

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE VASQUEZ,	§
	§ No. 127, 2006
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. IN00-07-0301
	§ IN00-07-0302
Plaintiff Below-	§
Appellee.	§

Submitted: April 12, 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, Jose Vasquez, filed an appeal from the Superior Court's February 28, 2006 order summarily dismissing 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

Vasquez' opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) In June 2001, Vasquez pleaded guilty to Continuous Sexual Abuse of a Child and Failure to Register as a Sex Offender. He was sentenced to a total of 21 years of Level V incarceration, to be suspended after 14 years for 7 years of probation.

(3) In this appeal, Vasquez claims that the Superior Court improperly denied his motion for postconviction relief. While conceding that his motion was filed beyond the three-year time limitation,<sup>2</sup> Vasquez, nevertheless, argues that his counsel's ineffective assistance in connection with his guilty plea resulted in a miscarriage of justice, which would permit the Superior Court to consider his untimely motion.<sup>3</sup>

(4) This Court consistently has held that a defendant claiming ineffective assistance of counsel must set forth concrete allegations of actual prejudice and substantiate those allegations, or risk summary dismissal.<sup>4</sup> Summary dismissal was warranted in this case because Vasquez failed to set forth any concrete allegations of actual prejudice and failed to substantiate any such allegations.

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

<sup>2</sup> Super. Ct. Crim. R. 61(i) (1).

<sup>3</sup> Super. Ct. Crim. R. 61(i) (5).

<sup>4</sup> *Younger v. State*, 580 A.2d 552, 555-56 (Del. 1990).

(5) It is manifest on the face of Vasquez' 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.

BY THE COURT:

/s/ Randy J. Holland  
Justice