

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMOND T. HARMON,	§
	§ No. 232, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0510006615
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 5, 2008
Decided: December 22, 2008

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

ORDER

This 22nd day of December 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, Lamond T. Harmon, filed an appeal from the Superior Court's December 19, 2007 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. 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) On May 17, 2006, Harmon pleaded guilty to Trafficking in Cocaine, Possession of Cocaine With Intent to Deliver, and Conspiracy in the Second Degree. Harmon was sentenced as a habitual offender on the trafficking conviction, receiving 11 years at Level V. On the possession conviction, he received 15 years at Level V, to be suspended for 18 months at Level III. On the conspiracy conviction, he received 2 years at Level V, to be suspended for 12 months at concurrent Level III probation.

(3) In this appeal, Harmon claims that a) the Superior Court did not have authority to sentence him as a habitual offender because the State failed to present sufficient proof of his habitual offender status; and b) the Superior Court improperly denied his claim of ineffective assistance of counsel.

(4) The record reflects that, in connection with his guilty plea, Harmon executed a plea agreement, a TIS guilty plea form, and an immediate sentencing form. He stipulated to his status as a habitual offender in the plea agreement and listed his prior convictions in the immediate sentencing form. The transcript of the hearing reflects that Harmon admitted to his status as a habitual offender as part of his negotiated plea agreement with the State. After completing the plea colloquy and accepting Harmon's plea as knowing, intelligent, and voluntary, the Superior Court judge ordered the State to file a habitual offender motion as part of the plea. The judge

further stated that he would sign the order granting habitual offender status after the motion was filed.¹ The judge then proceeded to sentence Harmon as a habitual offender with respect to his trafficking conviction.

(5) After Harmon's postconviction motion was filed, the Superior Court scheduled a hearing to address what appeared to be an error regarding the third felony relied upon by the State to support Harmon's habitual offender status. The record reflects that, in fact, Harmon had attached an inaccurate printout of his criminal history to his postconviction motion, which the Superior Court explained to him at the hearing. Finding that the State had provided the requisite support for Harmon's habitual offender status,² the Superior Court denied Harmon's postconviction motion.

(6) Harmon's first claim that the Superior Court did not have authority to sentence him as a habitual offender is unavailing. To begin with, the claim is time-barred because it was filed on November 26, 2007, well beyond the one-year statutory period.³ Moreover, Harmon cannot overcome the time bar because he has provided no evidence of a colorable

¹ The State agreed to file the habitual offender motion by May 19, 2006, two days after the hearing. The record reflects that the motion was served on defense counsel and filed in the Superior Court the following day. Because the criminal identification number was incorrect, however, the motion had to be re-filed on May 22, 2006. The judge signed the order on May 24, 2006.

² Del. Code Ann. tit. 11, § 4214(a); *Hall v. State*, 788 A.2d 118, 128 (Del. 2001).

³ Super. Ct. Crim. R. 61(i) (1). Under the Rule, the claim should have been filed no later than June 18, 2007.

claim of a miscarriage of justice due to a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.⁴

(7) Harmon's second claim that his attorney provided ineffective assistance by counseling him to accept the plea bargain also is time-barred.⁵ Moreover, it is without merit. In order to prevail on a claim of ineffective assistance of counsel in the context of a voluntary guilty plea, Harmon must demonstrate that there is a reasonable probability that, but for his counsel's errors, he would not have pleaded guilty but would have insisted on proceeding to trial.⁶ Because the record squarely supports Harmon's status as a habitual offender, his attorney committed no error and, therefore, did not provide ineffective assistance.

(8) 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.

⁴ Super. Ct. Crim. R. 61(i) (5).

⁵ Super. Ct. Crim. R. 61(i) (1).

⁶ *Albury v. State*, 551 A.2d 53, 60 (Del. 1988).

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/ Carolyn Berger
Justice