

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LeVAUGHN WALKER,	§	
	§	
Defendant Below,	§	No. 124, 2000
Appellant,	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware, in
	§	and for Kent County in IK95-
STATE OF DELAWARE,	§	04-0023-R1, 0024R1 & IK95-
	§	07-0002-R1.
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9503016771

Submitted: June 29, 2000
Decided: October 2, 2000

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

ORDER

This 2nd day October 2000, upon consideration of the appellant’s opening brief and the State of Delaware’s motion to affirm¹ pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, LeVaughn Walker, has appealed from the Superior Court’s denial of Walker’s motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). The State

¹ The Court has not considered the appellant’s unsolicited “Reply to State’s Motion to Affirm” that was filed on July 24, 2000. See Supr. Ct. R. 25(a) (providing that “there

of Delaware has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Walker's opening brief that the appeal is without merit. We agree and affirm.

(2) In March 1995, Walker, who was then 16-years old, was charged with murdering Nicole Moseley, who was 17-years old. The Superior Court conducted a reverse amenability hearing and determined that Walker should be tried in the Superior Court. Prior to trial, Walker moved to suppress an incriminating statement that he had given to the police the day after Nicole Moseley's body was found. Walker's suppression motion was denied.

(3) After a jury trial, Walker was convicted of Second Degree Murder (a lesser-included offense of First Degree Murder), and the additional charged offenses of Possession of a Deadly Weapon by a Person Prohibited and Felony Theft. On April 18, 1996, the Superior Court sentenced Walker to 38 years of incarceration followed by varying levels of probation.

(4) On direct appeal, Walker raised one issue, *i.e.*, that the Superior Court erred when it did not permit Walker's counsel to inspect a document that a police officer used to refresh his recollection while testifying against

shall be no briefing, argument or response to the motion [to affirm], unless requested

Walker. This Court concluded that Walker's appeal was without merit and affirmed the Superior Court's judgment.²

(5) In August 1997, Walker filed a *pro se* motion for postconviction relief. The motion alleged three claims: (i) that Walker's trial counsel was ineffective for failing to investigate the case and to consult with Walker; (ii) that the prosecution deliberately withheld exculpatory information; and (iii) that Walker was not advised of his complete *Miranda* rights.³

(6) By report dated February 4, 2000, a Superior Court Commissioner recommended that Walker's postconviction motion be dismissed as procedurally barred under Rule 61(i)(3) and (i)(4). Walker did not file objections. By order dated March 7, 2000, the Superior Court adopted the Commissioner's report and denied Walker's motion for postconviction relief. This appeal followed.

(7) In this appeal from the denial of his postconviction motion, Walker has raised only the claim that he received incomplete *Miranda*

by the Court").

² *Walker v. State*, Del. Supr., No. 226, 1996, Walsh, J., 1997 WL 139810 (March 20, 1997) (ORDER).

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

warnings. To the extent Walker has failed to brief his other two postconviction claims, those claims are deemed abandoned.⁴

(8) Walker did not raise his *Miranda* claim on direct appeal, and he has not alleged “cause” for his failure to raise the claim nor has he demonstrated “prejudice” as a result of the alleged violation.⁵ Furthermore, Walker has not shown that the Superior Court lacked jurisdiction or that there was a miscarriage of justice due to a constitutional violation.⁶ Consequently, Walker’s *Miranda* claim is barred pursuant to Rule 61(i)(3).

(9) Walker’s *Miranda* claim is also barred as previously adjudicated, under Rule 61(i)(4). It appears from the record that the Superior Court found that Walker “was given the *Miranda* warnings twice and there’s no evidence that he didn’t understand them.”⁷ Walker has presented no reason why reconsideration of the claim is warranted in the interest of justice.

(10) In his opening brief on appeal, Walker raises two new claims that he did not raise in his postconviction motion. Because Walker did not

⁴ *Somerville v. State*, Del. Supr., 703 A.2d 629, 631 (1997).

⁵ See Super. Ct. Crim. R. 61(i)(3) (providing that any ground for relief that was not asserted in the proceedings leading to the conviction is barred unless the movant shows “cause” for relief from the procedural default and “prejudice” from violation of the movant’s rights).

⁶ Super. Ct. Crim. R. 61(i)(5).

⁷ *State v. Walker*, Del. Super., Cr.A.Nos. IK95-04-0023, 0024; IK 94-07-0002, Terry, J. (Feb. 1, 1996) (Bench Ruling), Tr. at 7.

raise these claims in his postconviction motion, we review them now only for plain error.⁸

(11) First, Walker alleges that his counsel was ineffective for failing to “challenge” the Superior Court’s denial of Walker’s motion to suppress. Second, Walker alleges that the prosecutor committed misconduct when he directed that the police interrogate Walker without the presence of, and the consent of, Walker’s parent(s).

(12) It appears from the record that the Superior Court denied Walker’s motion to suppress only after conducting a hearing to determine (i) whether the State had complied with mandatory presentment and notification requirements,⁹ and (ii) whether Walker’s incriminating statement was otherwise knowing and voluntary. We conclude that the Superior Court’s analysis was proper, and that the court’s denial of Walker’s motion to suppress was free from plain error. Accordingly, Walker has not demonstrated that his counsel’s efforts to suppress the statement were inadequate or that the prosecutor acted improperly when he directed the police to interrogate Walker.

⁸ Supr. Ct. R. 8. See *Trump v. State*, Del. Supr., 753 A.2d 963, 971 (2000) (citing *Wainwright v. State*, Del. Supr., 504 A.2d 1096, 1100 (1986)) (providing that plain error is error that is “so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial”).

(13) In this case, the Superior Court's denial of Walker's motion for postconviction relief was appropriate. It is manifest on the face of Walker's opening brief that the appeal is without merit. The issues raised are clearly controlled by settled Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁹ See 10 Del. C. § 1004(2) and Family Court Rule 5(b)(1)(b) (providing duties of police officer when taking a child into custody).