

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY A. DUHADAWAY,	§	
	§	No. 202, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0106013189A
Appellee.	§	

Submitted: May 27, 2010
Decided: August 12, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 12th day of August 2010, 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, Henry A. Duhadaway, filed this appeal from the Superior Court’s denial of his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Duhadaway’s opening brief that the appeal is without merit. We agree and affirm the Superior Court’s judgment.

(2) In 2001, Duhadaway was charged with twelve counts of Rape in the First Degree and one count each of Continuous Sexual Abuse of a Child, Providing Obscenity to a Minor, and Unlawful Dealing in Child Pornography. In February 2002, Duhadaway pled *nolo contendere* to one count of Rape in the Second Degree and one count of Unlawful Dealing in Child Pornography. In exchange for Duhadaway's plea, the State agreed to dismiss the remaining charges. Duhadaway did not file a direct appeal.

(3) In March 2002, Duhadaway filed his first motion for postconviction relief. Duhadaway alleged ineffective assistance of counsel and related claims of due process violations and deficiencies in the pretrial process. By memorandum opinion dated June 19, 2002, the Superior Court denied Duhadaway's motion on its merits. On appeal, this Court affirmed the Superior Court's judgment.¹

(4) In December 2004, Duhadaway filed his second motion for postconviction relief. Duhadaway's second motion expanded on some of the claims that he raised in his first postconviction motion and further argued that, as a result of those claims, he should be allowed to withdraw his guilty plea. By order dated December 3, 2004, the Superior Court denied

¹ *Duhadaway v. State*, 2002 WL 31127536 (Del. Supr.).

Duhadaway's second postconviction motion as repetitive and as formerly adjudicated. On appeal, this Court affirmed.²

(5) On January 25, 2010, Duhadaway filed his third motion for postconviction relief. Duhadaway's third motion repeated some of the ineffective counsel allegations that he raised in his first and second postconviction motions and further alleged that his counsel failed to advise him of his right to appeal his conviction. After obtaining a response from Duhadaway's counsel, the Superior Court denied the motion as without merit and as procedurally barred. This appeal followed.

(6) It is clear to the Court that the Superior Court properly denied Duhadaway's third motion for postconviction relief as procedurally barred and as without merit. Simply put, in his postconviction motion and now on appeal, Duhadaway has not and cannot identify prejudicial error on the part of his counsel³ or that reconsideration of his formerly adjudicated allegations is warranted in the interest of justice.⁴

² *Duhadaway v. State*, 2005 WL 1469365 (Del. Supr.).

³ On a claim of ineffective assistance of counsel within the context of a guilty plea, a defendant must demonstrate that, but for his counsel's error, he would not have pleaded guilty but would have insisted on proceeding to trial. *Albury v. State*, 551 A.2d 53, 58-59 (Del. 1988).

⁴ Del. Super. Ct. Crim. R. 61(i)(4).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice