

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES A. BIGGINS,	§
	§ No. 17, 2001
Defendant Below,	§
Appellant,	§ Court Below: Superior Court of
	§ the State of Delaware, in and for
v.	§ Sussex County in Cr.A. Nos.
	§ S97-01-0376 - 0378, 0381,
STATE OF DELAWARE,	§ 0382.
	§
Plaintiff Below,	§
Appellee.	§ Def. ID No. 9609015504

Submitted: April 5, 2001

Decided: May 18, 2001

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

**ORDER**

This 18<sup>th</sup> day of May 2001, upon consideration of the appellant's "Memorandum and Supporting Points of Authorities in Lieu of an Opening Brief" ("Memorandum"), the State's motion to affirm, and the appellant's request to file a supplemental brief, it appears to the Court that:

(1) In 1997, the appellant, James A. Biggins, was convicted by a Superior Court jury of three counts of Unlawful Sexual Intercourse in the Second Degree, one count of Assault in the Third Degree and one count of Unlawful Imprisonment in the Second Degree. Biggins was sentenced to a total of 30 years

at Level V imprisonment. On direct appeal, Biggins' convictions and sentences were affirmed.<sup>1</sup>

(2) In January 2000, Biggins filed a *pro se* motion for postconviction relief under Superior Court Criminal Rule 61 ("Rule 61"). Biggins' postconviction motion raised 20 claims for relief. The Superior Court denied the motion for postconviction relief. On appeal, this Court affirmed.<sup>2</sup>

(3) On November 16, 2000, Biggins' filed a *pro se* "motion for judgment of acquittal or new trial pursuant to Rule 29" ("new trial motion"). Biggins' new trial motion raised claims that he had previously raised in his postconviction motion. On December 7, 2000, the Superior Court denied Biggins' motion. This appeal followed.

(4) In his request to file a supplemental brief on appeal, Biggins requests permission to file a brief "under the doctrine of plain error" raising issues that "arose between trial and appeal." Biggins' Memorandum, however, already raises numerous post-trial claims. Biggins does not show cause why a brief

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<sup>1</sup>*Biggins v. State*, Del. Supr., No. 468, 1997, Walsh, J., 1999 WL 1192332 (Nov. 24, 1999) (ORDER).

<sup>2</sup>*Biggins v. State*, Del. Supr., No. 118, 2000, Veasey, C.J., 2000 WL 1504868 (Sept. 26, 2000) (ORDER).

supplementing those claims is necessary. Moreover, it appears that Biggins wants to file a supplemental brief for the purpose of responding to the State's motion to affirm. Under the Rules of this Court, a response to a motion to affirm is not permitted, unless requested by the Court.<sup>3</sup>

(5) It is manifest on the face of Biggins' Memorandum that the appeal is without merit. The Superior Court properly treated Biggins' new trial motion as a motion for postconviction relief under Rule 61 and properly determined that the claims were barred as repetitive<sup>4</sup> and as formerly adjudicated.<sup>5</sup> Moreover, we find that Biggins' claims do not warrant reconsideration<sup>6</sup> or application of the exception to the procedural bar.<sup>7</sup>

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<sup>3</sup>Supr. Ct. R. 25(a)(iii).

<sup>4</sup>Super. Ct. Crim. R. 61(i)(2).

<sup>5</sup>Super. Ct. Crim. R. 61(i)(4).

<sup>6</sup>*Id.*

<sup>7</sup>*See* Super. Ct. Crim. R. 61(i)(5) (providing in pertinent part that any ground for relief barred as repetitive shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

NOW, THEREFORE, IT IS ORDERED that Biggins' request to file a supplemental brief is DENIED. The State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice