## IN THE SUPREME COURT OF THE STATE OF DELAWARE

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§	No. 393, 2003
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§	Court BelowSuperior Court
§	of the State of Delaware,
§	in and for Kent County
§	C.A. No. 03M-07-020
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Submitted: May 28, 2004 Decided: July 19, 2004

Before STEELE, Chief Justice, BERGER and JACOBS, Justices

## ORDER

This 19<sup>th</sup> day of July 2004, it appears to the Court that:

(1) The petitioner-appellant, William Gregory Summers, filed an appeal from the Superior Court's July 31, 2003 order denying his petition for a writ of habeas corpus. The respondent-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Summers' opening brief that the appeal is without merit. We agree and AFFIRM.

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

- (2) The record reflects that, in April 1994, Summers waived indictment by the grand jury and was charged by information with Trafficking in Cocaine, Possession with Intent to Deliver Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, Possession of Drug Paraphernalia and Conspiracy in the Second Degree. In November 1994, Summers pleaded guilty to the lesser-included offense of Attempted Trafficking in Cocaine.<sup>2</sup> He was sentenced to 5 years incarceration at Level V, to be suspended after 20 months for 2½ years of decreasing levels of probation.
- (3) In this appeal, Summers claims that he is being illegally detained because he did not waive his right to be indicted by the grand jury on the lesser-included charge of Attempted Trafficking in Cocaine.
- (4) In Delaware, the writ of habeas corpus provides relief on a very limited basis.<sup>3</sup> Habeas corpus only provides "an opportunity for one illegally confined or incarcerated to obtain judicial review of the jurisdiction of the court ordering the commitment." "Habeas corpus relief is not available to '[p]ersons committed or detained on a charge of treason or felony, the species whereof is plainly and fully set forth in the commitment."

<sup>&</sup>lt;sup>2</sup> Super. Ct. Crim. R. 11(e) (1) (C).

<sup>&</sup>lt;sup>3</sup> Hall v. Carr, 692 A.2d 888, 891 (Del. 1997).

<sup>&</sup>lt;sup>4</sup> Id

<sup>&</sup>lt;sup>5</sup> Id. (quoting Del. Code Ann. tit. 10, § 6902(1)).

(5) In this case, there is no evidence that the charge to which Summers

pleaded guilty was not valid on its face or that there was any jurisdictional defect.

Moreover, there is no evidence that the waiver of indictment form signed by

Summers was in any way defective. As such, habeas corpus relief is not available

to Summers and the Superior Court properly so determined.

(6) It is manifest on the face of Summers' 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/ Myron T. Steele

Chief Justice

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