

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM T. JOHNSON,	§
	§ No. 453, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9606009907
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 20, 2008
Decided: November 7, 2008

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 7th day of November 2008, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, William T. Johnson, filed an appeal from the Superior Court's August 29, 2008 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In October 1996, Johnson pleaded guilty to one count of Felony Theft. He was sentenced to two years at Level V, to be suspended for one year of probation. In July 2004, Johnson moved for postconviction relief in the Superior Court. The Superior Court denied Johnson's claims and this Court affirmed the Superior Court's judgment.¹

(3) In this appeal, Johnson claims that the Superior Court erred and abused its discretion when it denied his postconviction motion. He claims that a) his counsel was ineffective by failing to challenge the erroneous charges in his indictment; b) the prosecution charged him incorrectly; and c) the procedural bars to these claims are inapplicable because he is "innocent" of the charges to which he pleaded guilty.

(4) Johnson pleaded guilty to felony theft. He does not claim that his plea was entered involuntarily. In fact, the TIS guilty plea form attached to his brief reflects that he "freely and voluntarily" decided to plead guilty to that charge. This Court has long held that a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea.² Because Johnson's first two claims implicate alleged errors or defects occurring prior to the entry of his plea, we conclude that those claims have been waived. Johnson's third claim of "actual innocence" is irrelevant in the

¹ *Johnson v. State*, Del. Supr., No. 488, 2004, Jacobs, J. (May 31, 2005).

² *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

context of a voluntary guilty plea. The record reflects that Johnson determined, in October of 1996, that it was in his best interest to enter a plea of guilty to felony theft. He is now bound by the representations he made on the TIS guilty plea form he signed in connection with that plea.³ We, therefore, affirm the Superior Court's denial of Johnson's claims, albeit on grounds different from those relied upon by the Superior Court.⁴

(5) It is manifest on the face of Johnson's opening brief that his appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁴ *Unitrin v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995). The Superior Court determined that Johnson's claims were barred under Rule 61.