

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN E. MILLER,	§
	§ No. 192, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. No. IN83-01-0760
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 25, 2005  
Decided: October 18, 2005

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

**ORDER**

This 18<sup>th</sup> day of October 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 defendant-appellant, John E. Miller, appeals from the Superior Court’s April 27, 2005 order denying his motion for postconviction relief under Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Miller’s opening brief that the appeal is without merit. We agree and affirm.

(2) In August 1983, Miller pleaded guilty to Reckless Endangering in the First Degree. He was sentenced to 5 years incarceration at Level V, to be suspended after 90 days for 57 months probation. In April 1998, Miller pleaded guilty, in an unrelated case, to Robbery in the First Degree, and was sentenced as a habitual offender to 30 years incarceration at Level V.

(3) In November 2004, Miller moved for postconviction relief in the Superior Court. Miller claimed that his 1983 guilty plea was defective because he did not understand: (i) the elements of the charges to which he was pleading guilty; (ii) the minimum and maximum penalties for the charges; and (iii) the trial rights he was waiving by pleading guilty. Miller later voluntarily withdrew his appeal from the Superior Court's dismissal of his motion.

(4) In April 2005, Miller filed a second motion for postconviction relief, which asserted the same grounds as his first motion. The instant appeal is from the Superior Court's dismissal of Miller's second motion for postconviction relief on the basis of untimeliness.

(5) We find no error or abuse of discretion in the Superior Court's dismissal of Miller's motion. The record reflects that Miller's conviction became final in September 1983. Miller's motion, filed in April 2005, was

filed beyond the three-year period prescribed by Rule 61.<sup>1</sup> Moreover, Miller has presented no evidence of a miscarriage of justice by reason of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction—a miscarriage that would permit judicial review of his untimely claim.<sup>2</sup>

(6) It is manifest on the face of Miller’s opening brief that the 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.

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/ Jack B. Jacobs  
Justice

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<sup>1</sup> Super. Ct. Crim. R. 61(i) (1).

<sup>2</sup> Super. Ct. Crim. R. 61(i) (5).