

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEON PERKINS,	§	
	§	No. 325, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0212008942
Appellee.	§	

Submitted: September 9, 2008

Decided: December 11, 2008

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

ORDER

This 11th day of December 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 appellant, Leon Perkins, filed an appeal from the Superior Court's June 11, 2008 denial of his motion for postconviction relief.¹ The appellee, 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.²

We agree and AFFIRM.

¹ *State v. Perkins*, 2008 WL 2406231 (Del. Super.).

² Del. Supr. Ct. R. 25(a).

(2) In April 2005, a Superior Court jury convicted Perkins of Murder in the First Degree, Possession of a Firearm During the Commission of a Felony and two counts of Possession of a Deadly Weapon or Ammunition by a Person Prohibited. The Superior Court sentenced Perkins to mandatory life imprisonment on the murder charge plus an additional sixteen years on the remaining charges. Perkins' convictions were affirmed on appeal.³

(3) In May 2007, Perkins filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). Perkins alleged a *Brady* violation and claims of ineffective assistance of counsel.⁴ The Superior Court directed that Perkins' trial counsel respond to the ineffective assistance of counsel claims.⁵ Trial counsel did so in a detailed twenty-three page affidavit. After considering trial counsel's affidavit, the Superior Court rejected Perkins' ineffective counsel claims on the merits⁶ and dismissed the *Brady* claim as procedurally defaulted pursuant to Rule 61(i)(3).⁷

³ *Perkins v. State*, 920 A.2d 391 (Del. 2007).

⁴ A *Brady* violation occurs when a prosecutor fails to disclose favorable evidence that is material to either the guilt or punishment of the defendant. *See Brady v. Maryland*, 373 U.S. 83 (1963).

⁵ Del. Super. Ct. Crim. R. 61(g)(2).

⁶ To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that defense counsel's representation fell below an objective standard of reasonableness and that, but for counsel's errors, there is a reasonable probability that the outcome of the case would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984).

⁷ Rule 61(i)(3) provides that any ground for relief that was not previously raised is procedurally barred unless the defendant demonstrates "cause for relief from the procedural default" and "prejudice" stemming from the alleged grievance.

(4) On appeal, Perkins raises one claim of error, namely that the Superior Court abused its discretion when it ruled on his postconviction motion without first conducting an evidentiary hearing. Having carefully reviewed the parties' positions on appeal and the Superior Court record, it appears to the Court that Perkins' claim is without merit.

(5) It is within the discretion of the Superior Court to schedule an evidentiary hearing if, upon a review of the materials in the record, the Superior Court concludes that a hearing is desirable. If, on the other hand, the Superior Court does not deem an evidentiary hearing to be desirable, "the judge shall make such disposition of the motion as justice dictates."⁸

(6) In this case, the Superior Court decided Perkins' postconviction motion on the basis of the record and trial counsel's affidavit. Given the trial judge's extensive familiarity with the background of the case, we are unable to conclude that the trial judge abused her discretion in determining that an evidentiary hearing was not necessary.

(7) Having carefully reviewed the parties' positions on appeal, we have concluded that the Superior Court properly dismissed the *Brady* claim pursuant to Rule 61(i)(3) as Perkins has shown neither cause nor prejudice for his failure to raise the claim at trial or on direct appeal. Nor has Perkins established a colorable

⁸ Del. Super. Ct. Crim. R. 61(h)(1), (3).

claim of a constitutional violation to warrant application of the exception to the procedural bar.⁹

(8) We have further concluded that Perkins' ineffective assistance of counsel claims are without merit for the reasons stated in the Superior Court's well-reasoned decision of June 11, 2008. Perkins has not demonstrated that he was prejudiced as a result of his trial counsel's representation at trial or that his trial counsel's representation was unreasonable.¹⁰

(9) It is manifest on the face of Perkins' opening brief that the appeal is without merit. The issues on appeal are clearly 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, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁹ Del. Super. Ct. Crim. R. 61(i)(5).

¹⁰ *Strickland v. Washington*, 466 U.S. 668 (1984).