

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAIR A. MARIN,	§	
	§	
Defendant Below-	§	No. 586, 2003
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for Kent County
STATE OF DELAWARE,	§	Cr. A. Nos. IK96-10-0387; 0391
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: February 2, 2004  
Decided: March 25, 2004

Before **HOLLAND, STEELE** and **JACOBS**, Justices

**ORDER**

This 25<sup>th</sup> day of March 2004, 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, Jair A. Marin, filed an appeal from the Superior Court's November 25, 2003 order adopting the Commissioner's report and recommendation and denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is

manifest on the face of Marin's opening brief that the appeal is without merit.<sup>1</sup> We agree and AFFIRM.

(2) In December 1997, Marin was found guilty by a Superior Court jury of Trafficking in Cocaine and Possession of Cocaine with Intent to Deliver. He was sentenced to 15 years incarceration at Level V, to be followed by probation. On direct appeal, this Court affirmed Marin's convictions and sentences.<sup>2</sup>

(3) In his motion for postconviction relief, Marin claimed that: his confession was coerced; his arrest was in violation of Article 36 of the Vienna Convention; the prosecution witnesses gave perjured testimony; the drug evidence was tainted; the jury selection process was unconstitutional; and his counsel provided ineffective assistance. In her report and recommendation,<sup>3</sup> the Superior Court Commissioner found that each of Marin's arguments was grounded in his claim of ineffective assistance of counsel. She further found that Marin had failed to demonstrate that any action on the part of his counsel had prejudiced his case<sup>4</sup> and, therefore, denied his motion.<sup>5</sup> Following its review de novo of the

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> *Marin v. State*, Del. Supr., No. 134, 1998, Berger, J. (Mar. 3, 1999).

<sup>3</sup> Del. Code Ann. tit. 10, § 512(b); Super. Ct. Crim. R. 62.

<sup>4</sup> *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

<sup>5</sup> The Commissioner also noted that, because none of Marin's claims had been presented in his direct appeal, they were procedurally barred pursuant to Superior Court Criminal Rule 61(i) (3).

Commissioner's report, the Superior Court adopted the findings and recommendation of the Commissioner and summarily denied Marin's motion for postconviction relief.<sup>6</sup>

(4) In his appeal, Marin claims that the Superior Court abused its discretion by adopting the Commissioner's report and recommendation without holding an evidentiary hearing and making its own findings of fact.

(5) On a motion for postconviction relief, it is within the Superior Court's discretion to determine, after considering the motion, the State's response, the movant's reply and the record of any prior proceedings, whether an evidentiary hearing is desirable.<sup>7</sup> If it appears that an evidentiary hearing is not desirable, "the judge shall make such disposition of the motion as justice dictates."<sup>8</sup>

(6) There is no evidence of any error or abuse of discretion on the part of the Superior Court in its disposition of Marin's motion for postconviction relief. The Superior Court was within its discretion to refer the matter to the Commissioner for a report and recommendations and, upon review of the Commissioner's report and recommendations, was within its discretion to dispose of the matter summarily without an evidentiary hearing.

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<sup>6</sup> Super. Ct. Crim. R. 62(a) (5) (iv).

<sup>7</sup> Super. Ct. Crim. R. 61(h) (1).

<sup>8</sup> Super. Ct. Crim. R. 61(h) (3). In this case, the Superior Court judge referred the matter to the Commissioner pursuant to Superior Court Criminal Rule 62(a) (5).

(7) It is manifest on the face of Marin'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/ Jack B. Jacobs  
Justice