

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM J. WEBB, JR.,	§
	§
Defendant Below-	§ No. 373, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID No. 9907017204
Plaintiff Below-	§
Appellee.	§

Submitted: January 29, 2002

Decided: March 22, 2002

Before **VEASEY**, Chief Justice, **WALSH** 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, William J. Webb, Jr., filed this appeal from the Superior Court's July 11, 2001 order denying his motion for postconviction relief in connection with a violation of probation ("VOP"). 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 Webb's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In this appeal, Webb claims that: a) the Superior Court did not have jurisdiction to decide his motion for postconviction relief in connection with his VOP because an appeal from the same judgment was already pending in this Court; b) his VOP sentence was imposed in an illegal manner because it was based on false information; and c) the Superior Court abused its discretion in failing to dismiss the attorney who represented him on several 1999 criminal charges and appoint new counsel.

(3) In March 2000, Webb pleaded guilty to 1999 charges of Burglary in the First Degree, Assault in the First Degree and Endangering the Welfare of a Child. He also admitted to violating the terms of a period of probation imposed in 1997 in connection with another criminal charge. On June 23, 2000, the Superior Court imposed sentence for all four convictions. Webb did not file a direct appeal, but did file two postconviction motions in connection with his convictions and sentences on the 1999 charges. Webb unsuccessfully appealed the Superior Court's denial of the second motion to this Court.¹ In June 2001, while the matter was on appeal, Webb filed a postconviction motion in connection with the VOP in the Superior Court. The Superior Court's denial of that motion is the subject of the instant appeal.

¹*Webb v. State*, Del. Supr., No. 589, 2000, Veasey, C.J. (Dec. 7, 2001).

(4) All three of Webb's claims are unavailing. First, Webb himself chose to file a postconviction motion in connection with the VOP during the pendency of his appeal and can not now complain that it was improper for the Superior Court to act on his motion. There is, moreover, no evidence of any prejudice to him as a result of the timing of the Superior Court's action. Second, Webb is procedurally barred from pursuing his claim that his sentence was based on false information because he did not file a motion challenging the sentence within 90 days of its imposition and there are no extraordinary circumstances excusing the procedural default.² Third, Webb's claim that he should have been provided new counsel in connection with the 1999 charges was not presented to the Superior Court in the first instance, precluding our consideration of the claim on appeal.³

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

²SUPER. CT. R. 35(a) and (b).

³SUPR. CT. R. 8.

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:

Myron T. Steele
Justice