

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES G. TRUMP, SR.,	§
	§ No. 417, 2006
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9703005786
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 16, 2006

Decided: December 15, 2006

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

ORDER

This 15th day of December 2006, 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, James G. Trump, Sr., filed an appeal from the Superior Court's July 5, 2006 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 July 1998, Trump was found guilty by a Superior Court jury of 15 counts of Unlawful Sexual Intercourse in the First Degree. He was sentenced to 225 years of Level V incarceration. This Court affirmed Trump's convictions and sentences on direct appeal.¹

(3) In this appeal, Trump claims: a) the State engaged in "improper vouching" during its closing argument at trial; b) portions of the trial testimony of a detective involved in investigating the case were improperly admitted; c) portions of the trial testimony of the victim were improperly admitted; and d) his trial counsel provided ineffective assistance.

(4) Trump's claims are unavailing. First, because Trump's postconviction motion was not filed until June 2006, three years beyond the deadline, it is time-barred in this proceeding.² Second, Trump's claim of improper vouching was unsuccessfully asserted in his direct appeal and, as such, is barred in this proceeding as formerly adjudicated.³ Moreover, Trump has provided no evidence either that reconsideration of his claims is warranted in the interest of justice⁴ or that there is a colorable claim of a miscarriage of justice due to a constitutional violation that undermined the

¹ *Trump v. State*, 753 A.2d 963 (Del. 2000).

² Super. Ct. Crim. R. 61(i) (1). It also appears that Trump's first postconviction motion was denied by the Superior Court on the same ground. Super. Ct. Crim. R. 61(i) (4).

³ Super. Ct. Crim. R. 61(i) (4).

⁴ *Id.*

fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.⁵

(5) In order to prevail on his claim of ineffective assistance of counsel, Trump must show that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁶ In the absence of any evidence that any alleged error on the part of Trump's counsel resulted in prejudice to Trump, we find this claim to be without merit. Moreover, to the extent that Trump failed to pursue this claim in his first postconviction motion, it is procedurally barred here.⁷

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

⁵ Super. Ct. Crim. R. 61(i) (5).

⁶ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁷ Super. Ct. Crim. R. 61(i) (2).

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.⁸

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁸ While the Superior Court did not deny Trump's postconviction motion on the grounds cited here, we may affirm the judgment on grounds other than those articulated by the Superior Court. *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).