

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH T. DEPUTY,	§
	§
Defendant Below-	§ No. 699, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK97-01-0018 thru
Plaintiff Below-	§ 0020
Appellee.	§

Submitted: March 18, 2003

Decided: April 17, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices

**ORDER**

This 17<sup>th</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 defendant-appellant, Kenneth T. Deputy, filed an appeal from the Superior Court's December 10, 2002 order denying his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61.<sup>1</sup> The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of

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<sup>1</sup>The motion was filed in November 2002.

the Superior Court on the ground that it is manifest on the face of Deputy's opening brief that the appeal is without merit.<sup>2</sup> We agree and AFFIRM.

(2) In September 1997, a Superior Court jury convicted Deputy of Attempted Robbery in the First Degree, Assault in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced to a total of 27 years incarceration at Level V, to be suspended after 22 years for decreasing levels of probation. Deputy's convictions and sentences were affirmed by this Court on direct appeal.<sup>3</sup> His subsequent postconviction motion was denied by the Superior Court. This Court affirmed the Superior Court's judgment.<sup>4</sup>

(3) In this appeal, Deputy claims that: a) his motion for postconviction relief was improperly denied by the Superior Court as procedurally barred; b) the Superior Court's failure to hold an evidentiary hearing on his postconviction motion, including his claim that his counsel provided ineffective assistance,

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<sup>2</sup>SUPR. CT. R. 25(a).

<sup>3</sup>*Deputy v. State*, Del. Supr., No. 541, 1997, Holland, J. (Aug. 10, 1998).

<sup>4</sup>*Deputy v. State*, Del. Supr., No. 437, 1999, Berger, J. (Mar. 9, 2000).

violated his rights; c) his counsel was improperly permitted to file a “no merit brief” and withdraw from representing him on direct appeal; d) the violation of his constitutional rights during arraignment, indictment and trial serves to overcome any procedural bar to his claims; e) his counsel provided ineffective assistance at trial and on direct appeal; f) the Superior Court instructed the jury improperly and imposed an illegal sentence; and g) he should not be penalized for procedural defaults in the postconviction proceedings as they were the fault of his counsel.

(4) Deputy’s claims are unavailing. The Superior Court correctly ruled that his postconviction motion was both time-barred<sup>5</sup> and procedurally barred.<sup>6</sup> Moreover, consideration of Deputy’s claims is not warranted in the interest of justice,<sup>7</sup> and there is no evidence of any cause for relief from the procedural default or any prejudice resulting from a violation of Deputy’s rights.<sup>8</sup> Finally, there is no evidence that the Superior Court lacked jurisdiction

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<sup>5</sup>Because Deputy’s conviction became final in August 1988, his postconviction motion had to be filed by August 1991. SUPER. CT. CRIM. R. 61(i) (1).

<sup>6</sup>All of Deputy’s claims are barred as repetitive, procedurally defaulted or formerly adjudicated. SUPER. CT. CRIM. R. 61(i) (2), (3) and (4).

<sup>7</sup>SUPER. CT. CRIM. R.(i) (2) and (4).

<sup>8</sup>SUPER. CT. CRIM. R.(i) (3).

to try Deputy or that there was a miscarriage of justice due to a constitutional violation.<sup>9</sup>

(5) It is manifest on the face of Deputy's opening brief that this 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, clearly there was no abuse of discretion.

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

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<sup>9</sup>SUPER. CT. CRIM. R.(i) (5).