

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VERNELL D. LECATO,	§	
	§	No. 565, 2001
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Kent County in Cr.A.
	§	No. K98-01-0217I.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below	§	
Appellee.	§	Def. ID No. 9801000685

Submitted: December 20, 2001

Decided: February 19, 2002

Before **HOLLAND, BERGER** and **STEELE**, Justices.

**ORDER**

This 19<sup>TH</sup> day of February 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 appellant, Vernell LeCato, has appealed from the Superior Court’s denial of his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). The 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 LeCato’s opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In January 1999, after a jury trial in the Superior Court, LeCato was convicted of Delivery of Cocaine. LeCato was sentenced as a habitual offender to life in prison.<sup>1</sup> On direct appeal, this Court affirmed LeCato's conviction and sentence.<sup>2</sup>

(3) In his motion for postconviction relief, LeCato alleged that his trial counsel was ineffective, and that the State presented insufficient evidence to establish LeCato's eligibility for an enhanced sentence as a habitual offender. By order dated October 22, 2001, after considering LeCato's claims on the merits, the Superior Court denied postconviction relief.<sup>3</sup> This appeal followed. In his opening brief on appeal, LeCato raises the two claims that he raised in his postconviction motion, and he raises a third general claim that the Superior Court abused its discretion when denying LeCato's postconviction motion.

(4) LeCato claims that his trial counsel was ineffective when he failed to interview and subpoena two potential defense witnesses. To prevail on his claim, LeCato must show that his counsel's representation fell below

---

<sup>1</sup>Del. Code Ann. tit. 11, § 4214(b).

<sup>2</sup>*LeCato v. State*, 2000 WL 1535288 (Del. Supr.).

<sup>3</sup>*State v. LeCato*, 2001 WL 1628311 (Del. Super. Ct.).

an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.<sup>4</sup> To avoid summary dismissal, LeCato must support his claim with "concrete allegations of . . . actual prejudice" and substantiate them.<sup>5</sup>

(5) According to LeCato, his counsel should have subpoenaed a witness named William Wright, who would have corroborated the trial testimony of LeCato's co-defendant, Herbert Jacobs, who testified that he was unable to identify the drug seller. Moreover, LeCato contends that a second proposed witness, Dallas Tingle, would have contradicted the testimony of Dover Police Officer Anthony DiGirolomo, who testified that he observed LeCato apparently selling a substance to Herbert Jacobs.

(6) The Superior Court did not err when it concluded that LeCato did not suffer actual prejudice as a result of his counsel's failure to investigate and present William Wright and Dallas Tingle as defense witnesses. We have reviewed the record and agree with the Superior Court that the absence of the

---

<sup>4</sup>*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>5</sup>*Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

proposed testimony of William Wright and Dallas Tingle did not prejudice LeCato's defense.

(7) We find also that the Superior Court correctly concluded that the State met its burden of proof in establishing beyond a reasonable doubt the predicate offenses required under the habitual offender statute.<sup>6</sup> Moreover, the Superior Court correctly concluded, contrary to LeCato's contentions, that a plea of *nolo contendere* may serve as a predicate offense under the habitual offender statute.<sup>7</sup>

(8) It is manifest on the face of LeCato's opening brief that the appeal is without merit. 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. The judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated October 22, 2001.

---

<sup>6</sup>*See Hall v. State*, 2001 WL 1692385, at \*6 (Del. Supr.) (holding "that the State need offer only unambiguous documentary evidence of a prior predicate conviction . . . not a particular or exclusive type of documentary evidence").

<sup>7</sup>*Smith v. State*, 2000 WL 628346 (Del. Supr.). *See also* Del. Super. Ct. Crim. R. 11(e)(4) (providing that a judgment of conviction upon a plea of *nolo contendere* may be admissible in any proceeding).

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/ Carolyn Berger  
Justice