

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY IVERSON,	§
	§ No. 197, 2006
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ C.A. No. 06M-03-099
	§
Respondent Below-	§
Appellee.	§

Submitted: August 28, 2006  
Decided: October 17, 2006

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 17<sup>th</sup> day of October 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 petitioner-appellant, Gary Iverson, filed an appeal from the Superior Court’s March 30, 2006 order summarily dismissing his petition for a writ of habeas corpus. The respondent-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is

manifest on the face of Iverson's opening brief that his appeal is without merit.<sup>1</sup> We agree and AFFIRM.<sup>2</sup>

(2) In March 1984, Iverson was found guilty by a Superior Court jury of two counts of Assault in a Detention Facility and single counts of Attempted Escape after Conviction, Kidnapping in the First Degree and Conspiracy in the First Degree. He was sentenced to a term of life imprisonment on the kidnapping conviction and to a total of 16 years of Level V incarceration on the remaining convictions. Iverson's convictions and sentences were affirmed by this Court on direct appeal.<sup>3</sup>

(3) In March 2006, Iverson filed a petition for a writ of habeas corpus in the Superior Court on the ground that his life sentence was illegal because it was for an indefinite term. The Superior Court summarily dismissed the petition on the ground that Iverson had failed to state a claim upon which relief may be granted.

(4) In his appeal, Iverson claims that the Superior Court erred as a matter of law by summarily dismissing his petition for a writ of habeas corpus without serving prison officials and without holding an evidentiary

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

<sup>2</sup> On July 24, 2006, this Court granted Iverson's request to file a response to the State's motion to affirm. We, therefore, have also considered Iverson's "response to the State's motion to affirm" for purposes of this Order.

<sup>3</sup> *Iverson v. State*, Del. Supr., No. 231, 1984, Christie, J. (Mar. 20, 1985).

hearing.<sup>4</sup> Iverson also claims that he is entitled to an award of damages as a result of the Superior Court's failure to follow the proper procedures.<sup>5</sup>

(5) In Delaware, the writ of habeas corpus provides relief on a very limited basis.<sup>6</sup> Habeas corpus only provides "an opportunity for one illegally confined or incarcerated to obtain judicial review of the jurisdiction of the court ordering the commitment."<sup>7</sup> "Habeas corpus relief is not available to '[p]ersons committed or detained on a charge of treason or felony, the species whereof is plainly and fully set forth in the commitment.'"<sup>8</sup>

(6) We find no error or abuse of discretion on the part of the Superior Court in summarily dismissing Iverson's petition for a writ of habeas corpus. Iverson is not entitled to habeas corpus relief because he has failed to demonstrate that his commitment was irregular on its face or that the Superior Court lacked jurisdiction to convict and sentence him.<sup>9</sup> The statutes cited by Iverson in support of his argument that the Superior Court did not follow the proper procedures are relevant only if a petition for a writ

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<sup>4</sup> Del. Code Ann. tit. 10, § 6907.

<sup>5</sup> Del. Code Ann. tit. 10, § 6906.

<sup>6</sup> *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (quoting Del. Code Ann. tit. 10, § 6902(1)).

<sup>9</sup> *Hall v. Carr*, 692 A.2d at 891.

of habeas corpus already has been granted.<sup>10</sup> Because Iverson's petition did not state a claim that would support the issuance of a writ of habeas corpus, the Superior Court's summary dismissal of his petition on that basis was proper.<sup>11</sup>

(7) It is manifest on the face of Iverson's 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.<sup>12</sup>

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>10</sup> Del. Code Ann. tit. 10, §§ 6906, 6907.

<sup>11</sup> Del. Code Ann. tit. 10, § 8803(b) (A complaint filed by an individual who has been permitted to proceed *in forma pauperis* shall be dismissed if the Superior Court finds the action to be legally frivolous.)

<sup>12</sup> Because we have considered Iverson's response to the State's motion to affirm, his "motion for leave to file out-of-time response" to the State's motion to affirm is moot.