

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAKISHA SHORT,	§
	§ No. 228, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 9711007629
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 24, 2013
Decided: July 18, 2013

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

ORDER

This 18th day of July 2013, 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, Lakisha Short, filed an appeal from the Superior Court's April 8, 2013 order denying her 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.¹ We agree and affirm.

(2) The record reflects that, in May 1998, Short entered a plea of guilty to Assault in the Second Degree in Superior Court Criminal Identification Number 9711007629. She was sentenced to 3 years of Level V incarceration, to be suspended on August 20, 1998 (her 18th birthday) for 3 years of Level II probation. Short committed violations of probation ("VOPs") on three occasions. On April 23, 2001, upon her third VOP, the Superior Court discharged her from probation. Short's case was closed in 2001.

(3) In March 2004, a Superior Court jury found Short guilty of Robbery in the First Degree, two counts of Possession of a Firearm During the Commission of a Felony and one count of Aggravated Menacing in Cr. ID No. 0308021919A. The State filed a motion to have Short declared a habitual offender based on her most-recent robbery and weapon charges, as well as her 1998 second degree assault conviction. The Superior Court granted the State's motion and Short was sentenced to a total of 55 years at Level V. This Court affirmed Short's convictions on direct appeal.²

¹ Supr. Ct. R. 25(a).

² *Short v. State*, 865 A.2d 512 (Del. 2004).

(4) In an apparent attempt to attack her status as a habitual offender in Cr. ID 0308021919A, Short filed a motion for postconviction relief arguing that her guilty plea in Cr. ID No. 9711007629 was involuntary. The Superior Court denied Short's motion on the ground of mootness, since Cr. ID No. 9711007629 had been closed since 2001.

(5) In this appeal, Short claims that the Superior Court erred and abused its discretion when it denied her postconviction motion because a) the Superior Court's denial deprived her of a factual record to present on appeal and deprived her of the means to demonstrate that her plea was involuntary; and b) the Superior Court lacked jurisdiction to accept her plea.

(6) The Superior Court correctly ruled that Short's postconviction motion was moot. In order to seek postconviction relief, a defendant must either be "in custody or subject to future custody."³ Short was discharged from probation in Cr. ID No. 9711007629 in 2001. As such, she is neither "in custody" nor "subject to future custody" in that case and, therefore, lacks standing to move for postconviction relief in connection therewith.⁴

(7) 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

³ Super. Ct. Crim. R. 61(a) (1).

⁴ *Ruiz v. State*, 2011 WL 2651093 (Del. July 6, 2011) (ten years after his case was closed, the defendant lacked standing to seek postconviction relief since the Superior Court had discharged him from probation and he was not subject to any future custody in connection with his original charges).

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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