

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES W. HAMM,	§
	§ No. 476, 2005
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. 0011013269
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 21, 2006

Decided: June 21, 2006

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

ORDER

This 21st 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, Charles W. Hamm, filed an appeal from the Superior Court's September 7, 2005 order summarily dismissing his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ 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

¹ On October 18, 2005, the Superior Court also denied Hamm's motion for reargument.

of Hamm's opening brief that the appeal is without merit.² We agree and AFFIRM.

(2) In September 2001, Hamm was found guilty by a Superior Court jury of Burglary in the Second Degree and Felony Theft. On the burglary conviction, he was sentenced as a habitual offender³ to life imprisonment and, on the theft conviction, he was sentenced to thirty-one days at Level V. Hamm's convictions and sentences were affirmed by this Court on direct appeal.⁴

(3) In this appeal, Hamm claims that: a) his trial attorney provided ineffective assistance by failing to move to suppress fingerprint evidence; b) the prosecutor engaged in misconduct in his closing statement when he characterized the police officer who testified about the fingerprint evidence as an expert; c) the trial judge committed error when he allowed the fingerprint evidence to be presented to the jury; and d) the above errors amounted to a miscarriage of justice, which excuses his failure to raise these issues previously in his direct appeal.⁵

(4) All of Hamm's claims are premised on his argument that the fingerprint evidence used to convict him of burglary should not have been

² Supr. Ct. R. 25(a).

³ Del. Code Ann. tit. 11, § 4214(b).

⁴ *Hamm v. State*, Del. Supr., No. 16, 2002, Steele, J. (June 7, 2002).

⁵ Super. Ct. Crim. R. 61(i) (3) and (5).

admitted at trial. However, the record reflects no basis for exclusion of the fingerprint evidence and no basis for excluding the testimony of the prosecution's fingerprint expert at trial. Moreover, Hamm has failed to show that any alleged error by his trial attorney resulted in prejudice to him,⁶ that the prosecution engaged in misconduct, or that there was a miscarriage of justice underlying his conviction.⁷ As such, the Superior Court properly denied Hamm's motion for postconviction relief.

(5) It is manifest on the face of Hamm's 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/ Randy J. Holland
Justice

⁶ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁷ Super. Ct. Crim. R. 61(i) (5).