

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM GREGORY	§
SUMMERS,	§
	§ No. 161, 2002
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr.A. No. IK97-10-0448 thru
	§ 0454
Plaintiff Below-	§
Appellee.	§

Submitted: September 26, 2002

Decided: October 10, 2002

Before **WALSH, HOLLAND** and **BERGER**, Justices

ORDER

This 10th day of October 2002, 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, William Gregory Summers, filed an appeal from the Superior Court's March 5, 2002 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of

Summers' opening brief that the appeal is without merit.² We agree and AFFIRM.

(2) In January 1999, Summers was found guilty at a Superior Court bench trial of Robbery in the First Degree, Assault in the Third Degree, and Misdemeanor Theft. Thereafter, the State of Delaware filed a motion to have Summers declared an habitual offender.³ Following a hearing, the Superior Court granted the State's motion and sentenced Summers to life imprisonment.

(3) On direct appeal to this Court, Summers claimed that the Superior Court erred in sentencing him pursuant to the habitual offender statute, the statute was unconstitutionally disproportionate, and the sentence for misdemeanor theft was incorrect. This Court affirmed as to Summers' first two claims, but held that the separate sentence for misdemeanor theft was imposed in error and ordered that conviction and sentence be stricken.⁴ The matter was then remanded to the Superior Court for correction of Summers' sentence.

¹The Superior Court adopted the commissioner's January 28, 2002 report and recommendation. DEL. CODE ANN. tit. 10, § 512(b).

²SUPR. CT. R. 25(a).

³DEL. CODE ANN. tit. 11, § 4214(b).

⁴*Summers v. State*, Del. Supr., No. 563, 1999, Walsh, J. (Sept. 15, 2000).

(4) In this appeal, Summers claims that: a) his counsel provided ineffective assistance by failing to file a pretrial motion to suppress, conduct an adequate investigation and subpoena witnesses for trial; and b) the Superior Court erroneously determined that the claims made in his postconviction motion were procedurally barred. To the extent Summers has not argued other claims that were raised in his postconviction motion, those claims are deemed abandoned and will not be addressed by this Court.⁵

(5) In order to prevail on his claim of ineffective assistance of counsel, Summers must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁶ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁷

⁵*Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). Summers argued in the Superior Court that there was insufficient evidence presented at trial to support his robbery conviction; the State permitted false testimony to be presented at trial; the State failed to produce any physical evidence of the crimes and failed to call the officer who took the statement from the victim to testify at trial; and his counsel provided ineffective assistance by refusing to file the pretrial motions he requested and coercing him into entering a guilty plea.

⁶*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁷*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

(6) Summers' claims of ineffective assistance of counsel are without merit. We have reviewed the trial transcript and there is no evidence that Summers' counsel's representation fell below an objective standard of reasonableness or that any alleged errors by his counsel prejudiced him.

(7) Summers' claim that the Superior Court erred by determining that his claims were procedurally barred is also without merit. The Superior Court correctly determined that Summers' ineffective assistance of counsel claims did not reflect a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction⁸ and, on that basis, found his claims to be procedurally barred.⁹

(8) It is manifest on the face of Summers' opening brief that the 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.

⁸SUPER. CT. CRIM. R. 61(i) (5).

⁹SUPER. CT. CRIM. R. 61(i) (3).

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/ Randy J. Holland
Justice