Peterson v. State*, 2004 WL 1874651,

parameters of a defendant's entitlement to a hearing when a sentencing court acts under Rule 35(c). The federal version of Rule 35 addressing the correction of "an obvious arithmetical, technical, or other clear error" "does not provide for any formalized method of bringing the error to the attention of the court and recognizes that the court could *sua sponte* make the correction," although, regarding notice and the defendant's presence in court, the rule's Advisory Committee "contemplate[d] that the court will act in accordance with Rules 32 and 43 with regard to any corrections in the sentence."[177] In certain instances where this Court has reversed the modification of a defendant's sentence without the defendant present, it has found important the discretion afforded to the judge in imposing the sentence.[178] In

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at *1 (Del Aug. 17, 2004) (in response to a motion requesting additional credit time, the Superior Court, without a hearing, issued a modified sentence order reworking the defendant's sentence to include a Level IV commitment with a hold at Level V and discharging the defendant as unimproved from other sentences); *West v. State*, 2021 WL 4593164, at *2 (Del. Oct. 4, 2021) (although not specifically citing Rule 35, reciting the history of various modifications to the defendant's sentence, and finding that the defendant should have been present in court when the Superior Court increased the Level V component of his sentence by adding the condition that the Level V component of his sentence was suspended after successful completion of an inpatient drug treatment program).

[176] *Longford-Myers v. State*, 213 A.3d 556, 559 (Del. 2019).

[177] Advisory Committee Note to Fed. R. Crim. P. 35.

[178] *See*, *e.g.*, *Jones*, 672 A.2d at 556 (concluding that the defendant had the right to be present when the amended sentence was imposed, noting that, although Rule 35(a) permitted the Superior Court's to correct an illegal sentence, the defendant's amended sentence amounted to a substantive legal change in his sentence and that the sentencing judge had discretion to impose a more severe sentence); *Fullman v. State*, 431 A.2d 1260 (Del. 1981) (vacating sentence because the defendant was not

Hooks, this Court determined that there was not a difference between this Court permitting the modification or reduction of a sentence under Rule 35 and where one sentence was virtually substituted for another.[179]

Here, the Superior Court did not state whether it relied on Rule 35 in amending the sentence order reducing Medley's credit time, but it issued the order within the seven-day-period under Rule 35(c). The Advisory Committee's notes to the federal version of the rule reflect that, by declining to mandate a specific procedure, a sentencing court has some discretion in the process its uses.

Besides Rule 35(c), the Superior Court's decision to correct the error without Medley present finds support under Rule 35(a). While the correction addressed a factual error in the calculation of Medley's credit time, it also prevented the error from resulting in Medley's sentence becoming illegal under Section 3901 based on Medley receiving duplicate credit time or credit for time he was not actually incarcerated on this particular case.[180] The court's amended sentence order

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present when the Superior Court granted a motion for correction of his sentence and completely reconfigured his sentence by imposing a sentence on one versus two offenses, noting that the judge had a "significant amount of discretion" in resentencing the defendant on his Rule 35 motion, that the defendant had initiated the proceeding by filing a Rule 35 motion, and that the version of Rule 35 in effect at the time mandated a hearing on the motion unless the motion, files, and record in the case showed that the defendant was not entitled to relief).

[179] *Hooks*, 429 A.2d at 1314.

[180] *See Counts*, 2014 WL 3530821, at *1; *Ross*, 2009 WL 2054562, at *1; *Brisco-Bey*, 1993 WL 78216, at *1; *Elliott*, 2004 WL 120526, at *1 n. 5.

correcting the miscalculation did not amount to a substantive legal change in Medley's sentence because it did not alter the structure of his sentence.[181] The fact that the Superior Court lacked discretion in calculating Medley's credit time and essentially substituted one sentence for another supports its decision to amend the sentence order without Medley present under Rule 35.

Medley has not demonstrated prejudice.

