

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE R. THOMAS,	§	
	§	
Defendant Below-	§	No. 83, 2005
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. Nos. IN98-12-0233 thru
	§	0237, 0239;
Plaintiff Below-	§	IN98-12-2171
Appellee.	§	

Submitted: March 16, 2005

Decided: May 4, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 4<sup>th</sup> day of May 2005, 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, Andre R. Thomas, filed an appeal from the Superior Court's February 17, 2005 order 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 judgment of the Superior Court on the ground that it is manifest on the face of Thomas' opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In July 2000, Thomas was found guilty by a Superior Court jury of three counts of Reckless Endangering in the First Degree and additional weapon offenses. He was sentenced as an habitual offender to a total of 35 years incarceration at Level V. Thomas' convictions and sentences were affirmed by this Court on direct appeal.<sup>1</sup> This is Thomas' first motion for postconviction relief.

(3) In this appeal, Thomas claims that his constitutional rights were violated at trial because: a) the Superior Court failed to conduct a hearing to determine his competence to stand trial; and b) the State improperly failed to disclose an exculpatory surveillance tape in discovery.

(4) The Superior Court correctly concluded that Thomas' claims were procedurally defaulted. As noted by the Superior Court, Thomas' claims were not raised previously in his direct appeal<sup>2</sup> and Thomas has shown neither cause for relief from the procedural default nor prejudice from a violation of his rights.<sup>3</sup> Moreover, Thomas has not asserted that the Superior Court lacked jurisdiction, nor has he made a colorable claim of a miscarriage of justice due to a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.<sup>4</sup>

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<sup>1</sup> *Thomas v. State*, Del. Supr., No. 566, 2000, Steele, J. (Feb. 15, 2002).

<sup>2</sup> Super. Ct. Crim. R. 61(i) (3).

<sup>3</sup> Super. Ct. Crim. R. 61(i) (3) (A) and (B).

<sup>4</sup> Super. Ct. Crim. R. 61(i) (5).

(5) As for Thomas' claim that the Superior Court should have held a competency hearing, the record reflects that he had three psychiatric examinations during the year prior to trial and another one prior to sentencing. While the reports reflect that Thomas needs treatment for a personality disorder, none of them concludes that he is incompetent to stand trial.

(6) As for the surveillance tape, the record reflects that this issue was addressed by the Superior Court both during and after Thomas' trial. Although hotel employees testified that the police had taken the tape, the police testified that they did not recall doing so. The trial judge ultimately resolved the issue by giving the jury a "missing evidence" instruction. In ruling on Thomas' motion for a new trial, the Superior Court noted that, had the surveillance tape surfaced during the trial, it would most likely have undermined, rather than supported, Thomas' claims.

(7) It is manifest on the face of Thomas' 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