

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY MCCLEAF,	§
	§
Defendant Below-	§ No. 683, 2002
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID. 9910005729
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 17, 2003
Decided: February 28, 2003

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

ORDER

This 28th day of February 2003, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Anthony McCleaf, filed this appeal from the Superior Court's order, dated December 2, 2002, denying his motion for a new trial. McCleaf had been convicted in February 2000 of shoplifting, second degree forgery, and criminal impersonation. The Superior Court sentenced him in July 2000, and this Court affirmed his convictions and

sentence on direct appeal.¹ McCleaf filed his motion for a new trial in July 2002 contending that a 2002 legislative amendment to 11 Del. C. § 877, which defines the offense of offering a false instrument for filing, undermined his 2000 conviction for second degree forgery. The Superior Court denied the motion. This appeal ensued.

(2) The State has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of McCleaf's opening brief that his appeal is without merit. The State argues, alternatively, that: (i) McCleaf's motion for a new trial was untimely;² and (ii) McCleaf's motion was substantively frivolous because the 2002 legislative change to the statute defining the offense of offering a false instrument for filing was of no legal consequence to McCleaf's 2000 conviction for second degree forgery.

(3) After careful consideration of McCleaf's opening brief and the State's motion to affirm, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated December 2, 2002. The Superior Court did not err in concluding that McCleaf's motion for a new trial was not based on newly-

¹ *McCleaf v. State*, 2001 WL 1586810 (Del. Dec. 4, 2001).

² *See* DEL. SUPER. CT. CRIM. R. 33 (providing that any motion for a new trial that is not based on newly discovered evidence must be filed within seven days after a finding of guilt).

discovered evidence and thus was time-barred and that McCleaf's argument concerning the statutory amendment was not relevant to his case.

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

BY THE COURT:

s/Joseph T. Walsh
Justice