

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SAMLIE IRVIN, JR.,	§
	§ No. 148, 2007
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0408001668
	§
Respondent Below-	§
Appellee.	§

Submitted: April 9, 2007

Decided: May 24, 2007

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices

ORDER

This 24th 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), it appears to the Court that:

(1) The petitioner-appellant, Samlie Irvin, Jr., filed an appeal from the Superior Court's February 27, 2007 order 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 the opening brief that the appeal is without merit.¹

We agree and affirm.

(2) In September 2004, Irvin was indicted on multiple charges of forgery and theft. In February 2005, Irvin pleaded guilty to two counts of Forgery in the Second Degree. At the sentencing hearing on October 27, 2005, the Superior Court sentenced Irvin to two years at Level V, with credit for 232 days, on the first forgery conviction. On the second forgery conviction, the Superior Court sentenced him to “two years at Level 5 in the Key Program, and upon successful completion of the Key Program then that will go to one year at Crest, Level 4, and on successful completion of that to six months at Crest, Level 3 Aftercare.”²

(3) In June 2006, Irvin moved to correct his second forgery sentence on the ground that the written sentencing order did not correspond to the sentence as it was pronounced in court. The Superior Court denied the motion as well as Irvin’s subsequent motion for reargument. Irvin did not appeal from these orders. Instead, he filed the instant petition for a writ of habeas corpus.

¹ Supr. Ct. R. 25(a).

² The written sentencing order, which was filed on October 31, 2005, several days after the sentencing hearing, states that, on the second forgery conviction, Irvin shall be “placed in the custody of the Department of Correction for 18 month(s) at supervision level 5 KEY; Followed by 1 year(s) at supervision level 4 CREST; Upon successful completion at supervision level 4 CREST.”

(4) In Delaware, the writ of habeas corpus provides relief on a very limited basis.³ 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.”⁴ “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.’”⁵

(5) Irvin has not demonstrated that he is entitled to a writ of habeas corpus in this case. There is no evidence that the Superior Court lacked jurisdiction to sentence Irvin or that the commitment was irregular on its face. Irvin must rely on the rules of criminal procedure and the appellate process for the relief he seeks.

(6) It is manifest on the face of the 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.

³ *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997).

⁴ *Id.*

⁵ *Id.* (quoting Del. Code Ann. tit. 10, § 6902(1)).

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.

BY THE COURT:

/s/ Jack B. Jacobs
Justice