

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES CHRISTOPHER DEANGELO,	§
	§
Defendant Below-	§ No. 381, 2002
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. No. IN99-04-1179
	§ Cr. ID 9903023368
Plaintiff Below-	§
Appellee.	§

Submitted: April 14, 2003

Decided: May 27, 2003

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

ORDER

This 27th day of May 2003, upon consideration of the opening brief and the State's motion to affirm, it appears to the Court that:

(1) In 2000, a Superior Court jury convicted the defendant-appellant, James Christopher Deangelo, of second degree murder and possession of a deadly weapon during the commission of a felony. On direct appeal, this Court affirmed the conviction of second degree murder and reversed the weapon conviction.¹ We remanded the matter to the Superior Court for resentencing on the murder conviction. On remand, the Superior Court sentenced Deangelo to 20 years at

¹ *Deangelo v. State*, Del. Supr., No. 343, 2000, Berger, J. (Apr. 22, 2002).

Level V incarceration on the second degree murder conviction.² This is Deangelo's appeal from his resentencing.³

(2) The State has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Deangelo's opening brief that his appeal is without merit. The State asserts that the only issues raised in Deangelo's opening brief are related to errors that allegedly occurred during trial. The State contends that these issues were not raised by Deangelo in his direct appeal and have never been presented to the Superior Court for consideration. The State argues that the trial errors Deangelo alleges should not be considered in this appeal from his resentencing but, instead, should be considered as part of a petition for postconviction relief under Superior Court Criminal Rule 61. Because Deangelo does not raise any challenge to the resentencing order, the State contends that the Superior Court's judgment must be affirmed.

(3) We have carefully considered the parties' respective positions. In the absence of any challenge by Deangelo to the Superior Court's resentencing order, we find it manifest that the judgment of the Superior Court should be affirmed.⁴ Under the circumstances, the Superior Court did not err or abuse its discretion in

² The Superior Court had sentenced Deangelo following trial to 15 years on each of his original convictions.

³ Deangelo requested, and was permitted by the Court, to exercise his right to waive counsel and to represent himself in this appeal.

⁴ See *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993) (holding that failure to raise an issue in the opening brief generally constitutes a waiver of the claim on appeal).

resentencing Deangelo following this Court's remand.⁵ The Court will not consider the issues raised in Deangelo's opening brief in the first instance.⁶

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice

⁵ See *White v. State*, 576 A.2d 1322 (Del. 1990) (finding no due process or double jeopardy violation when trial court, upon resentencing, increased defendant's sentence).

⁶ See DEL. SUPR. CT. R. 8 (stating that "[o]nly questions fairly presented to the trial court may be presented for review....").