

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM WALTMAN,	§	
	§	No. 661, 2006
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0211004458
Appellee.	§	

Submitted: December 22, 2006
Decided: March 14, 2007

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

ORDER

This 14th day of March 2007, upon consideration of the opening brief filed by the appellant and the motion to affirm filed by the appellee pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, William Waltman, appeals the Superior Court’s denial of his *pro se* motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). The State of Delaware has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Waltman’s opening brief that this appeal is without merit. We agree and affirm.

(2) In 2002, Waltman was charged by information with several felony offenses, including Robbery in the First Degree and Carjacking in the First Degree. Waltman pleaded not guilty to the charges; the Superior Court scheduled final case review and trial for the following March 2003.

(3) At the March 19, 2003 final case review, Waltman, through his assistant public defender (“defense counsel”), requested a continuance to consider a plea offer. The presiding judge granted Waltman’s request and continued case review for two days, that is until Friday, March 21, 2003.

(4) At the final case review on Friday, March 21, 2003, defense counsel requested a continuance of the trial, which was scheduled to begin the following Monday, March 24, 2003. Defense counsel explained that the day before Waltman had retained a private attorney to represent him at trial; however, the private attorney could undertake representation only if the trial was continued.

(5) The prosecution opposed a trial continuance, arguing that Waltman had “had four months to figure out the counsel situation.”¹ The Superior Court denied the continuance request.

¹Trial Tr. at 3 (Mar. 21, 2003).

(6) Waltman proceeded to trial as scheduled on Monday, March 24, 2003. That morning, Waltman’s private attorney (“private counsel”) appeared before the trial judge to “re-request” a continuance on Waltman’s behalf.² Private counsel explained that a federal district court matter had prevented him from attending final case review, but he assured the trial judge that he was willing and able to undertake Waltman’s representation provided that the trial was continued. The trial judge denied private counsel’s “re-request” for a continuance, ruling that he would not “revisit an issue that was ruled upon by the Court two days ago.”³

(7) Defense counsel represented Waltman at trial. At the conclusion of the trial, the jury found Waltman guilty of all charges except for Vehicular Assault in the Second Degree.

(8) Private counsel represented Waltman on direct appeal. Waltman argued in the direct appeal that the Superior Court erred when it denied private counsel’s request for a trial continuance.⁴ By order dated December 30, 2003,

²Trial Tr. at 3 (Mar. 24, 2003).

³*Id.* at 4.

⁴Waltman argued that “under the totality of the circumstances” the Superior Court’s refusal to grant a trial continuance was an abuse of discretion and a violation of his constitutional right to counsel. *See Stevenson v. State*, 709 A.2d 619, 630-31 (Del. 1998) (reviewing denial of continuance on the eve of trial).

this Court rejected the argument and affirmed the judgment of the Superior Court.⁵

(9) In his *pro se* postconviction motion, Waltman once again argues that the Superior Court erred in denying the request for a trial continuance. By order dated November 28, 2006, the Superior Court denied Waltman's claim under the procedural bar of Rule 61(i)(4) because his claim was formerly adjudicated in the direct appeal. This appeal followed.

(10) In his opening brief before this Court, Waltman continues to argue that the denial of a trial continuance violated his constitutional rights. We find it manifest on the face of the opening brief that the Superior Court's denial of postconviction relief should be affirmed.⁶ Waltman argued this issue on direct

⁵*Waltman v. State*, 2003 WL 23104199 (Del. Supr.).

⁶The opening brief consists of a photocopy of Waltman's postconviction motion prefaced with a revised cover page and one "amendment" page. The Court notes that Waltman's appellate arguments rely in large part on federal case law that has been overturned. See *United States v. D'Amore*, 56 F.3d 1202 (9th Cir. 1995), overruled by *United States v. Garrett*, 179 F.3d 1143 (9th Cir. 1999), *cert. denied*, 528 U.S. 978 (1999).

appeal without success⁷ and he has not demonstrated that reconsideration of the claim is warranted in the interest of justice.⁸

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁷See *Waltman v. State*, 2003 WL 23104199 (Del. Supr.) (applying *Stevenson* factors and concluding that the denial of a continuance on eve of trial was not an abuse of discretion).

⁸See Del. Super. Ct. Crim. R. 61(i)(4) (2007) (procedurally barring adjudicated claims unless reconsideration is warranted in the interest of justice).