

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|---------------------------|--------------------------------|
| WILLIAM JOSEPH WEBB, JR., | § |
| | § No. 491, 2006 |
| 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. 9702013762 |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: November 2, 2006
Decided: December 12, 2006

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

ORDER

This 12th day of December 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 defendant-appellant, William Joseph Webb, Jr., filed an appeal from the Superior Court's August 29, 2006 order denying his 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 appellant's opening brief that the appeal is without merit. We agree and **AFFIRM**.

(2) In May 1997, as part of a plea agreement under former Superior Court Criminal Rule 11(e) (1) (C), Webb pleaded guilty to Burglary in the Second Degree. He was sentenced to 8 years incarceration at Level V, to be suspended after 1 year for 7 years of probation. Webb did not file a direct appeal of his conviction and sentence.

(3) In June 2000, Webb was found to be in violation of probation (“VOP”) after pleading guilty in March 2000 to Burglary in the First Degree, Assault in the First Degree, and Endangering the Welfare of a Child. His probationary sentence on his second-degree burglary conviction was revoked and he was sentenced to 3 years of incarceration at Level V. Webb also was sentenced to an additional 7½ years of Level V incarceration on his new convictions. In December 2004, Webb filed the postconviction motion at issue in the instant appeal.¹

(4) In this appeal, Webb claims that a) his original plea agreement was breached, b) his original conviction violated double jeopardy, c) his original conviction and subsequent VOP were based upon “false information and erroneous legal principles,” d) he was given a “constitutionally defective sentence,” e) his counsel provided ineffective assistance at the pretrial and

¹ We previously remanded this matter to the Superior Court on the ground that its April 6, 2005 decision was erroneously based on the circumstances underlying Webb’s March 2000 guilty plea rather than his May 1997 guilty plea. The instant appeal is from the Superior Court’s order following remand.

trial stages, and f) the Superior Court improperly denied his claim of ineffective assistance of counsel without an adequate record.

(5) Webb filed his postconviction motion in December 2004, several years past the time deadline for filing such a motion.² As such, his claims are time-barred. Moreover, his claims are procedurally defaulted because he failed to assert them in the proceedings leading to the judgment of conviction.³ We are not persuaded by Webb's argument that the procedural bars do not apply to his claims because, first, the Superior Court lacked jurisdiction over the second-degree burglary charge and, second, there were constitutional infirmities underlying his conviction and sentence.⁴ There is no support in the record for these claims.

(6) Furthermore, Webb pleaded guilty to the charge of second-degree burglary. Absent clear and convincing evidence to the contrary, which Webb has not provided, Webb is bound by the representations he made at his plea colloquy.⁵ To the extent Webb argues that the procedural bars should not apply due to his counsel's ineffective assistance, that

² Super. Ct. Crim. R. 61(i) (1).

³ Super. Ct. Crim. R. 61(i) (3).

⁴ Super. Ct. Crim. R. 61(i) (5).

⁵ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

argument, too, is unavailing. Webb has made no showing that any error on the part of his counsel resulted in prejudice to him.⁶

(7) Webb's final contention is that the Superior Court decided his claim of ineffective assistance of counsel without an adequate record. Specifically, Webb argues that the Superior Court should have obtained an affidavit from his counsel before deciding his motion. Because Webb's motion was clearly out of time, and the record reveals no basis for not applying the time bar, there was no abuse of discretion by the Superior Court in ruling on Webb's motion without an affidavit from his counsel.

(8) It is manifest on the face of Webb's opening brief that his 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

⁶ *Strickland v. State*, 466 U.S. 668, 688, 694 (1984).