

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD R. COCHRAN,	§
	§ No. 49, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0102010757
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 4, 2007

Decided: May 17, 2007

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

ORDER

This 17th day of May 2007, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a),¹ it appears to the Court that:

(1) The defendant-appellant, Donald R. Cochran, filed an appeal from the Superior Court's January 22, 2007 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.² The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment

¹ The Court also has considered the appellant's response to the motion to affirm, which was filed on April 4, 2007 with the Court's permission. Supr. Ct. R. 25(a) (iii).

² The Superior Court adopted the commissioner's report and recommendation. Del. Code Ann. tit. 10, § 512(b) (1); Super. Ct. Cr. R. 62(a) (5).

of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit.³ We agree and AFFIRM.

(2) In February 2003, Cochran entered Robinson pleas⁴ to charges of Burglary in the First Degree, Assault in the First Degree, and Possession of a Deadly Weapon During the Commission of a Felony. On the burglary conviction, he was sentenced to 20 years incarceration at Level V, to be suspended after 6 years for decreasing levels of supervision. He was sentenced to 10 years of Level V incarceration and to 2 years of Level V incarceration on the assault and weapon convictions, respectively. This Court dismissed Cochran's direct appeal as untimely.⁵

(3) In February 2006, Cochran moved for postconviction relief in the Superior Court. The Superior Court denied the motion on the grounds that the claims were procedurally barred⁶ and that Cochran had failed to demonstrate that his counsel provided ineffective assistance.⁷

(4) In this appeal, Cochran claims that: a) the Superior Court lacked jurisdiction over him due to a violation of the extradition laws; b) the Superior Court improperly failed to hold an evidentiary hearing to determine his competency to stand trial; c) the Superior Court failed to consider the

³ Supr. Ct. R. 25(a).

⁴ Super. Ct. Crim. R. 11(b).

⁵ *Cochran v. State*, Del. Supr., No. 356, 2003, Veasey, C.J. (Nov. 12, 2003).

⁶ Super. Ct. Crim. R. 61(i) (3).

⁷ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

mitigating evidence in his favor; d) his counsel rendered ineffective assistance by failing to raise those issues; e) his counsel's Rule 61 affidavit failed to respond to one of his allegations of ineffective assistance; f) the Superior Court and his counsel failed to give him correct information concerning the maximum sentence he was facing; and g) the Superior Court erred by adopting the commissioner's report and recommendation rather than engaging in its own fact-finding.

(5) Cochran's first three claims were properly denied by the Superior Court as procedurally barred because they were not raised on direct appeal and Cochran failed to demonstrate cause for relief from the procedural default and prejudice from a violation of his rights.⁸ Moreover, Cochran entered Robinson pleas to the charges against him, but presented no evidence that those pleas were involuntary. As such, Cochran waived any allegations of errors or defects occurring prior to the entry of the pleas.⁹

(6) In order to prevail on a claim of ineffective assistance in the context of a plea, Cochran must demonstrate that, but for his counsel's professional errors, he would not have entered the plea, but would have

⁸ Super. Ct. Crim. R. 61(i) (3) (A) and (B); *Younger v. State*, 580 A.2d 552, 555-56 (1990).

⁹ *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

insisted on proceeding to trial.¹⁰ In the absence of any such evidence, the Superior Court properly denied that claim as well.

(7) Cochran's next claim is that his postconviction motion should have been granted because his counsel's Rule 61 affidavit failed to respond to one of his allegations of ineffective assistance. In the absence of any evidence that a deficiency in Cochran's counsel's affidavit prevented the Superior Court from fully and fairly adjudicating Cochran's postconviction motion, we conclude that this claim is without merit. Cochran's claim that the Superior Court and his counsel failed to present him with correct information concerning the maximum sentence he was facing was not presented to the Superior Court in the first instance and, therefore, may not be considered in this appeal.¹¹

(8) Cochran's final claim is that the Superior Court should have engaged in its own fact-finding rather than relying on the commissioner's report and recommendation. There is no legal support for this proposition. The Superior Court is authorized to refer a matter to a commissioner for a report and recommendation.¹² There is no evidence that the Superior Court

¹⁰ *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

¹¹ Supr. Ct. R. 8.

¹² Del. Code Ann. tit. 10, § 512(b) (1); Super. Ct. Crim. R. 62(a) (5).

acted in a manner contrary to its authority in this case. We, therefore, find this claim, too, to be without merit.

(9) It is manifest on the face of Cochran's 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, 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.¹³

BY THE COURT:

/s/ Carolyn Berger
Justice

¹³ On April 27, 2007, after he had filed his response to the motion to affirm, Cochran filed a motion for the appointment of counsel. That motion is untimely. Even if it had been timely, there is no constitutional right to counsel in collateral attacks on convictions. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Although this Court has the discretionary authority to appoint counsel in such cases, we find no compelling reason to justify the appointment of counsel in this case. Supr. Ct. R. 26(b). The motion is, therefore, denied.