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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0826-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAWN JULY,

Defendant-Appellant.

Submitted March 20, 2018 – Decided April 6, 2018

Before Judges Fisher and Fasciale.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 99-
07-2486.

Shawn July, appellant pro se.

Robert D. Laurino, Acting Essex County
Prosecutor, attorney for respondent (Barbara
A. Rosenkrans, Special Deputy Attorney General/
Acting Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant appeals the 2016 denial of his motion to correct
what he claims was an illegal sentence; he claims the judgment
incorrectly applied the 927-day gap-time credit awarded when he

was sentenced in 2002. We find no merit in defendant's argument and affirm.

The record reveals that, on June 25, 1999, defendant began serving a five-year maximum sentence on a conviction for weapons, CDS, and resisting-arrest offenses. On January 6, 2002, defendant was sentenced to an aggregate twenty-year prison term with an eighty-five percent period of parole ineligibility, pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, for aggravated manslaughter and unlawful possession of a weapon; this term was ordered to run concurrently with the 1999 sentence. When sentenced in 2002, defendant was awarded a gap-time credit of 927 days, which represented the time he was incarcerated between the 1999 and 2002 convictions.

Defendant unsuccessfully appealed the 2002 judgment of conviction, State v. July, No. A-5319-01 (App. Div. Oct. 18, 2004); he did not then assert any issue with regard to gap-time credit. The Supreme Court denied certification, 182 N.J. 629 (2005). Defendant filed a post-conviction relief (PCR) petition in March 2005, claiming he was denied the effective assistance of counsel. Relief was denied, and defendant appealed without arguing the sentence was excessive or unlawful. We found defendant entitled to an evidentiary hearing on an ineffectiveness allegation and remanded for that purpose. State v. July, No. A-5154-07 (App. Div.

July 26, 2010). A hearing was conducted and the PCR judge denied relief. Defendant appealed, we affirmed, State v. July, No. A-0247-11 (App. Div. Feb. 11, 2013), and the Supreme Court denied certification, 215 N.J. 488 (2013).

In 2013, as the appellate proceedings in defendant's PCR appeal neared an end, defendant petitioned the United States District Court for the District of New Jersey for a writ of habeas corpus, raising issues about the effective assistance of counsel; he made no claim regarding gap-time credit. The district court denied relief in 2016, as did the United States Court of Appeals for the Third Circuit in 2017.

In February 2015, defendant filed an inmate grievance against the Department of Corrections (DOC), arguing the DOC incorrectly applied the 927 gap-time credit to his sentence. The DOC denied relief, and defendant appealed that final agency decision. We affirmed. July v. Dep't of Corr., No. A-2687-15 (App. Div. July 11, 2017).

On November 13, 2015 – nine months after commencing his inmate grievance but prior to our affirmance of the DOC's final decision – defendant moved in the trial court seeking a correction of what he claims was an illegal sentence because of the application of the 927 days in gap-time credit. Defendant did not then, and does not now, argue that the computation of the gap-time credit was

erroneous; he claims only that it has not been applied properly. For reasons set forth in a written opinion, the motion judge found procedural obstacles – based on both the passage of time and defendant's failure to seek relief previously – standing in the way of a consideration of the merits; the judge applied those procedural bars but he also considered the merits and found defendant's argument lacking in substance. It is the denial of this motion defendant now appeals, arguing the judge erroneously failed to correct the sentence because it

HAD NOT BEEN IMPOSED IN ACCORDANCE WITH THE SENTENCING PROVISION OF N.J.S.A. 2C:44-5(b)2; AS THE SENTENCING JUDGE FAILED TO REDUCE [DEFENDANT'S] SENTENCE BY THE GAP-TIME CREDIT, WHICH ULTIMATELY IS MEANT TO DETERMINE THE LENGTH OF THE TERM REMAINING TO BE SERVED AFTER THE CORRECT APPLICATION OF THE 927 DAYS OF GAP-TIME CREDIT.

We reject defendant's argument on its merits without considering the procedural bars referred to by the motion judge.

As we observed when affirming defendant's appeal of the DOC's final agency decision, gap-time credit "cannot be used to reduce an inmate's mandatory sentence, which is what July seeks here." July v. Dep't of Corr., slip op. at 3 (citing N.J.A.C. 10A:9-5.2(c)). Instead, gap-time credits "'advance the date on which a defendant first becomes eligible for parole,' but only when 'neither a judicial nor a statutory parole bar has been imposed.'"

Id. at 3 (quoting State v. Hernandez, 208 N.J. 24, 38-39, 41 (2011)).

Applying these principles, we held:

July began serving his aggravated manslaughter sentence on January 7, 2002. July's mandatory minimum of seventeen years for this conviction expires on January 6, 2019, and the agency listed July's maximum and minimum date as January 6, 2019. The maximum for this conviction is twenty years. July was awarded 927 days of gap-time credit and 400 days of work credit by the court. Together, these credits reduce the maximum twenty-year sentence to the mandatory minimum of seventeen years because the credits cannot reduce the sentence below the mandatory minimum.

Gap-time credits are governed by N.J.[S.A.] 2C:44-5(b). "Unlike jail credits, gap-time credits are applied to the 'back end' of a sentence." Hernandez, . . . 208 N.J. at 38. Gap-time credit will not reduce the period of parole ineligibility imposed by NERA. Id. at 41. July's aggravated manslaughter conviction requires he serve a term of seventeen years before he is eligible for parole; gap credits cannot reduce that term.


[July v. Dep't of Corr., slip op. at 3-4.]

For these and the other reasons set forth in our unpublished opinion in July's appeal of the DOC's rejection of the same argument, we reject defendant's argument in this appeal.¹

¹ We are mindful Rule 1:36-3 generally precludes our citation of unpublished opinions; the Rule, however, permits citation to an unpublished opinion "to the extent required by" issue preclusion doctrines, and our holding in the earlier opinion regarding

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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defendant's gap-time credit is entitled to our deference because
of the law-of-the-case doctrine. See Lombardi v. Masso, 207 N.J.
517, 538-39 (2011).