

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY W. SUMMERS,	§
	§
Defendant Below-	§ No. 670, 2002
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID 93K04951DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 20, 2003
Decided: March 20, 2003

Before **WALSH, HOLLAND**, and **BERGER**, Justices.

ORDER

This 20th day of March 2003, upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Gregory Summers filed this appeal from the Superior Court’s denial of postconviction relief. The State has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face Summers’ opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Summers pled guilty in 1993 to one count of delivery of cocaine. The Superior Court sentenced him to three

years imprisonment, suspended for time served for home confinement and two years probation. In May 1995, the Superior Court discharged Summers from his probation as unimproved due to his incarceration on new criminal charges. In November 2002, Summers moved for postconviction relief, which was summarily dismissed.

(3) Having carefully considered the parties' respective positions, we find it manifest that the judgment of the Superior Court should be affirmed. Summers was discharged from his 1993 probation as unimproved. He is no longer in custody as a result of his 1993 conviction and thus is not entitled to seek postconviction relief.* Accordingly, the Superior Court did not err in summarily dismissing his petition.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

* See *Fullman v. State*, 2000 WL 140114 (Del. Feb. 1, 2000) (citing DEL. SUPER. CT. CRIM. R. 61(a)(1)).