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APPROVAL OF THE APPELLATE DIVISION**

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-2687-15T4

SHAWN JULY,

Appellant,

v.

NEW JERSEY DEPARTMENT  
OF CORRECTIONS,

Respondent.

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Submitted June 8, 2017 – Decided July 11, 2017

Before Judges Lihotz and Whipple.

On appeal from New Jersey Department of  
Corrections.

Shawn July, appellant pro se.

Christopher S. Porrino, Attorney General,  
attorney for respondent (Lisa A. Puglisi,  
Assistant Attorney General, of counsel; Nicole  
E. Adams, Deputy Attorney General, on the  
brief).

PER CURIAM

Shawn July, an inmate at New Jersey State Prison in Trenton,  
appeals from a May 6, 2015 final decision from the New Jersey

Department of Corrections regarding the calculation of gap-time credits. We affirm.

On June 25, 1999, July began serving a five-year maximum sentence for unlawful possession of a firearm, possession of a controlled dangerous substance (CDS), distribution of a CDS, conspiracy to distribute a CDS, receiving stolen property, and resisting arrest. On January 6, 2002, July was sentenced to an aggregate twenty-year 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. The 2002 sentence ran concurrent to the 1999 sentence, totaling an aggregate maximum sentence of twenty-two years, six months, and thirteen days. July was awarded 927 days of gap-time credit for the time he spent incarcerated between the 1999 conviction and the 2002 conviction.

On February 10, 2015, July filed an inmate grievance form seeking a correction to his sentence and arguing his gap-time was not applied. Department of Corrections staff responded on April 6, 2015, indicating the gap-time credits are included in his calculation. July appealed from this determination on April 9, 2015, again arguing the credits were incorrectly calculated. A final decision from May 6, 2015, stating the gap-time credits had been included. July subsequently appealed from the final decision.

July argues the agency did not correctly apply his gap-time credits to his sentence. We disagree.

Gap-time credits are awarded when a defendant has been previously incarcerated and is sentenced to another term "for an offense committed prior to the former sentence." N.J.S.A. 2C:44-5(b)(2). Then, the defendant shall be credited with time served in imprisonment on the prior sentence in determining the permissible aggregate length of the term . . . remaining to be served." Ibid. These credits cannot be used to reduce an inmate's mandatory sentence, which is what July seeks here. N.J.A.C. 10A:9-5.2(c). These 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." State v. Hernandez, 208 N.J. 24, 38-39, 41 (2011) (citing Booker v. N.J. State Parole Bd., 136 N.J. 257, 261, 263-65 (1994)).

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 credits 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.A.C. 2C:44-5(b). "Unlike jail credits, gap-time credits are applied to the 'back end' of a sentence." Hernandez, supra, 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. Thus, the agency's decision was not arbitrary or capricious.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION