

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAPHAEL ONKEO,	§
	§ No. 182, 2008
Defendant-Appellant Below,	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0705035791
	§
Plaintiff-Appellee Below,	§
Appellee.	§

Submitted: July 1, 2008

Decided: August 26, 2008

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

ORDER

This 26th day of August 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, Raphael Onkeo, filed an appeal from the Superior Court's March 25, 2008 order affirming his August 22, 2007 conviction in the Court of Common Pleas. 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) Onkeo was charged with Unlawful Sexual Contact in the Third Degree.¹ He was found guilty of that charge on August 22, 2007, following a bench trial in the Court of Common Pleas, and was sentenced to 60 days of Level V incarceration, to be suspended for 6 months at Level II followed by 6 months at Level I. Onkeo appealed the judgment of the Court of Common Pleas to the Superior Court on the ground of insufficiency of the evidence. On March 25, 2008, the Superior Court affirmed the Court of Common Pleas judgment.²

(3) The transcript of the Court of Common Pleas trial reflects that Onkeo and Brook Morgan were both employed as certified nursing assistants at Green Valley Pavilion Nursing Home in Smyrna, Delaware. Morgan testified that, on May 29, 2007, she went into one of the patient's rooms to make the bed. Onkeo, whose shift had been over for at least two hours, followed her into the empty room and closed the door behind him. Morgan asked him to open the door, but he did not. After a short conversation, Onkeo came up behind Morgan, placed his hands on her breasts and thrust his erect penis against her. Morgan left the room and later

¹ Del. Code Ann. tit. 11, § 767 (“A person is guilty of unlawful sexual contact in the third degree when the person has sexual contact with another person . . . and the person knows that the contact is either offensive to the victim or occurs without the victim’s consent.”)

² *Onkeo v. State*, Cr. ID No. 0705035791, Young, J. (Del. Super., Mar. 25, 2008).

reported the incident to police. Onkeo testified that Morgan invited him into the room to help her and that they walked out of the room together. He denied that the incident occurred.

(4) In this appeal, Onkeo advances a number of claims, which may fairly be characterized as a claim that there was insufficient evidence presented at trial to support his conviction of Unlawful Sexual Contact in the Third Degree.³ Onkeo also claims that his attorney provided ineffective assistance. However, because that claim was not presented to the Superior Court in the first instance, we decline to address it in this appeal.⁴

(5) In an appeal from the Court of Common Pleas to the Superior Court, the standard of review is whether there is legal error and whether the factual findings made by the trial judge are sufficiently supported by the record and are the product of an orderly and logical deductive process.⁵ Findings of the Court of Common Pleas that are supported by the record must be accepted by the Superior Court even if, acting independently, it would have reached a contrary conclusion.⁶ Moreover, findings regarding

³ To the extent that Onkeo asserts claims that were not asserted in his appeal to the Superior Court, we decline to address those claims. Supr. Ct. R. 8.

⁴ Supr. Ct. R. 8.

⁵ *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

⁶ *Id.*

credibility will be rejected only if clearly erroneous.⁷ This Court applies the same standard of review to the Superior Court's decision.⁸

(6) We agree with the Superior Court that the factual findings of the Court of Common Pleas are supported by the record and are the product of an orderly and logical deductive process. In the absence of clear error, we will not disturb the judge's determination that Morgan's testimony was more credible than that of Onkeo. We also agree with the Superior Court that the evidence presented at trial was more than sufficient to support Onkeo's conviction of third-degree unlawful sexual contact. Moreover, it is manifest on the face of the opening brief that the appeal is without merit because the issues presented 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, pursuant to Supreme Court Rule 25(a), the appellee's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁷ *Cagle v. State*, 332 A.2d 140, 143 (Del. 1974).

⁸ *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985).