

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALVIN L. DRUMMOND,	§
	§ No. 200, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0111006853
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 4, 2005
Decided: October 18, 2005

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 18th day of October 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, Alvin L. Drummond, appeals from the Superior Court's April 21, 2005 order denying his motion for postconviction relief.¹ 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

¹ The Superior Court judge adopted the findings of fact and recommendations of the Commissioner. Del. Code Ann. tit. 10, § 512(b); Super. Ct. Crim. R. 62.

face of Drummond's opening brief that the appeal is without merit.² We agree and affirm.

(2) In July 2002, Drummond was found guilty by a Superior Court jury of Attempted Murder in the First Degree, thirteen counts of Possession of a Firearm During the Commission of a Felony, eight counts of Robbery in the First Degree, two counts of Kidnapping in the Second Degree, Burglary in the First Degree, Possession of a Firearm By a Person Prohibited, four counts of Aggravated Menacing, Wearing a Disguise During the Commission of a Felony, and Conspiracy in the Second Degree. He was sentenced to life in prison plus 98 years. This Court affirmed Drummond's convictions and sentences on direct appeal.³

(3) On this second appeal, Drummond claims that: a) the prosecutor knowingly introduced and relied upon false evidence regarding the time the crime was committed, thereby undermining his alibi defense; and b) his counsel provided ineffective assistance in failing to object to the prosecutor's closing argument, wherein the prosecutor misrepresented the time that the crime was committed. To the extent Drummond has not argued

² Supr. Ct. R. 25(a).

³ *Drummond v. State*, Del. Supr., No. 532, 2002, Veasey, C.J. (Oct. 2, 2003).

other grounds that previously were raised, those grounds are deemed waived and will not be addressed by this Court.⁴

(4) Drummond's first claim is procedurally barred as formerly adjudicated, because this Court disposed of this claim on Drummond's direct appeal.⁵ Moreover, there is no basis for excusing the procedural default, as there is no evidence either that the Superior Court lacked jurisdiction to adjudicate Drummond's criminal case or that there occurred a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.⁶

(5) Drummond's second claim is that his counsel provided ineffective assistance by failing to object to the prosecutor's closing argument wherein the prosecutor misrepresented the time that the crime was committed. On direct appeal, this Court rejected Drummond's claim that the prosecutor had misrepresented the evidence in his closing argument. As such, Drummond's present claim, which repeats the claim previously adjudicated against him, must fail. Moreover, our review of the record does not reveal that any alleged error by Drummond's counsel resulted in any

⁴ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his motion for postconviction relief filed in the Superior Court, Drummond presented numerous other arguments in support of his claims of prosecutorial misconduct and ineffective assistance of counsel.

⁵ Super. Ct. Crim. R. 61(i) (4).

⁶ Super. Ct. Crim. R. 61(i) (5).

prejudice to him and we, therefore, find his claim of ineffective assistance of counsel to be without merit.

(6) It is manifest on the face of Drummond's opening brief that the 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.⁷

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁷ We also hereby deny as moot Drummond's two motions to remand this matter to the Superior Court for the purpose of filing a motion for a new trial.