

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HUGH P. McCafferty,	§	
	§	No. 615, 2005
Petitioner,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	Sussex County in C.A. No.
	§	05M-11-001.
STATE OF DELAWARE,	§	
	§	
Respondent,	§	
Appellee.	§	Def. ID No. 0007019820

Submitted: February 1, 2006  
Decided: May 3, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 3<sup>rd</sup> day of May 2006, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Hugh P. McCafferty, filed an appeal from the Superior Court's order dated November 4, 2005 and docketed on November 8, 2005, that dismissed his petition for a writ of habeas corpus. It is manifest on the face of McCafferty's opening brief that this appeal is without merit. Accordingly, we affirm.

(2) In 2001, McCafferty pleaded no contest in the Superior Court to one count of Possession of a Firearm during the Commission of a Felony and

one count of Rape in the Third Degree. McCafferty was sentenced to a total of twenty-three years at Level V suspended after nine years for three years of probation. As part of his sentence, the Superior Court ordered that McCafferty was to have no contact with the minor victim, no unsupervised contact with minors, and “contact with [his minor daughter] only as permitted by [his wife].”<sup>1</sup>

(3) In May 2004, McCafferty filed a motion for sentence modification seeking to eliminate the requirement that his wife must approve any contact with his daughter. By order dated May 21, 2004, the Superior Court denied McCafferty’s motion. On appeal, this Court affirmed.<sup>2</sup>

(4) On November 1, 2005, McCafferty filed a petition for a writ of habeas corpus. McCafferty alleged that the sentencing provision restricting contact with his minor daughter was imposed in violation of his right of due process. The Superior Court summarily dismissed McCafferty’s habeas petition. This appeal followed.

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<sup>1</sup>*State v. McCafferty*, Del. Super., Cr. ID No. 0007019820, Stokes, J. (Sept. 18, 2001) (ORDER).

<sup>2</sup>*McCafferty v. State*, 2005 WL 65866 (Del. Supr.).

(5) The writ of habeas corpus under Delaware law provides relief on a very limited basis.<sup>3</sup> Habeas corpus relief is not available to a petitioner who is “committed or detained on a charge of treason or felony, the species whereof is plainly and fully set forth in the commitment.”<sup>4</sup>

(6) In this case, the Superior Court had jurisdiction to accept McCafferty’s nolo contendere plea to the felony charges for which he was convicted.<sup>5</sup> The Superior Court’s subsequent commitment of McCafferty to the custody of the Department of Correction to serve a prison sentence is valid on its face.<sup>6</sup> McCafferty’s objection to a special no contact condition of the sentence does not render the commitment invalid.<sup>7</sup> The Superior Court did not err by dismissing McCafferty’s petition for a writ of habeas corpus.

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

<sup>4</sup>*Id.* (quoting Del. Code Ann. tit. 10, § 6902(1)); *In re Pitt*, 541 A.2d 554, 557 (Del. 1988); *Skinner v. State*, 135 A.2d 612, 613 (Del. 1957) (citing *Curran v. Woolley*, 104 A.2d 771 (Del. 1954)).

<sup>5</sup>*See* Del. Code Ann. tit.11, § 771 (codifying crime of Rape in the Third Degree, a class B Felony); Del. Code Ann. tit. 11, § 1447A (codifying crime of Possession of a Firearm During the Commission of a Felony, a class B felony).

<sup>6</sup>*See* Del. Code Ann. tit. 11, § 4205(b)(2) (providing term of incarceration for a class B felony).

<sup>7</sup>*See Samuel v. State*, 2000 WL 1743951 (Del. Supr.) (affirming denial of habeas corpus petition when Superior Court had subject matter jurisdiction over offenses and Court’s commitment to custody to serve prison sentence for conviction is valid on its face).

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/ Henry duPont Ridgely  
Justice