

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM J. HAWKINS,	§	
	§	No. 358, 2003
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County in IK99-11-
	§	0375-R1, 0376-R1; IK99-12-
STATE OF DELAWARE,	§	0227-R1.
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9911005395

Submitted: September 4, 2003

Decided: December 10, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices.

ORDER

This 10th day of December 2003, 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 appellant, William J. Hawkins, has appealed from the Superior Court's denial of his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. 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 Hawkins' opening brief that the appeal is without merit. We agree and affirm.

(2) In March 2000, a Superior Court jury found Hawkins guilty of Unlawful Imprisonment in the Second Degree, Assault in the Second Degree and Possession of a Deadly Weapon During the Commission of a Felony. Hawkins was declared a habitual criminal and was sentenced to a total of thirty years imprisonment. On direct appeal, this Court affirmed Hawkins' conviction and sentence.¹

(3) In October 2002, Hawkins filed a motion for postconviction relief, a memorandum of law pursuant to Superior Court Criminal Rule 61, and an amendment to the motion. Hawkins alleged that his counsel was ineffective for failing to (i) request a self-defense jury instruction, (ii) object to inadmissible documents and hearsay testimony, (iii) interview three witnesses, (iv) subpoena a police officer, and (v) request a *Getz* analysis of an eyewitness' testimony.² Moreover, Hawkins alleged that his grand jury indictment was defective.

(4) The Superior Court referred Hawkins' Rule 61 motion, memorandum, and amended motion, to a Superior Court Commissioner who issued a report finding that Hawkins' claims were either procedurally barred or were without merit. By order dated July 16, 2003, the Superior Court adopted

¹*Hawkins v. State*, 2002 WL 384436 (Del. Supr.).

²*See Getz v. State*, 538 A.2d 726, 734 (Del. 1988).

the Commissioner's findings and recommendations and denied Hawkins' motion for postconviction relief. This appeal followed.

(5) In his opening brief on appeal, Hawkins raises the same claims that he raised in his postconviction motion, as amended, as well as the following two new claims. First, Hawkins argues that his attorney coerced him into not testifying. Second, Hawkins argues that the Superior Court should have conducted an evidentiary hearing on his ineffective assistance of counsel claims.

(6) We have considered Hawkins' claim that his counsel coerced him not to testify and find that the claim is unsubstantiated by the record. There is no indication in the transcript or record that Hawkins' decision not to testify was coerced by his counsel. To the contrary, the record indicates that Hawkins' decision not to testify was "conscious" and "voluntary."³

³The trial transcript reflects this exchange:

THE COURT: Mr. Hawkins, what your attorney has just stated to me indicates that it's your decision, your conscious voluntary decision that you do not wish to testify. Was everything your lawyer stated on the record correct?

MR. HAWKINS: Yes, sir.

THE COURT: Okay. You understand that you have a right to testify or not to testify, and that decision is solely within your discretion as your [de]termination, the constitution of the United States, as well as the constitution of the State of Delaware, does give you that right. If it is your decision not to testify, the court will give an appropriate instruction to the jury in that regard.

(7) Hawkins' claim is that he was entitled to an evidentiary hearing. It is well-settled that the Superior Court is not required to conduct an evidentiary hearing upon a Rule 61 motion if, on the face of the motion, it appears that the petitioner is not entitled to relief.⁴ In this case, the Court finds that the Superior Court properly exercised its discretion in disposing of Hawkins' Rule 61 motion without requiring an evidentiary hearing.

(8) Having carefully considered Hawkins' remaining claims, we find it manifest on the face of the opening brief that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's decision dated July 16, 2003, that adopted the Commissioner's well-reasoned report and recommendation. The Superior Court properly denied Hawkins postconviction

I will instruct the jury, namely, that your decision not to testify should not be construed in any way as indicating any conscious statement on your part that any, that the jury should not draw any inference against you in that regard. I'm, basically, paraphrasing what the court is going to do, but there will be an instruction in that regard.

MR. HAWKINS: Yes.

THE COURT: Okay. So it's your decision that you do not wish to testify; is that right?

MR. HAWKINS: Yes, sir.

THE COURT: Okay.

Trial Tr., Mar. 29, 2000, at 131, 132.

⁴*Maxion v. State*, 686 A.2d 148, 151 (1996).

claims as either procedurally barred or as being without merit. We also agree with the Superior Court's determination that Hawkins' claims do not warrant reconsideration in the "interest of justice"⁵ or application of the jurisdictional or "miscarriage of justice" exception⁶ to the procedural bar.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the appellee's motion to affirm is GRANTED. The judgment of the Superior Court is hereby AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁵See Super. Ct. Crim. R. 61(i)(4) (providing that any formerly adjudicated claim is barred unless reconsideration of the claim is warranted in "the interest of justice").

⁶See Super. Ct. Crim. R. 61(i)(5) (providing that the procedural bar does not apply to defaulted claims other than claims that the court "lacked jurisdiction" or claims that manifest a "miscarriage of justice" because of a constitutional violation).