

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN E. MILLER,	§
	§ No. 136, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9712003463
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 10, 2008
Decided: May 19, 2008

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 19th day of May 2008, 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 defendant-appellant, John E. Miller, filed an appeal from the Superior Court’s February 28, 2008 order denying his petition for a writ of habeas corpus. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and **AFFIRM**.

(2) The record reflects that Miller pleaded guilty to Robbery in the First Degree in 1998. He was sentenced as a habitual offender to 30 years of Level V incarceration. On direct appeal, this Court affirmed Miller's conviction and sentence.¹ Between 2002 and 2007, Miller filed ten Rule 61 postconviction motions in the Superior Court, all of which were denied. He also filed numerous other motions and petitions for relief, including two petitions for writs of habeas corpus, all in connection with his guilty plea. In its order denying Miller's tenth postconviction motion, the Superior Court directed that no future postconviction motion from Miller in Cr. A. No. IN97-12-0663 would be docketed before a Superior Court judge had ordered that the motion was neither frivolous nor repetitive.²

(3) In this appeal from the Superior Court's denial of his petition for a writ of habeas corpus, Miller states only that he was unaware that a petition for a writ of habeas corpus was not a proper means to raise his claims of error. He requests this Court to remand this matter back to the Superior Court and order the Superior Court to treat his petition as a Rule 61 postconviction motion.

(4) Miller has raised no claims in his opening brief. Moreover, we find no justification for remanding this matter to the Superior Court. It is

¹ *Miller v. State*, Del. Supr., No. 420, 1998, Hartnett, J. (Aug. 4, 1999).

² *Miller v. State*, Del. Super., Cr. A. No. IN97-12-0663, Slights, J. (July 17, 2007).

manifest on the face of Miller's opening brief that this appeal is without merit. To the extent any issues have been presented on appeal, they are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.³

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

³ *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997) (Habeas corpus only provides an opportunity for one illegally incarcerated to obtain judicial review of the jurisdiction of the court ordering the commitment.)