

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DERIOUS JOHNSON,	§
	§
Defendant Below-	§ No. 343, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ C.A. No. 08M-06-047
Plaintiff Below-	§
Appellee.	§

Submitted: September 2, 2008
Decided: November 24, 2008

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

ORDER

This 24th day of November 2008, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Derious Johnson, filed this appeal from the Superior Court's denial of his petition for a writ of habeas corpus. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Johnson's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Johnson currently is serving a life sentence as a habitual offender following his 2003 conviction on a charge of

first degree rape. In June 2008, Johnson filed a petition in the Superior Court seeking a writ of habeas corpus. According to Johnson, his 2003 habitual offender sentence is illegal because one of his predicate offenses, a 1998 drug possession conviction, was invalid because the Superior Court had no jurisdiction over that charge. The Superior Court denied the writ. This appeal followed.

(3) After careful consideration of appellant's opening brief and the State's motion to affirm, we find it manifest that the judgment of the Superior Court should be affirmed. After a judgment of conviction in a court of competent jurisdiction and subsequent sentencing, a prisoner cannot seek release via a writ of habeas corpus "no matter how illegal or erroneous the judgment of conviction might have been, if the judgment of the court is legal on its face."¹ In this case, Johnson's 2003 commitment is valid on its face.² Thus, there is no basis for a writ of habeas corpus.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹ *Curran v. Woolley*, 104 A.2d 771, 773 (Del. 1954).

² 10 Del. C. § 6902(1)