

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS NORWOOD,	§	
	§	No. 42, 2006
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0107006910

Submitted: March 17, 2006

Decided: June 12, 2006

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

ORDER

This 12th day of June 2006, 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 appellant, Thomas Norwood, has appealed the Superior Court's decision of December 30, 2005, that summarily denied his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The appellee, State of Delaware, has moved to affirm the Superior Court's decision on the ground that it is manifest on the face of Norwood's opening brief that the appeal is without merit. We agree and affirm.

(2) In March 2002, a jury convicted Norwood of twenty drug and drug-related offenses. The Superior Court sentenced Norwood to twenty years at Level V suspended, after six years and upon successful completion of the Level V Key Program, for decreasing levels of supervision. On direct appeal, this Court affirmed.¹

(3) On September 30, 2005, Norwood filed a motion for postconviction relief under Rule 61. Norwood alleged that his court-appointed counsel was ineffective at trial and on direct appeal. The Superior Court summarily dismissed Norwood's postconviction motion after ruling on the merit of his claims. This appeal followed.

(4) On appeal, in addition to his ineffective assistance of counsel claims, Norwood alleges that he was prejudiced when the Prothonotary returned a postconviction motion that he had attempted to file on September 2, 2005. Norwood did not raise this claim in the Superior Court. We review the claim for plain error.²

(5) According to Norwood, the Prothonotary returned his postconviction motion "with instructions to use the prescribed form provided

¹*Norwood v. State*, 2003 WL 29969 (Del. Supr.).

²Del. Supr. Ct. R. 8; *Jenkins v. State*, 305 A.2d 610, 613 (Del. 1973).

by the court.”³ Norwood claims that the decision to return his motion was arbitrary.⁴ He also argues that “forcing [him] to use the prescribed form” prevented him from “fully present[ing] his arguments.”

(6) The Superior Court may, in its discretion, issue a decision on the merits of a noncomplying motion under Rule 61 or, in its discretion, return the motion pursuant to Rule 61(c)(1).⁵ Under these circumstances, the Court can discern no plain error with respect to Norwood’s claim that the decision to return his postconviction motion was arbitrary.

(7) Similarly, the Court can discern no plain error with respect to Norwood’s claim that he was prevented from fully presenting his arguments. The record on appeal does not include a copy of the Rule 61 form and instructions that, according to Norwood, he received from the Prothonotary. Nonetheless, the Court takes judicial notice that the form and instructions

³See Del. Super. Ct. Crim. R. 61(b), (c)(1) (governing the form of motion under Rule 61 and providing that, if a judge directs, the prothonotary may return a motion that does not conform to the prescribed form).

⁴In support of his argument, Norwood cites to *State v. Weston*, 2006 WL 257202 (Del. Super.), wherein, Norwood contends, the Superior Court ruled on the merit of a motion for postconviction relief even though the motion did not conform to the prescribed form).

⁵*Whitfield v. State*, 1994 WL 632536, *1 (Del. Supr.).

routinely provided by the Superior Court expressly allow for the filing of a separate memorandum of law for legal arguments.⁶

(8) We have carefully reviewed Norwood's ineffective assistance of counsel claims and conclude that those claims are without merit for the reasons stated in the Superior Court's well-reasoned decision of December 30, 2005. Norwood has not demonstrated that he was prejudiced as a result of his counsel's representation at trial or that counsel's representation was unreasonable on appeal.⁷ We further conclude that the Superior Court properly disposed of Norwood's Rule 61 motion without requiring an evidentiary hearing.⁸

(9) It is manifest on the face of the opening brief that Norwood's appeal should be affirmed. The issues on appeal are controlled by settled

⁶See motion for postconviction relief form and instructions (Sept. 2002), *available at* <http://courts.delaware.gov/forms/download.aspx?ID=6108>.

⁷See *Strickland.v. Washington*, 466 U.S. 668 (1984) (holding that a defendant claiming ineffective assistance of counsel must show that counsel's representation fell below an objective standard of reasonableness and was prejudicial).

⁸See Del. Super. Ct. Crim. R. 61(d)(4) (providing that the Superior Court may summarily dismiss a postconviction motion if it "plainly appears from the motion" and the record that the defendant is not entitled to relief). *Compare Horne v. State*, 887 A.2d 973, 975 (Del. 2005) (determining that Superior Court record without sworn testimony was "incomplete and inadequate" on appeal to review the reasonableness of trial counsel's representation).

Delaware law. To the extent that judicial discretion is implicated, there was no abuse of discretion.

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/ Myron T. Steele
Chief Justice