

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDERICK W. SMITH, JR.,	§
	§
Petitioner Below-	§ No. 382, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ C.A. No. 07M-07-059
Respondent Below-	§
Appellee.	§

Submitted: August 22, 2007

Decided: October 23, 2007

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

**ORDER**

This 23<sup>rd</sup> day of October 2007, upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Frederick W. Smith, Jr., filed this appeal from the Superior Court’s order denying his petition for a writ of habeas corpus. Smith sought habeas corpus relief on the ground that his 1993 conviction was illegal because the trial judge declared that the charges against Smith would be dismissed if the victim did not appear for the second day of trial. The State has moved to affirm the Superior Court’s judgment on the ground

that it is manifest on the face of Smith's opening brief that the appeal is without merit. We agree and affirm.

(2) In Delaware, the writ of habeas corpus provides relief on a very limited basis.<sup>1</sup> Pursuant to Section 6902 of Title 10 of the Delaware Code, 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>2</sup> Smith was convicted by a Superior Court jury of various felonies, and thereafter was sentenced to a lengthy period of incarceration. Smith's commitment is valid on its face, and he continues to be held pursuant to that valid commitment. To the extent Smith contends that his conviction is invalid because the Superior Court judge should have dismissed the charges as he allegedly stated he would, such an issue cannot be reviewed through the filing of a writ of habeas corpus.<sup>3</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>1</sup> *Hall v. Carr*, 692 A.2d 88, 891 (Del. 1997).

<sup>2</sup> DEL. CODE. ANN. tit. 10, § 6902 (1999).

<sup>3</sup> *Lewis v. State*, 215 A.2d 433, 434 (Del. 1965).