

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TIMOTHY ASHLEY,	§
	§ No. 255, 2012
Plaintiff Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for Kent County
JAMES M. STILLER, JR.,	§ C.A. No. K11C-12-008
	§
Defendant Below-	§
Appellee.	§

Submitted: October 5, 2012
Decided: November 15, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 15th day of November 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a),¹ it appears to the Court that:

(1) The plaintiff-appellant, Timothy Ashley, filed an appeal from the Superior Court’s May 2, 2012 order dismissing his complaint. The defendant-appellee, James M. Stiller, Jr., has moved to affirm the Superior Court’s judgment

¹ On October 3, 2012, the appellee also filed a motion to dismiss pursuant to Supr. Ct. R. 29(b) on the ground that the appellant failed to file his opening brief in accordance with the briefing schedule set by the Court.

on the ground that it is manifest on the face of the appellant's opening brief that the appeal is without merit.² We agree and affirm.

(2) The record reflects that, on September 15, 2010, Ashley pleaded guilty to Possession of a Firearm During the Commission of a Felony and the lesser-included offense of Attempted Possession With Intent to Deliver Cocaine. As part of the plea agreement, the State dismissed a number of other criminal charges. Ashley was sentenced to 18 years of Level V incarceration, to be suspended after 4 years for probation. Ashley did not appeal his convictions, but filed a motion for postconviction relief, alleging, among other things, ineffective assistance of counsel. After finding, among other things, that Ashley had not demonstrated that his counsel was ineffective, the Superior Court denied the motion.

(3) On December 13, 2011, Ashley filed a civil complaint in the Superior Court alleging negligence and/or breach of contract against Stiller, his court-appointed defense counsel with respect to the criminal charges against him. The complaint alleged that Stiller failed to carry out Ashley's instructions, lied to Ashley regarding legal issues, handled his criminal case negligently and breached his contract with Ashley. The complaint further alleged that, had Ashley not

² Supr. Ct. R. 25(a).

pleaded guilty, he would not have been convicted of the criminal charges against him.

(4) In connection with his complaint, Ashley filed an application to proceed *in forma pauperis*. In its order dated May 2, 2012, the Superior Court granted Ashley's application, but also dismissed his complaint as factually and legally frivolous pursuant to Del. Code Ann. tit. 10, §8803(b).

(5) In this appeal, Ashley claims that the Superior Court abused its discretion when it dismissed his complaint.

(6) Pursuant to Del. Code Ann. tit. 10, §8803(b), the Superior Court must review the plaintiff's complaint once his application to proceed *in forma pauperis* is granted. If the complaint is found to be factually frivolous, malicious or legally frivolous such that even a *pro se* litigant should have found well-settled law disposing of the issues raised, the complaint shall be dismissed.

(7) It is well-settled that there is no contractual relationship between a defendant and an attorney appointed by the Superior Court to represent the defendant in criminal matters.³ Moreover, an attorney appointed by the Superior Court in such matters has qualified immunity from legal malpractice claims under the State Tort Claims Act, Del. Code Ann. tit. 10, §§4001-4005.⁴ As such, in order to state a claim against such an attorney, the defendant must plead facts supporting

³ *Browne v. Robb*, 583 A.2d 949, 953-55 (Del. 1990).

⁴ *Id.* at 950-52.

gross negligence.⁵ In addition, Superior Court Civil Rule 9 requires that any claim of negligence must be pleaded with particularity.

(8) We have reviewed Ashley's complaint in light of the applicable legal standards. We agree with the Superior Court that Ashley's complaint was legally frivolous under Del. Code Ann. tit. 10, §8803(b) and that dismissal was warranted. As such, we conclude that there was no error or abuse of discretion on the part of the Superior Court.

(9) It is manifest on the face of the 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, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.⁶

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁵ Id. at 952-53.

⁶ The appellee's motion to dismiss is hereby denied as moot.