

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MANUEL NIEVES,	§	
	§	No. 221, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0107022700
Appellee.	§	

Submitted: June 6, 2012
Decided: August 9, 2012

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

O R D E R

This 9th day of August 2012, after careful consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the Superior Court record, it appears to the Court that:

(1) The appellant, Manuel Nieves, has appealed the Superior Court’s April 9, 2012 order accepting, after *de novo* review and consideration of Nieves’ response, a Commissioner’s March 15, 2012 report dismissing Nieves’ motion for postconviction relief on procedural grounds.¹ The appellee, State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

¹ See Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to relief).

(2) Nieves argues that under our decision in *Lewis v. State*, the Superior Court abused its discretion when the trial judge *sua sponte* permitted the jury to view the victim’s out-of-court videotaped statement during deliberations. In our decision in *Lewis* and in *Flonnory* before it, however, we held that an exception to the rule against permitting written or recorded out-of court witness statements in the jury room is “where the parties do not object to having written or recorded statements go into the jury room as exhibits.”² Here, Nieves does not argue, and the record does not reflect, that the parties objected to having the victim’s out-of-court videotaped statement go into the jury room as an exhibit. We therefore conclude that the Superior Court did not err when determining that Nieves’ argument under *Lewis v. State* was without merit, and that Nieves’ sixth motion for postconviction relief was procedurally barred.³

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/ Myron T. Steele
Chief Justice

² *Lewis v. State*, 21 A.3d 8, 13-14 (Del. 2011) (citing *Flonnory v. State*, 893 A.2d 507, 527 (Del. 2006)).

³ It appears from the record that this was Nieves’ sixth motion for postconviction relief. The Commissioner’s March 15, 2012 report identified the motion as Nieves’ fifth.