

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN M. FRANKLIN,	§
	§
Defendant Below-	§ No. 543, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0304010407C
Plaintiff Below-	§
Appellee.	§

Submitted: December 3, 2007

Decided: February 12, 2008

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

ORDER

This 12th day of February 2008, upon consideration of appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, John Franklin, filed this appeal from the Superior Court's denial of his second motion for postconviction relief. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Franklin's opening brief that the appeal is without merit. We agree. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that a Superior Court jury convicted Franklin in 2004 of five counts of first degree rape, one count of terroristic

threatening, and one count of endangering the welfare of a child. This Court affirmed his convictions and sentence on direct appeal.¹ Thereafter, Franklin moved for postconviction relief, which the Superior Court denied.² We affirmed the Superior Court's decision on appeal.³ In his second motion for postconviction relief, Franklin argued that his convictions should be overturned because of prosecutorial misconduct and ineffective assistance of counsel. The Superior Court held that Franklin's claims were procedurally barred, and thus denied his motion. This appeal followed.

(3) In his opening brief on appeal, Franklin argues that the prosecutor engaged in misconduct by: (i) impermissibly commenting on Franklin's exercise of his Fifth Amendment right not to testify; (ii) failing to disclose potentially exculpatory evidence; and (iii) misstating the law to the jury. Franklin also argues that his trial counsel was ineffective for: (i) failing to have the victim tested for herpes; (ii) failing to consult with him about the testimony of a defense expert; (iii) failing to cross-examine the victim on the effects of drugs she was taking on her ability to perceive and recollect Franklin's actions; and (iv) failing to cross-examine the victim about her prior consensual sexual acts with Franklin.

¹ *Franklin v. State*, 2005 WL 528674 (Del. Mar. 2, 2005).

² *Franklin v. State*, 2005 WL 3193713 (Del. Super. Nov. 29, 2005).

³ *Franklin v. State*, 2006 WL 1374675 (Del. May 17, 2006).

(4) After careful consideration of Franklin's opening brief and the State's motion to affirm, we find it manifest that the judgment below should be affirmed on the basis of the Superior Court's well-reasoned decision dated September 26, 2007. The Superior Court did not err in concluding that Franklin's claims of prosecutorial misconduct were barred because Franklin had failed to raise the issues in the proceedings leading to the judgment of conviction.⁴ Similarly, the Superior Court did not err in holding that Franklin's claims for ineffective assistance of counsel were barred by Franklin's failure to raise these claims in his first motion for postconviction relief.⁵ Franklin failed to overcome these procedural hurdles.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁴ Del. Super. Ct. Crim. R. 61(i)(3) (2008)

⁵ Del. Super. Ct. Crim. R. 61(i)(2) (2008).