

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDERICK W. SMITH, JR.,	§
	§
Defendant Below-	§ No. 603, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN93-07-1601; 1602
Plaintiff Below-	§ IN93-08-2030; 2031
Appellee.	§

Submitted: January 7, 2002

Decided: March 22, 2002

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

ORDER

This 22nd day of March 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, Frederick W. Smith, Jr., filed an appeal from the Superior Court's November 13, 2001 order denying his fourth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The 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 Smith's opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In January 1994, Smith was convicted by a Superior Court jury of two counts of Unlawful Sexual Intercourse in the Second Degree, one count of Unlawful Sexual Penetration in the Third Degree and one count of Assault in the Third Degree. He was sentenced to a total of 32 years imprisonment at Level V, to be followed by probation. Smith's convictions and sentences were affirmed by this Court on direct appeal.²

(3) In this appeal, Smith claims that the victim's inculpatory statement, which she recanted at trial and which was neither signed nor initialed, was an improper basis not only for his convictions, but also for the indictment, thereby depriving the Superior Court of jurisdiction to convict him.

(4) Smith's claim is unavailing. To the extent Smith seeks to challenge his conviction, his claim is procedurally barred³ and, to the extent Smith seeks to

¹SUPR. CT. R. 25(a).

²*Smith v. State*, 669 A.2d 1 (Del. 1995).

³SUPER. CT. CRIM. R. 61(i) (4).

avoid Rule 61's procedural bars by challenging the validity of the indictment and the Superior Court's jurisdiction to convict him, his claim is meritless.⁴

(5) It is manifest on the face of Smith'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.

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/ Myron T. Steele
Justice

⁴SUPER. CT. CRIM. R. 61(i) (5); *Ellegood v. State*, Del. Supr., No. 104, 2001, Walsh, J. (June 26, 2001) (citing *Costello v. United States*, 350 U.S. 359, 363-64(1956)).