

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN S. EPPERSON,	§
	§ No. 123, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9408009291
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 10, 2006
Decided: June 5, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 5th day of June 2006, 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, Kevin S. Epperson, filed an appeal from the Superior Court’s February 22, 2006 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 Superior

Court's judgment on the ground that it is manifest on the face of Epperson's opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In March 1996, Epperson was found guilty by a Superior Court jury of Kidnapping in the First Degree and Unlawful Sexual Contact in the First Degree. He was sentenced as a habitual offender to fifty-two years of Level V incarceration followed by eight years of probation. Epperson's convictions and sentences were affirmed by this Court on direct appeal.² Since that time, Epperson has filed numerous postconviction motions challenging his convictions and sentences, all of which have been unsuccessful.

(3) In this appeal, Epperson claims that his trial counsel provided ineffective assistance and that the trial judge improperly failed to appoint substitute counsel, made erroneous evidentiary rulings and improperly instructed the jury. Epperson also claims that the Superior Court erred by denying his postconviction motion as procedurally barred³ and instead should have reached the merits of the motion due to a miscarriage of justice.⁴

¹ Supr. Ct. R. 25(a).

² *Epperson v. State*, Del. Supr., No. 214, 1996, Walsh, J. (Feb. 6, 1997).

³ Supr. Ct. Crim. R. 61(i) (1), (2), (3) and (4).

⁴ Supr. Ct. Crim. R. 61(i) (5).

(4) In the absence of any evidence of a miscarriage of justice, we conclude that the Superior Court correctly denied Epperson's motion as procedurally barred. We also note that this appears to have been Epperson's eighth postconviction motion since his direct appeal was decided in 1997. The record reflects that Epperson's appeal from the Superior Court's denial of his latest motion for postconviction relief is frivolous and constitutes an abuse of the judicial process.⁵ Accordingly, Epperson is hereby enjoined from filing any claims in this Court without first seeking leave of the Court.⁶ Any future requests by Epperson to proceed in forma pauperis in any matter before this Court must be accompanied by an affidavit containing the certifications required by Section 8803(e).⁷

(5) It is manifest on the face of Epperson's opening brief that his 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, 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.

⁵ Del. Code Ann. tit. 10, § 8803(b).

⁶ Del. Code Ann. tit. 10, § 8803(e).

⁷ *Proctor v. Bunting*, 797 A.2d 671, 672-73 (Del. 2002).

IT IS FURTHER ORDERED that Epperson is ENJOINED from filing any claims in this Court in the future without first seeking leave of the Court in accordance with this Order.

BY THE COURT:

/s/ Randy J. Holland
Justice