

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY D. MARVEL,	§
	§ No. 347, 2013
Defendant Below,	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0510007925
	§
Plaintiff Below,	§
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, Larry D. Marvel, appeals from the Superior Court’s June 3, 2013 order adopting the April 18, 2013 report of the Superior Court Commissioner, which recommended that Marvel’s second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ The plaintiff-appellee, the State of Delaware, has

¹ DEL. CODE ANN. tit. 10, § 512(b); SUPER. CT. CRIM. R. 62.

moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that this appeal is without merit.²

We agree and affirm.

(2) The record reflects that, in May 2006, Marvel was found guilty by a Superior Court jury of Criminal Solicitation in the Second Degree and Conspiracy in the Second Degree. He was sentenced as a habitual offender to life in prison plus 2 years at Level V.³ This Court affirmed Marvel's convictions on direct appeal.⁴

(3) Since that time, Marvel has unsuccessfully pursued three motions for correction of an illegal sentence, federal petitions for habeas corpus relief as well as a previous motion for postconviction relief. This Court affirmed the Superior Court's denial of Marvel's previous postconviction motion.⁵

(4) In this appeal, Marvel asserts several claims that may fairly be summarized as follows: The Superior Court incorrectly denied Marvel's postconviction motion because he has a constitutional entitlement to the appointment of counsel to pursue his claims of ineffective assistance with

² SUPR. CT. R. 25(a).

³ See DEL. CODE ANN. tit. 11, § 4214(a).

⁴ *Marvel v. State*, 2007 WL 2713271 (Del. Sept. 18, 2007).

⁵ *Marvel v. State*, 2008 WL 4151830 (Del. Sept. 10, 2008).

respect to his trial counsel. Marvel requests that, under Superior Court Criminal Rule 61(i)(5), this Court “reinstate” his first postconviction proceedings and appoint counsel to pursue his claims of ineffective assistance with respect to his trial counsel.

(5) Postconviction proceedings, as outlined in Rule 61, contain no procedure for the “reinstatement” of a previous postconviction motion. Moreover, we discern no legal or factual basis for Marvel’s claim of a constitutional entitlement to the appointment of counsel to assist him in prosecuting ineffective assistance claims against his trial counsel in connection with his second postconviction motion. Marvel asserted claims of ineffective assistance in his first postconviction motion, which were thoroughly addressed by the Superior Court. He waived those claims on appeal by failing to assert them.⁶ Any ineffectiveness claims by Marvel in these proceedings are procedurally barred.⁷

(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 settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

⁶ *Id.*

⁷ SUPER. CT. CRIM. R. 61(i)(1) and (4).

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