

IN THE SUPREME COURT OF THE STATE OF DELAWARE

COREY WASHINGTON,	§
	§ No. 509, 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. 0004018575A
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 9, 2007
Decided: November 20, 2007

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

ORDER

This 20th day of November 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, Corey Washington, filed an appeal from the Superior Court's August 29, 2007 order denying his second 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 February 2001, Washington was found guilty by a Superior Court jury of one count of Possession of Cocaine With Intent to Deliver, one count of Maintaining a Vehicle, two counts of Possession of Cocaine Within 1000 Feet of a School, one count of Resisting Arrest, one count of Driving While Suspended or Revoked, and one count of Possession of Drug Paraphernalia. He was sentenced to life in prison plus nine years. Washington's convictions and sentences were affirmed by this Court on direct appeal.¹

(3) Washington previously moved for postconviction relief in December 2003. After reviewing submissions from Washington's trial counsel and the State, a Superior Court commissioner recommended that the motion be denied. The Superior Court adopted the commissioner's report and recommendation and denied the motion. Washington did not appeal the Superior Court's order.

(4) In this appeal from the Superior Court's denial of his second postconviction motion, Washington claims that the Superior Court erred in denying his motion because a) the motion was not untimely; b) even if untimely, the motion should have been considered on its merits due to a double jeopardy violation; c) his sentence is illegal; and d) he was denied his

¹ *Washington v. State*, Del. Supr., No. 217, 2001, Berger, J. (Mar. 18, 2002).

right to an evidentiary hearing on his postconviction claims. To the extent that Washington fails to assert other grounds to support his appeal that previously were raised, those grounds are deemed waived and will not be addressed by this Court.²

(5) The record reflects that Washington's convictions became final in April 2002 following this Court's issuance of the mandate.³ Under the statute of limitations in effect at that time, Washington's postconviction motion had to be filed no later than April 2005.⁴ Because the motion was not filed until October 2005, it clearly was untimely and, thus, barred.⁵ Moreover, Washington's second claim of a double jeopardy violation was raised in his direct appeal and is, therefore, barred as formerly adjudicated.⁶ Washington's third claim of an illegal sentence also is unavailing because it is not properly brought as a postconviction claim.⁷ Finally, Washington's fourth claim is without merit, since it was within the Superior Court's discretion to decide his postconviction motion without an evidentiary hearing.⁸

² *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

³ *Jackson v. State*, 654 A.2d 829 (Del. 1995).

⁴ Super. Ct. Crim. R. 61(i) (1).

⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁶ Super. Ct. Crim. R. 61(i) (4).

⁷ *Jackson v. State*, Del. Supr., Nos. 90, 124, 2007, Jacobs, J. (Aug. 2, 2007) (citing *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998)).

⁸ Super. Ct. Crim. R. 61(h).

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice