

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN E. MILLER,	§
	§ No. 287, 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. Nos. IN97-04-0204; 0208
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 19, 2005
Decided: October 18, 2005

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

ORDER

This 18th 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 June 23, 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 September 1997, Miller pleaded guilty to Burglary in the Third Degree and Conspiracy in the Second Degree. He was sentenced to 5 years incarceration at Level V, suspended for time served for a total of 52 months probation. In March 1998, Miller was found to have committed a violation of probation (“VOP”) and was sentenced to 1 year incarceration at Level V. 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 January 2005, Miller moved for postconviction relief in the Superior Court. He claimed that his 1997 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. The Superior Court dismissed Miller’s motion, holding that Miller’s claims were moot because he already had completed the sentence imposed as a result of his 1997 guilty plea.

(4) The Superior Court correctly dismissed Miller’s motion. The record reflects that Miller’s conviction became final in October 1997. Miller’s motion, filed in January 2005, was filed after the three-year period

prescribed by Rule 61.¹ Moreover, Miller has presented no evidence of a miscarriage of justice because 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.²

(5) 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 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

¹ Super. Ct. Crim. R. 61(i) (1).

² Super. Ct. Crim. R. 61(i) (5). We affirm on a basis different from the one articulated by the Superior Court. *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).