Even if this Court finds that the Superior Court erred under Rule 43 in issuing the amended sentence order without Medley present, Medley has not demonstrated prejudice. To be sure, this Court has found reversible error and has determined that a defendant does not need to show prejudice when the defendant is absent during "a traditional and formal confrontation stage of the trial such as the impaneling of the jury, the return of the verdict or the imposition of sentence."[182] However, in other instances, a defendant is required to demonstrate prejudice.[183] Prejudice is lacking where no purpose would be served by having the defendant present in court.[184] In

[181] *See Evans*, 645 F.3d at 665-66 ("time is a feature of a sentence of incarceration," not a condition of confinement).

[182] *Dutton v. State*, 452 A.2d 127, 147 (Del. 1982).

[183] *Joyner v. State*, 2017 WL 444842, at *5 (Del. Jan. 20, 2017) (citing *Capano v. State*, 781 A.2d 556, 654 (Del. 2001).

[184] *Bailey v. State*, 419 A.2d 925, 927 (Del. 1980) (where verdict in non-jury trial was rendered by a letter opinion, concluding that, "[e]ven if Rule 43 required the defendant's presence in this case," "[w]e cannot think of any manner in which the

the context of resentencing, the Second Circuit has concluded that, even if district courts erred in not having defendants present in court, any error was harmless where the sentence imposed is less onerous than the original one or "when a defendant's presence would not have affected the outcome of the resentencing."[185]

Here, Medley was present in court when his sentence was imposed, and the amended sentence order reducing his credit time was not issued during the traditional stages identified in *Dutton*. To conclude otherwise would call into doubt the ability of courts to modify sentences under any circumstance except after hearings with defendants present, which is illogical as Rule 43's exceptions cite Rule 35.[186] The justice who concurred in the decision in *Hooks* would have found "any error in this case is harmless beyond a reasonable doubt."[187] The correction did not prejudice Medley because the Superior Court lacked discretion in calculating the credit for

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defendant in this case could have been prejudiced, nor does the defendant allege that the return of the verdict by letter opinion without his presence prejudiced his case").

[185] *United States v. Arrous*, 320 F.3d 355, 361 (2d Cir. 2003) (lack of prejudice where resentencing eliminated restitution obligation) (citing *United States v. Pagan*, 785 F.2d 378, 380-81 (2d Cir. 1986) (while concluding that clarification or correction of monetary assessments should have been done in defendant's presence, concluding that error was harmless because the assessments were mandatory).

[186] *See United States v. Parrish*, 427 F.3d 1345, 1347 (11th Cir. 2005) ("We have noted that the right to be present at one's sentencing 'does not translate into a right to be present whenever judicial action modifying a sentence is taken'") (quoting *United States v. Jackson*, 923 F.2d 1494, 1496 (11th Cir. 1991) (presence not required when correcting an illegal sentence under federal version of Rule 35)).

[187] *Hooks*, 429 A.2d at 1314.

time previously served. Medley also received the credit time in other cases on which he was actually incarcerated. Any error was harmless because Medley's presence would not have affected the outcome.[188]

In sum, the Superior Court did not delegate any reformation of Medley's sentence, and his constitutional and procedural rights were not violated. In any event, Medley has not demonstrated prejudice. Medley has not shown plain error.

[188] *See Rice v. Wood*, 77 F.3d 1138, 1140 (9th Cir. 1996) (the defendant's absence from the courtroom when the jury returned its verdict and found no mitigating factors deemed harmless because nothing indicated that jurors would have changed their minds if the defendant had been present); Super. Ct. Crim. R. 52 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

CONCLUSION

The State respectfully requests that this Court affirm the judgment below without further proceedings.

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Dated: February 8, 2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILBUR MEDLEY,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 315, 2021
	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using MS Word.

2. This brief complies with the type-volume requirement of Rule 14(d)(i) because it contains 9,865 words, which were counted by MS Word.

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DATE: February 8, 2022