

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GUY D. GIOVE,	§
	§ No. 267, 2013
Defendant Below,	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID Nos. 92S03793DI
	§ 92S03307DI
Plaintiff Below,	§ 92S03159DI
Appellee.	§

Submitted: July 11, 2013

Decided: August 23, 2013

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 23rd day of August 2013, 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, Guy D. Giove, appeals from the Superior Court's May 16, 2013 order denying his third petition for relief from sex offender registration. The plaintiff-appellee, the State of Delaware, moves 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.¹

We agree and affirm.

(2) The record reflects that, in January 1993, Giove was found guilty of two counts of Unlawful Sexual Intercourse in the Third Degree and one count of Sexual Harassment, plus a separate count of Maintaining a Dwelling for Keeping Controlled Substances. He was designated as a Tier II sex offender. After receiving credit for Level V time previously served, Giove had the remainder of his Level V sentence suspended for 2 years of Level IV Home Confinement, to be followed by 2 years of Level II probation.²

(3) In 2011, Giove, represented by counsel, filed a motion in the Superior Court seeking to exempt himself from all statutory sex offender registration requirements pursuant to Del. Code Ann. tit. 11, §4121. On October 31, 2011, the Superior Court denied Giove's motion. On September 25, 2012, Giove, again represented by counsel, filed a second motion requesting that he be exempted from all statutory sex offender registration requirements. On November 30, 2012, the Superior Court again denied Giove's motion. This is Giove's appeal from the Superior Court's denial of

¹ SUPR. CT. R. 25(a).

² It appears that the Board of Parole erroneously re-designated Giove as a Tier I sex offender in 2010. His current designation remains at Tier I.

his latest, *pro se* motion for exemption from the statutory sex offender registration requirements.

(4) The Superior Court has the authority to grant a petition such as Giove's pursuant to Del. Code Ann. tit. 4121(e)(2)(d). However, the Superior Court may not grant the petition unless the offender establishes, by a preponderance of the evidence, that public safety no longer requires the preservation of his tier designation.³

(5) In its latest order denying Giove's request to be exempted from the statutory sex offender registration requirements, the Superior Court relied on the same rationale it adopted in its two previous denials---*i.e.*, that Giove had failed to demonstrate by a preponderance of the evidence that public safety no longer requires the preservation of his tier designation. Having reviewed the record in this matter carefully, we cannot conclude that the Superior Court either erred or abused its discretion when it denied Giove's latest request.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

³ The Superior Court also is required to provide the Attorney General with notice of the motion and the opportunity to be heard.

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's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice