

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY FOSTER,	§
	§
Defendant Below-	§ No. 351, 2002
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. IN98-10-0862 thru
	§ -0872 and -0874
Plaintiff Below-	§
Appellee.	§

Submitted: August 9, 2002
Decided: August 28, 2002

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

ORDER

This 28th day of August 2002, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Henry Foster, was convicted by a Superior Court jury of eleven counts of unlawful sexual intercourse and one count of second degree unlawful sexual contact. The victim was Foster's minor niece. On direct appeal, this Court reversed Foster's conviction on one of the counts of unlawful sexual intercourse and remanded his case for reimposition of sentence on the remaining convictions.¹ In May 2002, Foster filed his first petition for postconviction relief. Foster's argument

¹ *Foster v. State*, Del. Supr., No. 117, 2000, Berger, J. (May 16, 2001).

mirrored the arguments raised by dozens of other defendants convicted of similar offenses who recently have been flooding the Superior Court with the same canned postconviction petition. Foster argued that, because the victim of his crimes was a minor and a member of his family, jurisdiction over his offenses was vested exclusively in the Family Court. The Superior Court denied Foster's motion. This appeal ensued.

(2) Having carefully considered the parties' respective contentions and the record below, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated June 3, 2002. The Superior Court did not err in concluding that there was no substantive merit to Foster's frivolous claim. Moreover, the argument raised in Foster's motion should have been raised on direct appeal but was not.²

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:

s/ Joseph T. Walsh
Justice

² DEL. SUPER. CT. CRIM. R. 61(i)(3).