

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TIMOTHY C. MURDTER,	§	
	§	No. 101, 2001
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County in PS99-11-
	§	0352I.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9910023894

Submitted: May 14, 2001

Decided: June 21, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

ORDER

This 21st day of June 2001, upon consideration of the appellant's opening brief and the State's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) On January 5, 2000, Timothy C. Murdter was charged by Information with two counts of Unlawful Sexual Intercourse in the First Degree and one count of Unlawful Sexual Contact in the Second Degree. The alleged victim was Murdter's 14-year old daughter.

(2) On July 7, 2000, Murdter pleaded guilty, pursuant to Superior Court Criminal Rule 11(e)(1)(c), to one count of Unlawful Sexual Intercourse

in the Second Degree, as a lesser-included offense. Murdter was sentenced, in accordance with the plea agreement, to 20 years at Level V, suspended after ten years, for six years at Level III.

(3) On February 2, 2001, Murdter filed a *pro se* Motion to Dismiss Indictment. Murdter's motion challenged the jurisdiction of the Superior Court over his case. Murdter alleged that the circumstances of his case more closely supported the "specific" charge of Incest,¹ which is in the exclusive jurisdiction of the Family Court, rather than the more "general" charge of Unlawful Sexual Intercourse in the First Degree.²

(4) The Superior Court treated Murdter's Motion to Dismiss Indictment as a motion for postconviction relief. By memorandum opinion dated February 12, 2001, the Superior Court denied Murdter's postconviction motion. This appeal followed.

(5) In his opening brief on appeal, Murdter reiterates his jurisdictional claims and raises a claim of ineffective assistance of counsel. Murdter, however, did not raise a claim of ineffective assistance of counsel in the Superior Court. Accordingly, we will not consider Murdter's

¹11 *Del. C.* § 766.

²11 *Del. C.* § 775 repealed by 71 *Del. Laws c.* 285 § 13.

ineffective assistance of counsel claim for the first time on appeal.³ Generally, the Court considers on appeal only those questions that were fairly presented in the trial court.

(6) It is manifest on the face of Murdter's opening brief that this appeal is without merit. As a matter of Delaware law, when, as here, a father is alleged to have had sexual intercourse with his minor daughter, he can be charged in the Superior Court with the offense of Unlawful Sexual Intercourse in the First Degree.⁴ In this case, it is clear that the Superior Court had jurisdiction over the charges presented in the Information against Murdter and over the lesser-included offense to which Murdter pled guilty.

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/Joseph T. Walsh
Justice

³Supr. Ct. R. 8.

⁴*Getz v. State*, Del. Supr., No. 301, 1994, Veasey, C.J., 1994 WL 622022 (Oct. 31, 1994) (ORDER); *In re Haskins*, Del. Supr., No. 442, 1993, Moore, J., 1994 WL 10822 (Jan. 4, 1994) (ORDER), *reh'g denied* (Feb. 4, 1994) (ORDER); *Wilson v. State*, Del. Supr., No. 116, 1992, Veasey, C.J., 1992 WL 219102 (Aug. 10, 1992) (ORDER).

