

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BENJAMIN WHITEMAN,	§
	§ No. 192, 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. 30604628DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 30, 2006

Decided: July 14, 2006

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

ORDER

This 14th day of July 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, Benjamin Whiteman, filed an appeal from the Superior Court’s April 5, 2006 order denying his motion for postconviction relief.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is

¹ The Superior Court docket sheet reflects that Whiteman has filed at least seven postconviction motions in that court.

manifest on the face of the opening brief that the appeal is without merit.²

We agree and AFFIRM.

(2) In April 1987, Whiteman pleaded guilty to Burglary in the Second Degree. The Superior Court's sentencing order declared Whiteman to be a habitual offender, but imposed a Level V sentence of only 10 years, to be suspended after 3 years for probation. In August 1989, a Superior Court jury found Whiteman guilty of Unlawful Sexual Penetration in the Third Degree. He was sentenced as a habitual offender to life imprisonment.³ His conviction and sentence were affirmed by this Court on direct appeal.⁴

(3) In this appeal, Whiteman claims that: a) his 1987 plea agreement is invalid because he did not admit to the requisite predicate offenses; b) his attorney provided ineffective assistance; and c) his 1987 plea is invalid because it was transcribed by a Chancery Court reporter, rather than a Superior Court reporter.

(4) We conclude that Whiteman's appeal should be affirmed on the basis of, and for the reasons stated, in the Superior Court's April 5, 2006

² Supr. Ct. R. 25(a).

³ Del. Code Ann. tit. 11, § 4214(a).

⁴ *Whiteman v. State*, Del. Supr., No. 455, 1989, Walsh, J. (Jan. 11, 1991).

order. Not only is Whiteman's motion untimely, it is procedurally barred.⁵ Two of the issues raised by Whiteman in his most recent filing were just decided by this Court two months ago in another appeal by Whiteman.⁶

(5) It is manifest on the face of the 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/ Carolyn Berger
Justice

⁵ Super. Ct. Crim. R. 61(i) (1), (2), (3) and (4).

⁶ *Whiteman v. State*, Del. Supr., No. 13, 2006, Ridgely, J. (May 15, 2006).