

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERNEST A. CRUMP, JR.,	§	
	§	No. 72, 2006
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Kent County in
	§	IK80-05-0020, 0068, 0070,
STATE OF DELAWARE,	§	0071.
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: March 27, 2006

Decided: July 3, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 3rd 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 appellant, Ernest A. Crump, Jr., filed an appeal from the Superior Court’s order of January 31, 2006, that denied his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) In 1980, Crump pleaded guilty to Burglary in the Second Degree, Reckless Endangering in the First Degree and Kidnaping in the Second Degree. After sentencing, Crump moved to withdraw the guilty plea on the basis of an exculpatory affidavit signed by his co-defendant. The Superior Court granted Crump's motion. Later, when the co-defendant indicated that he intended to repudiate the affidavit, the Superior Court denied Crump's request to reinstate the initial plea and sentence.

(3) In the end, Crump pleaded guilty to Kidnaping in the First Degree, Burglary in the Second Degree and Felony Theft. The Superior Court sentenced Crump in 1981 to a mandatory term of life imprisonment and an additional five years at Level V. Crump's first motion for postconviction relief, which was filed in 1996, was denied by the Superior Court.

(4) Crump filed his second motion for postconviction relief in January 2005. The Superior Court referred the motion to a Commissioner for proposed findings and recommendations.¹ By report dated August 30, 2005, the Commissioner recommended that the Superior Court deny Crump's motion as procedurally barred under Rule 61(i).²

¹Del. Code Ann. tit. 10, § 512(b); Del. Super. Ct. Crim. R. 62(a)(5).

²Del. Super. Ct. Crim. R. 61(i) (listing bars to postconviction remedy).

(5) Crump filed written objections to the Commissioner's report. Following a de novo determination of Crump's objections, the Superior Court adopted the report and denied Crump's postconviction motion. This appeal followed.

(6) On appeal, Crump argues three of the six claims that he raised in his second postconviction motion.³ He also challenges the Commissioner's denial of his motion for appointment of counsel and motion for transcript. Finally, Crump argues that the Superior Court should have conducted an evidentiary hearing on the postconviction motion and should not have considered the State's untimely response to the motion.⁴

(7) Crump has failed to demonstrate prejudicial error or abuse of discretion arising from the Commissioner's denial of his motion for appointment of counsel and motion for transcript.⁵ Moreover, Crump has not

³Crump argues (i) violation of rights under the Sixth Amendment; (ii) ineffective assistance of counsel; and (iii) failure to conduct hearing on motion to withdraw 1980 guilty plea. Crump's remaining postconviction claims are deemed abandoned and will not be addressed by the Court. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

⁴The record reflects that the State's response was due on or before June 2, 2005 and was filed on June 21, 2005.

⁵Crump alleges that the Superior Court failed to send the decision to him.

demonstrated, and the record does not reflect, that he was prejudiced as a result of the State's untimely response to the postconviction motion.⁶

(8) We conclude that the judgment of the Superior Court should be affirmed on the basis of, and for the reasons provided in, the Commissioner's Report and Recommendations dated August 30, 2005 as adopted by the Superior Court's order dated January 31, 2006. We agree that Crump's second postconviction motion and the claims therein, coming twenty-three years after his guilty plea and sentence, were appropriately subject to a summary disposition under Rule 61(i) as untimely,⁷ repetitive,⁸ and defaulted in the absence of any indication of cause and prejudice.⁹

(9) It is manifest on the face of Crump's opening brief that this appeal is without merit. The issues presented on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

⁶*Bodnari v. State*, 2006 WL 155237 (Del. Supr.). Crump addressed both the merit and the apparent untimeliness of the response in his written objection filed on June 24, 2005.

⁷Del. Super. Ct. Crim. R. 61(i)(1).

⁸Del. Super. Ct. Crim. R. 61(i)(2).

⁹Del. Super. Ct. Crim. R. 61(i)(3).

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/MyronT.Steele
Chief Justice