

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH T. DEPUTY,	§	
	§	No. 644, 2007
Petitioner Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Respondent Below,	§	C.A. No. 07M-11-012
Appellee.	§	

Submitted: January 16, 2008

Decided: March 18, 2008

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

ORDER

This 18th day of March 2008, upon consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the appellant’s motion for leave to respond to the motion to affirm, it appears to the Court that:

(1) The appellant, Kenneth T. Deputy, has filed an appeal from the Superior Court’s December 3, 2007 summary dismissal of his petition for a writ of habeas corpus. The appellee, State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of Deputy’s opening

brief that the appeal is without merit.¹ We agree and affirm. Moreover, we deny the appellant's motion for leave to respond to the motion to affirm.²

(2) In 1997, Deputy was convicted of Attempted Robbery in the First Degree, Assault in the First Degree, and Possession of a Deadly Weapon During the Commission of a Felony. Deputy was sentenced to a total of 27 years at Level V imprisonment suspended after 22 years for decreasing levels of supervision. On direct appeal, this Court affirmed Deputy's convictions and sentences.³ Thereafter, Deputy unsuccessfully sought review of his convictions in postconviction and sentence correction motions.⁴

(3) On November 29, 2007, Deputy filed a petition for a writ of habeas corpus in the Superior Court. Deputy argued that his incarceration is illegal because the Superior Court was without jurisdiction to try, convict and sentence him in 1997.⁵ By order dated December 3, 2007, the Superior Court denied Deputy's habeas corpus petition. This appeal followed.

¹ Del. Supr. Ct. R. 25(a).

² *Id.*

³ *Deputy v. State*, 1998 WL 700168 (Del. Supr.).

⁴ See *State v. Deputy*, 1999 WL 743921 (Del. Super.) (denying postconviction relief); *Deputy v. State*, 2000 WL 313437 (affirming denial of postconviction relief); *Deputy v. State*, 2003 WL 1890011 (Del. Supr.) (affirming denial of postconviction relief); *Deputy v. State*, 2005 WL 1076511 (Del. Supr.) (affirming denial of motion for correction of sentence); *Deputy v. State*, 2005 WL 3358527 (Del. Supr.) (affirming denial of motion for correction of sentence).

⁵ Deputy notes that he has "continually challenged this injustice" for the past eleven years.

(4) In Delaware, the writ of habeas corpus provides relief on a limited basis.⁶ 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.”⁷

(5) In this case, Deputy was convicted by a Superior Court jury of felonies and was sentenced to incarceration. Deputy has not demonstrated that the Superior Court lacked jurisdiction over him or that there was an irregularity in his commitment.⁸

(6) It is manifest on the face of the opening brief that Deputy’s 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 appellee’s motion to affirm is GRANTED. The appellant’s motion for leave to respond to the motion to affirm is DENIED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁶ *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997).

⁷ Del. Code Ann. tit. 10, § 6902 (1999).

⁸ *See, e.g., Ingram v. State*, 2002 WL 86748 (Del. Supr.), for application of conditions precedent for state habeas corpus relief.