

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRY K. WHITFIELD,	§
	§ No. 332, 2005
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0202006501
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 17, 2006

Decided: May 3, 2006

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

ORDER

This 3rd day of May 2006, upon consideration of the briefs on appeal and the record below, and the appellant's request to voluntarily dismiss his appeal and the State's answer thereto, it appears to the Court that:

(1) The defendant-appellant, Terry K. Whitfield, filed an appeal from the Superior Court's June 30, 2005 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. After the State's answering brief was filed, Whitfield requested that his appeal be dismissed. We deny Whitfield's request to dismiss his appeal and, finding no merit to the appeal, we affirm the decision of the Superior Court.

(2) After Whitfield had filed his opening brief and appendix, and the State had filed its answering brief and appendix, Whitfield wrote a letter informing the Clerk of the Delaware Supreme Court that he wished to voluntarily dismiss his appeal. The State filed an answer to Whitfield's request stating that it would not agree to the dismissal of Whitfield's appeal.

(3) An appellant may unilaterally dismiss an appeal “[at] any time before filing of the appellee’s brief”¹ Otherwise, a voluntary dismissal may occur only upon stipulation of the parties and with the approval of the Court.² Thus, in determining whether an appellant’s request to voluntarily dismiss an appeal should be granted, the Court must consider whether the appellee has already filed an answering brief. Where, as here, the State has filed its answering brief and declines to stipulate to the dismissal of the appeal, the appeal must proceed.³

(4) In his opening brief, Whitfield claims that his counsel provided ineffective assistance by not filing a motion to disqualify the trial judge, by coercing his guilty plea and by failing to file the appropriate motions. He further claims that the Superior Court abused its discretion by not granting his motion for postconviction relief on those grounds.

¹ Supr. Ct. R. 29(a).

² Id.

³ *Paskins v. State*, Del. Supr., No. 461, 1997, Berger, J. (Dec. 23, 1997).

(5) Upon careful review of the parties' briefs and the record below, it appears to the Court that the judgment of the Superior Court should be affirmed on the basis of and for the reasons set forth in its well-reasoned decision dated June 30, 2005. We find no error or abuse of discretion on the part of the Superior Court in any respect.

NOW, THEREFORE, IT IS ORDERED that Whitfield's request to voluntarily dismiss his appeal is DENIED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice