

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY W. AUSTIN,	§
	§
Defendant Below-	§ No. 93, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN99-03-1467 R1-
Plaintiff Below-	§ 1470 R1
Appellee.	§

Submitted: June 16, 2003

Decided: July 7, 2003

Before **VEASEY**, Chief Justice, **HOLLAND** and **STEELE**, Justices

**ORDER**

This 7th day of July 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, Larry W. Austin, filed an appeal from the Superior Court's December 20, 2002 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 judgment of the Superior Court on the ground that it is manifest on the face of Austin's opening brief that the appeal is without merit. We agree and affirm.

(2) In March 2000, Austin was found guilty by a Superior Court jury

of Possession With Intent to Deliver Cocaine, Possession of Cocaine Within 1000 Feet of a School, Possession of Cocaine Within 300 Feet of a Park, and Resisting Arrest. Austin, who was free on bail during trial, failed to appear for the second day of the trial. The Superior Court denied his counsel's motion for a mistrial and he was convicted in absentia. Following his capture by the police in July 2000, Austin was sentenced to a total of 32½ years incarceration at Level V, to be suspended after 15 years for decreasing levels of supervision. Austin's convictions and sentences were affirmed by this Court on direct appeal.<sup>1</sup>

(3) In this appeal, Austin claims that his counsel provided ineffective assistance by failing to: a) investigate the State's case against him and present defense witnesses at trial; b) consult with him prior to trial; and c) provide him with the necessary materials, such as trial transcripts, to pursue his pro se appeal.<sup>2</sup>

(4) In order to prevail on his claim of ineffective assistance of counsel, Austin must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.<sup>3</sup> Although not insurmountable, the *Strickland* standard is

---

<sup>1</sup>*Austin v. State*, Del. Supr., No. 429, 2000, Walsh, J. (Aug. 6, 2001).

<sup>2</sup>Following an evidentiary hearing in Superior Court, this Court granted Austin's motion to pursue his direct appeal pro se. *Id.*

<sup>3</sup>*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”<sup>4</sup>

(5) While Austin argues that his counsel provided ineffective assistance by failing to investigate and present witnesses for the defense, he has provided no facts to support his claim that his counsel’s alleged error resulted in prejudice to him. Austin’s second claim that his counsel failed to consult with him is likewise unsupported by any facts demonstrating prejudice. Austin, finally, has failed to provide any argument in support of his third claim that his counsel improperly failed to provide him with the necessary materials, such as transcripts, to pursue his pro se appeal<sup>5</sup> and we, therefore, deem that argument to be abandoned.<sup>6</sup>

(6) It is manifest on the face of Austin’s 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, 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:

---

<sup>4</sup>*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

<sup>5</sup>This Court granted leave for Austin to file a supplemental brief addressing the Superior Court’s denial of his request for a transcript, but Austin chose not to do so.

<sup>6</sup>*Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

/s/ Randy J. Holland

Justice