

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                                |
|--------------------|--------------------------------|
| DAVID M. WILLIAMS, | §                              |
|                    | § No. 128, 2009                |
| Defendant Below-   | §                              |
| Appellant,         | §                              |
|                    | § Court Below—Superior Court   |
| v.                 | § of the State of Delaware     |
|                    | § in and for New Castle County |
| STATE OF DELAWARE, | § Cr. ID Nos. 9803018202A      |
|                    | § 9903025091                   |
| Plaintiff Below-   | §                              |
| Appellee.          | §                              |

Submitted: April 22, 2009

Decided: May 26, 2009

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

**ORDER**

This 26<sup>th</sup> day of May 2009, 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, David M. Williams, filed an appeal from the Superior Court’s February 25, 2009 order denying his motion for sentence modification in Criminal Identification Number (“Cr. ID No.”) 9803018202A and its March 11, 2009 order denying his motion for a new trial in Cr. ID No. 9903025091. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgments of the Superior Court on the

ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and AFFIRM.

(2) The record reflects that Williams was arrested on March 25, 1998. At a preliminary hearing on April 8, 1998, he was bound over to the grand jury on a number of criminal charges. On April 13, 1998, the grand jury returned three separate bills of indictment against Williams in Cr. ID Nos. 9803018189, 9803018210, and 9803018202. When Williams did not appear for his arraignment, a *capias* was issued for his arrest. Williams was arrested in July 1998 on additional charges. On July 20, 1998, the grand jury returned another indictment against Williams, charging him with a number of additional criminal offenses in Cr. ID No. 9807002178. All of the indictments were later incorporated in a superseding indictment, with Cr. ID No. 9803018202 designated as the lead case.

(3) A number of the charges against Williams were later dismissed. Charges of Forgery in the Second Degree and Attempted Escape were re-designated as Cr. ID No. 9803018202A. Charges of Possession of Burglary Tools, Criminal Mischief, and two counts of Attempted Burglary in the Second Degree were re-designated as Cr. ID No. 9803018202B.

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<sup>1</sup> Supr. Ct. R. 25(a).

(4) On March 31, 1999, Williams was arrested on charges of Receiving Stolen Property, Discharging a Weapon, and two weapon offenses. He was bound over to the grand jury at a preliminary hearing on April 13, 1999, and, on April 26, 1999, was indicted on all four charges in Cr. ID No. 9903025091. On October 7, 1999, Williams pleaded guilty to one of the weapon offenses. All of the remaining charges were dismissed.

(5) In this appeal, Williams' sole claim is that, in Cr. ID No. 9903025091, the State failed to establish probable cause that he committed the crimes charged because there was no preliminary hearing held and no indictment issued. To the extent that Williams has not argued other grounds to support his appeal that were previously raised, those grounds are deemed to be waived and will not be addressed by this Court.<sup>2</sup>

(6) The Court of Common Pleas docket reflects that a preliminary hearing was held on April 13, 1999. The Superior Court docket reflects that, on April 26, 1999, the grand jury indicted Williams on all four charges in Cr.

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<sup>2</sup> *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In the Superior Court, Williams moved to modify his sentence in Cr. ID No. 9803018202A. Although Williams filed a notice of appeal of the Superior Court's denial of the motion, his opening brief contains no argument in support of that appeal.

ID No. 9903025091. As such, there is no factual basis for Williams' claim and we, therefore, conclude that it is without merit.<sup>3</sup>

(7) It is manifest on the face of the opening brief that the appeal is without merit because the issue raised is 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 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>3</sup> To the extent Williams attempts to argue that his motion for sentence modification should have been granted because there was no preliminary hearing and indictment, there also is no factual basis for that claim.