

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHON SAMPLE,	§
	§ No. 278, 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. 0405022601
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 6, 2007

Decided: October 22, 2007

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 22<sup>nd</sup> day of October 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 defendant-appellant, Stephon Sample, filed an appeal from the Superior Court's March 19, 2007 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-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. We agree and AFFIRM.

(2) In March 2005, after his motion to suppress evidence was denied by the Superior Court, Sample pleaded guilty to Trafficking in Cocaine. The transcript of the plea colloquy reflects that Sample admitted to trafficking in cocaine and also confirmed that he was satisfied with his counsel's performance. Sample was sentenced to 25 years of Level V incarceration, to be suspended after 10 years for 1 year of Level III supervision. Sample did not file a direct appeal from his conviction and sentence.

(3) In January 2006, Sample moved for postconviction relief, alleging that his counsel had provided ineffective assistance. The Superior Court referred the matter to a commissioner for a report and recommendation.<sup>1</sup> The commissioner ordered defense counsel to submit his affidavit by February 24, 2006; ordered the State to file a legal memorandum by March 24, 2006; and ordered Sample to file his reply by April 24, 2006. When defense counsel failed to file his affidavit on February 24, 2006, the State requested an extension of time in which to file its memorandum. Sample objected to the extension.

(4) The record reflects that the State filed its memorandum on June 5, 2006 and defense counsel filed his affidavit on June 9, 2006. On June 15,

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

2006, having decided to accept the untimely filings, the commissioner issued an amended order of briefing providing that Sample's reply was to be filed by July 21, 2006. When Sample filed an objection to the issuance of the amended briefing order, the commissioner denied the objection as moot and the Superior Court affirmed the commissioner's decision. Sample filed his reply on July 18, 2006.

(5) In this appeal, Sample claims that a) the Superior Court should have granted his postconviction motion because both defense counsel's affidavit and the State's response were untimely; b) his counsel provided ineffective assistance at his suppression hearing; c) the Superior Court lacked jurisdiction over his case because he did not have a preliminary hearing until 22 days after his arrest; and d) his arrest was invalid because a Justice of the Peace from outside Kent County issued the arrest warrant.

(6) Sample's first claim is that the Superior Court should have granted his postconviction motion because both defense counsel's affidavit and the State's response were untimely. The record reflects that the commissioner provided Sample with ample opportunity to respond to the submissions of both defense counsel and the State. In the absence of any discernible prejudice to Sample, we conclude that his first claim is without merit.

(7) Sample's second claim is that his counsel provided ineffective assistance at his suppression hearing. Under Delaware law, a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea.<sup>2</sup> The transcript of Sample's plea colloquy clearly reflects that his guilty plea was voluntary. Because the suppression hearing occurred prior to the entry of Sample's voluntary guilty plea, Sample has waived his right to assert a claim based on alleged errors occurring at the suppression hearing. We, therefore, conclude that Sample's second claim is without merit.

(8) Sample's two final claims are that the Superior Court lacked jurisdiction over his case because he did not have a preliminary hearing until 22 days after his arrest and that his arrest was invalid because a Justice of the Peace from outside Kent County issued the arrest warrant. Neither of these claims was presented to the Superior Court in the first instance and we, therefore, decline to address them in this appeal.<sup>3</sup>

(9) 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

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<sup>2</sup> *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).

<sup>3</sup> Supr. Ct. R. 8. Moreover, because Sample fails to address the specific ineffective assistance of counsel claims he made in his postconviction motion, those claims are deemed abandoned and will not be addressed by this Court. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

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.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice