

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| BEN ROTEN, | § |
| | § No. 437, 2011 |
| Defendant Below- | § |
| Appellant, | § |
| | § Court Below—Superior Court |
| v. | § of the State of Delaware |
| | § in and for Sussex County |
| STATE OF DELAWARE, | § Cr. ID No. 0907011738 |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: October 28, 2011

Decided: November 8, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 8th day of November 2011, 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, Ben Roten, filed an appeal from the Superior Court’s July 19, 2011 order denying his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

¹ Because this was Roten’s first postconviction motion, the Superior Court requested affidavits from Roten’s trial and appellate counsel pursuant to Superior Court Criminal Rule 61(g) (2). *Horne v. State*, 887 A.2d 973, 975 (Del. 2005).

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.² We agree and affirm.

(2) The record before us reflects that, in January 2010, Roten was found guilty by a Superior Court jury of Assault in a Detention Facility for throwing a bucket of boiling water on a fellow inmate and beating him with a broom handle. The Superior Court admitted into evidence a letter written by Roten to his girlfriend, which admitted to the crime. The Superior Court sentenced Roten as a habitual offender to 25 years at Level V incarceration, to be followed by 6 months of Level IV Work Release. This Court affirmed Roten's conviction on direct appeal.³

(3) In this appeal, Roten makes a number of claims that may fairly be summarized as follows: the Superior Court erred when it denied his postconviction motion because a) his constitutional rights were violated when the Department of Correction seized and read the letter he wrote to his girlfriend; b) it was improper for the Superior Court to admit the letter into evidence at trial and to refuse to permit the jury to be informed that the injured inmate was in prison on a rape conviction; and c) his trial counsel provided ineffective assistance because he did not object to the admission of the letter into evidence and did not object to the Superior Court's refusal to

² Supr. Ct. R. 25(a).

³ *Roten v. State*, Del. Supr., No. 108, 2010, Berger, J. (Oct. 4, 2010).

permit the jury to be informed that the injured inmate was in prison on a rape conviction.

(4) The Superior Court must first determine if the defendant has satisfied the procedural requirements of Rule 61 before reaching the substantive merits of any motion for postconviction relief.⁴ In this case, the Superior Court properly determined that Roten's first four claims were procedurally barred under Rule 61(i) (3) because he had failed to raise them in his direct appeal and, moreover, had failed to show cause for relief from the procedural default and prejudice from a violation of his rights.⁵

(5) To the extent that Roten attempts to overcome the procedural bar by demonstrating a colorable claim of a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to his conviction,⁶ that attempt is unavailing. This Court has ruled that prison officials may undertake reasonable inspections of outgoing prisoner mail in the interest of promoting prison security and that a prisoner does not have a reasonable expectation of privacy in mail sent outside the prison.⁷ Moreover, because rape is not a crime of dishonesty or false statement, the nature of the injured

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁵ Super. Ct. Crim. R. 61(i) (3) (A) and (B).

⁶ Super. Ct. Crim. R. 61(i) (5).

⁷ *Johnson v. State*, 983 A.2d 904, 917-19 (Del. 2009).

inmate's conviction was not admissible to impeach his credibility.⁸ There was no violation of Roten's rights as a result of the rulings made at his trial and the Superior Court properly so concluded.

(6) Roten's final claim is that his counsel provided ineffective assistance. In order to prevail on that claim, Roten must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁹ As the record reflects, Roten's allegation that his counsel failed to object to the admissibility of the letter is incorrect. Counsel argued both that the letter was inadmissible on the grounds of foundation and authenticity and that the injured inmate's rape conviction should be admitted into evidence. Both arguments were properly rejected by the Superior Court. There was no error on the part of Roten's trial counsel and the Superior Court properly so concluded.¹⁰

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

⁸ Del. R. Evid. 609(a).

⁹ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

¹⁰ Roten's claim that his appellate counsel was ineffective will not be addressed, since it was not presented to the Superior Court in the first instance. Supr. Ct. R. 8.

settled Delaware law and, to the extent that judicial discretion is implicated, 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/ Carolyn Berger
Justice