

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES E. ALLEN,	§
	§
Petitioner Below-	§ No. 325, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ C.A. No. 06M-05-130
Respondent Below-	§
Appellee.	§

Submitted: July 10, 2006
Decided: August 25, 2006

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

ORDER

This 25th day of August 2006, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, James Allen, filed this appeal from the Superior Court's denial of his petition for a writ of habeas corpus. The State of Delaware has filed a motion to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Allen's opening brief that the appeal is without merit. We agree and affirm

(2) The record reflects that Allen was convicted of several charges, including attempted burglary and related offenses, in July 2003. This Court reversed Allen's convictions on direct appeal and remanded the matter for a

new trial.¹ Thereafter, the State obtained a superseding indictment. Allen's retrial presently is scheduled for September 19, 2006.

(3) Allen filed a petition for a writ of habeas corpus, arguing that the indictment is defective and the Superior Court thus lacks jurisdiction to hold him. Allen contended that the grand jury had indicted him as a principal but the prosecutor improperly amended the indictment to charge him as an accomplice. The Superior Court dismissed Allen's petition on the ground that his attempt to challenge the validity of the underlying charges was not properly subject to relief through a writ of habeas corpus.

(4) After careful consideration of the parties' respective positions, we find it manifest that the judgment of the Superior Court denying Allen's petition for a writ of habeas corpus should be affirmed on the basis that habeas corpus relief is not available to allege trial errors that can be reviewed on appeal.² Allen's claim that the State improperly amended the indictment against him is in the nature of a trial error that can be raised on appeal.³

¹ *Allen v. State*, 878 A.2d 447 (Del. 2004).

² *Golla v. State*, 135 A.2d 137 (Del. 1957), *cert. denied*, 355 U.S. 965 (1958) (writ of habeas corpus may not be used as a writ of error to review errors in the conduct of trial).

³ *See Johnson v. State*, 711 A.2d 18 (Del. 1998).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice