

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAWRENCE P. WHALEN,	§	
	§	No. 657, 2002
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in
	§	S95-07-0093-R2.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9506011067

Submitted: February 6, 2003  
Decided: April 21, 2003

Before **WALSH, HOLLAND** and **BERGER**, Justices.

**ORDER**

This 21<sup>st</sup> day of April 2003, 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 appellant, Lawrence P. Whalen, filed this appeal from an order of the Superior Court denying his motion for postconviction relief. The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the basis that it is manifest on the face of Whalen's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In November 1995, Whalen entered a *Robinson* plea<sup>1</sup> to one count of Unlawful Sexual Intercourse in the Second Degree. Whalen was sentenced, pursuant to Superior Court Criminal Rule 11(e)(1)(c), to fifteen years at Level V imprisonment suspended after ten years for probation. Whalen did not appeal.

(3) In 1997, Whalen moved for postconviction relief. The Superior Court summarily denied the motion. On appeal, this Court affirmed.<sup>2</sup>

(4) In 2002, nearly seven years after his conviction became final, Whalen filed a second motion for postconviction relief. The Superior Court summarily denied the motion. This appeal followed.

(5) In his opening brief on appeal, Whalen raises eight claims challenging the validity of his *Robinson* plea: (i) involuntary plea agreement due to ineffective assistance of counsel; (ii) breach of plea agreement; (iii) denial of due process, unfair indictment, denial of discovery and prosecutorial misconduct; (iv) newly discovered evidence; (v) lack of subject matter jurisdiction; (vi) abuse of discretion and judicial conflict; (vii) ineffective assistance of counsel and (viii) inaccurate transcripts.

(6) In one of his appellate claims, Whalen argues that the Superior Court judge who decided his second postconviction motion should have

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<sup>1</sup> *Robinson v. State*, 291 A.2d 279 (Del. 1972).

<sup>2</sup> *Whalen v. State*, 1998 WL 736341 (Del Supr.).

recused himself because he had presided over a previous case in which Whalen sought postconviction relief.<sup>3</sup> Whalen did not present this claim in the Superior Court, however, and he has not demonstrated plain error concerning the claim.<sup>4</sup> A judge is not required to enter a disqualification because of an adverse ruling in the same or prior proceedings.<sup>5</sup>

(7) Having carefully considered the parties' respective positions, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's decision dated October 29, 2002. In that decision, the Superior Court properly denied Whalen's postconviction motion as procedurally time-barred.<sup>6</sup> Furthermore, we agree with the Superior Court that the claims that were previously raised and denied, namely the alleged breach of Whalen's plea agreement and many aspects of his ineffective assistance of counsel claim, do not warrant reconsideration.<sup>7</sup> This Court further finds that Whalen's other unadjudicated claims could have been raised in his first postconviction motion and were not. Consequently, the claims are barred as repetitive.<sup>8</sup> Finally, we agree

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<sup>3</sup> See *Whalen v. State*, 2003 WL 1572126 (Del. Supr.).

<sup>4</sup> Supr. Ct. R. 8; *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

<sup>5</sup> *Weber v. State*, 547 A.2d 948, 952 (Del. 1988).

<sup>6</sup> Super. Ct. Crim. R. 61(i)(1).

<sup>7</sup> Super. Ct. Crim. R. 61(i)(4).

<sup>8</sup> Super. Ct. Crim. R. 61(i)(2).

with the Superior Court and find that none of Whalen's claims warrant application of the exception to the procedural bars.<sup>9</sup>

(8) It is manifest on the face of Whalen's opening brief that this appeal is without merit. The issues presented on appeal clearly are controlled by settled Delaware law. To the extent judicial discretion is implicated, there was no abuse of discretion.

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/ Randy J. Holland  
Justice

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<sup>9</sup> Super. Ct. Crim. R. 61(i)(5).