

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOE LOUIS FOLKS, JR.,	§
	§ No. 293, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 30103873DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 17, 2005

Decided: December 8, 2005

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

**ORDER**

This 8<sup>th</sup> day of December 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, Joe Louis Folks, Jr., filed an appeal from the Superior Court’s June 2, 2005 order denying his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved 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. We agree and AFFIRM.

(2) In February 1993, a Superior Court jury found Folks guilty of two counts of Unlawful Sexual Intercourse in the First Degree. He was sentenced to 35 years of Level V incarceration. This Court affirmed Folks' convictions and sentences on direct appeal.<sup>1</sup>

(3) In this appeal, Folks claims that: a) his arrest was unconstitutional; b) the arresting officer committed perjury at the suppression hearing and at trial; c) there was insufficient evidence to support his convictions; d) his counsel was ineffective during the preliminary hearing, arraignment, suppression hearing, and trial stages; and e) the Superior Court abused its discretion by not scheduling an evidentiary hearing on his claim of ineffective assistance of counsel.

(4) Folks' convictions became final on July 18, 1994, following this Court's issuance of the mandate.<sup>2</sup> At that time, Folks had three years in which to file a timely postconviction motion.<sup>3</sup> His instant motion, which was filed in the Superior Court on May 23, 2005, clearly was untimely. There is, moreover, no basis upon which to excuse Folks' untimely filing, as he has presented no evidence of a "colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined

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<sup>1</sup> *Folks v. State*, Del. Supr., No. 301, 1993, Walsh, J. (June 28, 1994).

<sup>2</sup> *Jackson v. State*, 654 A.2d 829 (Del. 1995).

<sup>3</sup> Super. Ct. Crim. R. 61(i) (1). This rule has since been amended to provide for a one year period in which to file a postconviction motion.

the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”<sup>4</sup> The record also reflects that Folks’ claims previously were raised in his first postconviction motion, precluding their consideration here.<sup>5</sup> We, finally, find no abuse of discretion on the part of the Superior Court in not scheduling an evidentiary hearing on Folks’ untimely ineffective assistance of counsel claim.

(5) It is manifest on the face of Folks’ 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.

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  
Chief Justice

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<sup>4</sup> Super. Ct. Crim. R. 61(i) (5).

<sup>5</sup> Super. Ct. Crim. R. 61(i) (4).