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IN THE SUPREME COURT OF THE STATE OF DELAWARE

AL-HAJJ MALIK LEWIS,	§	
	§	No. 628, 2006
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0107006531
Appellee.	§	

2007 APR 26 10 00 AM
 DEPARTMENT OF COURTS
 1000 MARKET STREET
 DOVER, DE 19901

Submitted: February 2, 2007
 Decided: April 26, 2007

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

ORDER

This 26th day of April 2007, 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, Al-Hajj Malik Lewis, filed an appeal from the Superior Court’s November 16, 2006 summary dismissal of his *pro se* motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The appellee, State of Delaware, moved to affirm the judgment of the

Superior Court on the ground that it is manifest on the face of Lewis' opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In February 2002, Lewis pleaded guilty to one count each of Murder in the Second Degree and Possession of a Firearm by a Person Prohibited. Lewis was sentenced to a total of twenty-six years at Level V, suspended after eleven years, followed by Level IV and probation.² Lewis did not file a direct appeal.

(3) In his postconviction motion, Lewis contended that his defense counsel failed to investigate his case and then pressured him into pleading guilty. The Superior Court, however, denied the postconviction motion as untimely and did not reach the merit of Lewis' ineffective assistance of counsel claim. In his opening brief on appeal, Lewis repeats the arguments that he raised in his postconviction motion.

(4) Under then-existing Superior Court Criminal Rule 61(i)(1), a motion for postconviction relief was required to be filed no later than three years after the movant's judgment of conviction became final.³ The time bar could be overcome only if the movant demonstrated a colorable claim that

¹ Del. Supr. Ct. R. 25(a) (2007).

² See *State v. Lewis*, Del. Super., Cr. ID No. 0107006531, Del Pesco, J. (Jan. 3, 2007) (second corrected sentencing order).

³ Effective July 1, 2005, Rule 61(i)(1) was amended to reduce the postconviction limitation period from three years to one year in cases where the judgment of conviction became final after July 1, 2005.

there was 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.⁴

(5) In this case, Lewis does not dispute that he did not file his postconviction motion within the applicable three-year time limitation.⁵ Nonetheless, Lewis argues that the untimeliness of his motion should be excused because his counsel's ineffective assistance rose to the level of a "miscarriage of justice."⁶

(6) A movant claiming ineffective assistance of counsel must make and substantiate concrete allegations of actual prejudice or risk summary dismissal.⁷ In this case, the Superior Court determined, and we agree, that there is no record support for Lewis' allegations of ineffective assistance of counsel.⁸ Thus, Lewis has not successfully demonstrated that but for his

⁴ Del. Super. Ct. Crim. R. 61(i)(5) (2007).

⁵ The record reflects that Lewis filed his motion for postconviction relief in October 2006, more than four years after his conviction became final in June 2002, *i.e.*, thirty days after his May 2002 sentencing. *See Jackson v. State*, 654 A.2d 829, 832-33 (Del. 1995) (providing that a defendant who does not take a direct appeal within thirty days of sentencing is subject to a "finality" date which begins when the time for direct appeal has expired).

⁶ Del. Super. Ct. Crim. R. 61(i)(5).

⁷ *Roberts v. State*, 2007 WL 598250 (Del. Supr.) (citing *Younger v. State*, 580 A.2d 552, 556 (Del. 1990)).

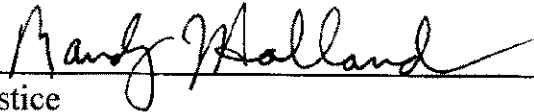
⁸ The Court notes that the Superior Court record does not include a transcript of the guilty plea proceedings. It appears that Lewis requested a transcript of those proceedings at State expense in 2004. The Superior Court denied the request on the basis that Lewis had not offered a factual basis for the transcript. *See State v. Lewis*, Del. Super., Cr. ID No.

counsel's unprofessional errors, he would not have pleaded guilty, but instead would have insisted on proceedings to trial.⁹ Nor has Lewis successfully shown that that the Superior Court abused its discretion when determining that he did not suffer a miscarriage of justice due to a constitutional violation that undermined the proceedings leading to his conviction.

(7) It is manifest on the face of Lewis' opening brief that this appeal is without merit. The issues presented on appeal are controlled by settled 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:


Justice

0107006531, Del Pesco, J. (Oct. 12, 2004) (order denying transcript). Lewis did not thereafter renew his request for transcript at State expense.

⁹ *Roberts v. State*, 2007 WL 598250 (Del. Supr.) (citing *Hill v. Lockhart*, 474 U.S. 52, 58-9 (1985)).