IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN R. WINN,	§
	§ No. 409, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0103012308
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 25, 2013 Decided: January 7, 2014

Before HOLLAND, BERGER and JACOBS, Justices

ORDER

This 7th day of January 2014, 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, Stephen R. Winn, filed an appeal from the Superior Court's July 12, 2013 order adopting the March 28, 2013 report of the Superior Court Commissioner, which recommended that Winn's third motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied. 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

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

face of the opening brief that this appeal is without merit.² We agree and affirm.

- (2) The record before us reflects that, in February 2002, Winn was found guilty by a Superior Court jury of Rape in the First Degree, Kidnapping in the First Degree, Assault in the Third Degree, Criminal Contempt of a Protection from Abuse Order and Terroristic Threatening. He was sentenced to 47 years of Level V incarceration, to be followed by probation. This Court affirmed Winn's convictions on direct appeal.³ Winn subsequently filed two motions for postconviction relief pursuant to Rule 61. The Superior Court's denials of both of those motions were affirmed by this Court.4
- In this appeal from the Superior Court's denial of his third (3) motion for postconviction relief, Winn claims that, because of various violations of his constitutional rights at trial, the Superior Court erred and abused its discretion by not considering the merits of his postconviction claims and erred by failing to grant his motion for the appointment of counsel.

² Supr. Ct. R. 25(a). ³ *Winn v. State*, 2003 WL 1442468 (Del. Mar. 19, 2003).

⁴ Winn v. State, 2005 WL 3357513 (Del. Dec. 8, 2005); Winn v. State, 2010 WL 1544167 (Del. Apr. 19, 2010).

- (4) On a motion for postconviction relief pursuant to Rule 61, Delaware law mandates that the Superior Court first determine whether a defendant has met the procedural requirements of Rule 61 before considering the merits of his claims.⁵ In this case, we find no error or abuse of discretion on the part of the Superior Court in determining that Winn had failed to meet the procedural requirements of Rule 61 and in dismissing his claims on that ground.⁶ Moreover, we find no error or abuse of discretion on the part of the Superior Court in determining that Winn had presented no "colorable claim of a miscarriage of justice" that would require the Superior Court to consider the merits of his claims.⁷ Finally, we can discern no basis, either legal or factual, upon which Winn would be entitled to the appointment of counsel in connection with his postconviction proceedings.
- (5) 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.

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

⁶ Super. Ct. Crim. R. 61(i) (1), (2) (3) and (4).

⁷ Super. Ct. Crim. R. 61(i) (5).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger Justice