

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|---|----------------------------------|
| ROGER BOATSWAIN, | § | |
| | § | No. 412, 2006 |
| Defendant Below, | § | |
| Appellant, | § | Court Below—Superior Court |
| | § | of the State of Delaware, in and |
| v. | § | for New Castle County |
| | § | |
| STATE OF DELAWARE, | § | C.A. No. 06M-06-075 |
| | § | |
| Plaintiff Below, | § | Cr. A. No. 0304003074 |
| Appellee. | § | |

Submitted: April 20, 2007

Decided: July 19, 2007

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 19th day of July 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 petitioner, Roger Boatswain, filed an appeal from the Superior Court summary dismissal of his petition for a writ of habeas corpus. The respondent, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face

of Boatswain's opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In July 2004, Boatswain was convicted of two counts each of Robbery in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony (PDWDCF) for having brandished a knife while robbing a bank teller and then struggling with a bank security guard upon making his getaway.² Boatswain's convictions were affirmed on direct appeal.³

(3) In June 2006, Boatswain filed a petition for a writ of habeas corpus in the Superior Court. Boatswain argued that his two robbery convictions and his conviction of both robbery and PDWDCF were in violation of double jeopardy because he had robbed only one bank using only one weapon. By order dated June 28, 2006, the Superior Court denied Boatswain's petition. This appeal followed.

(4) In Delaware, the writ of habeas corpus provides relief on a limited basis. Habeas corpus relief is available only to ensure that the prisoner is held pursuant to a legally valid commitment issued by a court of

¹ Del. Supr. Ct. R. 25(a) (2007).

² Boatswain was also convicted of one count of Possession of a Deadly Weapon by a Person Prohibited.

³ *Boatswain v. State*, 2005 WL 1000565 (Del. Supr.).

competent jurisdiction.⁴ It is not a substitute for the postconviction remedy under Superior Court Criminal Rule 61.⁵

(5) Boatswain has not demonstrated that he is entitled to habeas corpus relief. Boatswain has presented no evidence that the Superior Court lacked jurisdiction to sentence him for his felony convictions or that there was any irregularity on the face of the commitment.

(6) It is manifest on the face of the opening brief that this appeal is without merit. The issues on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED pursuant to Supreme Court Rule 25(a). The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

Jack B. Jacobs
Justice

⁴ Del. Code Ann. tit. 10, § 6902(1) (1999); *DeAngelo v. State*, 2004 WL 3248441 (Del. Supr.) (citing *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997); *Curran v. Woolley*, 104 A.2d 771, 773 (Del. 1954)).

⁵ See Del. Super. Ct. Crim. R. 61(a)(2) (2007) (providing in part that “the [postconviction] remedy may not be sought by a petition for a writ of habeas corpus”). See also *LaTorre v. State*, 2005 WL 1950210 (Del. Supr.) (affirming denial of habeas petition in part on unavailability of habeas corpus relief to address double jeopardy claim); *Nickerson v. State*, 2000 WL 368390 (Del. Supr.).