

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY L. WARD,	§
	§
Defendant Below-	§ No. 464, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN88-11-0589-0590
Plaintiff Below-	§
Appellee.	§

Submitted: October 23, 2001
Decided: November 27, 2001

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

ORDER

This 27th day of November 2001, 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 L. Ward, filed this appeal from the September 12, 2001 order of the Superior Court summarily dismissing his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. Plaintiff-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 the opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In 1989 Ward was convicted by a Superior Court jury of Attempted Murder in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. Ward was sentenced to a life term at Level V for the murder conviction and to 3 years incarceration at Level V for the weapon conviction. This Court affirmed Ward's convictions and sentences on direct appeal.² In 1991 Ward filed his first motion for postconviction relief.³ This Court affirmed the Superior Court's denial of the motion.⁴ While Ward's second motion for postconviction relief asserted all the claims asserted in his first motion, he chose to appeal to this Court only the claim of ineffective assistance of counsel.⁵

¹Supr. Ct. R. 25(a).

²*Ward v. State*, Del. Supr., 575A.2d 1156 (1990).

³The grounds for the motion were ineffective assistance of counsel at trial and on appeal, abuse of discretion and plain error on the part of the judge, and violation of the right of confrontation.

⁴*Ward v. State*, Del. Supr., No. 23, 1992, Moore, J., 1992 WL 115185 (Apr. 30, 1992) (ORDER).

⁵Ward has, therefore, waived his right to argue any additional claims on appeal. *Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152-53 (1993).

(3) In reviewing Ward's motion for postconviction relief, the Superior Court correctly first determined whether the motion was procedurally barred before it addressed the merits of the underlying claims.⁶ The Superior Court also correctly determined that Ward's motion, which asserted claims identical to those asserted in his previous motion, was procedurally barred as formerly adjudicated⁷ and that Ward's claim of ineffective assistance of counsel did not provide a sufficient basis for reconsideration of his claims.⁸

(4) It is manifest on the face of Ward's opening brief that this 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.

⁶*Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991).

⁷Super. Ct. Crim. R. 61(i) (4).

⁸Super. Ct. Crim. R. 61(i) (4) and (5). There is no evidence that any alleged error on the part of counsel resulted in prejudice to Ward. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

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:

/s/ E. Norman Veasey
Chief Justice