

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSUE LaTORRE,	§	
	§	
Petitioner Below-	§	No. 147, 2005
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for Kent County
STATE OF DELAWARE,	§	C.A. No. 05M-03-010
	§	
Respondent Below-	§	
Appellee.	§	

Submitted: April 27, 2005

Decided: July 14, 2005

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

ORDER

This 14th day of July 2005, 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 petitioner-appellant, Josue LaTorre, filed an appeal from the Superior Court's March 24, 2005 order summarily dismissing his petition for a writ of habeas corpus.¹ The respondent-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the

¹ It appears that LaTorre also seeks to appeal from the Superior Court's May 26, 1999 sentencing order.

face of LaTorre's opening brief that the appeal is without merit.² We agree and AFFIRM.

(2) In January 1999, LaTorre pleaded guilty to two counts of Robbery in the First Degree, Possession of a Firearm During the Commission of a Felony, and three counts of Aggravated Menacing. As part of its plea bargain with LaTorre, the State dismissed several serious felony charges against him. LaTorre was sentenced to a total of 4 years incarceration at Level V on the robbery convictions and to 3 years incarceration at Level V on the weapon conviction. On the aggravated menacing convictions, he was sentenced to a total of 7½ years incarceration at Level V, to be suspended after 2 years for probation.

(3) In this appeal, LaTorre claims that his petition for a writ of habeas corpus should have been granted because his three aggravated menacing convictions violate double jeopardy. He contends that those convictions must merge with his two robbery convictions.

(4) In Delaware, the writ of habeas corpus provides relief on a very limited basis.³ Habeas corpus only provides "an opportunity for one illegally confined or incarcerated to obtain judicial review of the jurisdiction of the court

² Supr. Ct. R. 25(a).

³ *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997).

ordering the commitment.”⁴ “Habeas corpus relief is not available to ‘[p]ersons committed or detained on a charge of treason or felony, the species whereof is plainly and fully set forth in the commitment.’”⁵

(5) In this case, habeas corpus relief is not available to LaTorre because he has presented no evidence that the Superior Court lacked jurisdiction to sentence him or that there was any irregularity on the face of his commitment. Moreover, a defendant waives his right to challenge a voluntary and intelligent plea bargain that provides a benefit to him.⁶ In this case, not only has LaTorre provided no evidence that his guilty plea was coerced or in any way irregular,⁷ but also his plea bargain provided him with a clear benefit. As such, we must conclude that there is no basis for LaTorre’s challenge to his guilty plea.⁸

(6) It is manifest on the face of LaTorre’s 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, clearly there was no abuse of discretion.

⁴ Id.

⁵ Id. (quoting Del. Code Ann. tit. 10, § 6902(1)).

⁶ *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).

⁷ As the appellant, it was LaTorre’s burden to provide those portions of the transcript necessary to give this Court a fair and accurate account of the context in which the claim of error occurred. *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987); Supr. Ct. R. 9(e) (ii) and 14(e).

⁸ It also appears that, in its April 8, 2005 sentencing order, the Superior Court dismissed the aggravated menacing charges and re-sentenced LaTorre on the first robbery charge in order to avoid any potential double jeopardy issue.

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
Justice