

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HUBERT E. PARKER

Petitioner Below-
Appellant,

v.

STATE OF DELAWARE,

Respondent Below-
Appellee.

'
' No. 481, 1999
'
' Court Below—Superior Court
' of the State of Delaware,
' in and for Sussex County
' C.A. No. 99M-09-017

Submitted: April 3, 2000
Decided: May 18, 2000

Before **HOLLAND, HARTNETT** and **BERGER**, Justices.

ORDER

This 18th day of May 2000, upon consideration of the appellant's amended opening brief, the appellee's motion to affirm pursuant to Supreme Court Rule 25(a),¹ and the appellant's motion for the appointment of counsel, it appears to the Court that:

(1) On March 16, 1999, the defendant-appellant, Hubert E. Parker, was charged by Information with Possession of Cocaine and

¹ On April 18, 2000, the appellant filed a response to the appellee's motion to affirm. A response, however, is not permitted to a motion to affirm unless requested by the Court. Supr. Ct. R. 25(a). Accordingly, the Court did not consider the appellant's response.

Possession of Drug Paraphernalia.² By separate Information on the same date, Parker was charged with one count each of Second Degree Burglary, Third Degree Burglary, and Second Degree Conspiracy, three counts of Theft, and two counts of Criminal Mischief.³ By Information filed on May 7, 1999, Parker was charged with three counts of Criminal Mischief, and two counts each of Third Degree Burglary, Second Degree Conspiracy, and Theft.⁴

(2) On September 29, 1999, while awaiting trial on the above charges, Parker petitioned for a writ of habeas corpus in the Superior Court. By order dated October 5, 1999, the Superior Court denied Parker's petition. This appeal followed. On February 28, 2000, Parker filed his opening brief. Parker filed an amended opening brief on March 23, 2000.

(3) On January 24, 2000, during the pendency of this appeal, Parker pleaded guilty in the Superior to seven charges arising from the three Informations; i.e., two counts each of Third Degree Burglary and Theft, and one count each of Possession of Cocaine, Second Degree Conspiracy and Criminal Mischief. Parker was immediately sentenced to

² *State v. Parker*, Del. Super., Cr.A.Nos. S99-02-0603I, 0604I.

17 years at Level V, suspended after five years mandatory incarceration, for one year at a Level IV program, suspended, upon successful completion, for ten years at Level III and one year at Level II. On March 14, 2000, Parker filed a motion for postconviction relief. Parker's motion is pending in the Superior Court.

(4) On April 5, 2000, Parker filed a motion for appointment of counsel in this appeal. Although the Court possesses the discretionary authority to appoint counsel, there appears to be no compelling reason to justify the appointment of counsel in this appeal.

(5) The writ of habeas corpus under Delaware law provides relief on a very limited basis.⁵ Habeas corpus relief is not available to a petitioner who, on the face of court records, is legally held in custody pending felony charges.⁶ After a judgment of conviction and sentencing, “the only material fact to be ascertained upon a petition for a writ of habeas corpus is the existence of a judgment of conviction by a court of

³ *State v. Parker*, Del. Super., Cr.A.Nos. S99-01-0060I – 0067I.

⁴ *State v. Parker*, Del. Super., Cr.A.Nos. S99-01-0265I – 0273I.

⁵ See 10 Del. C. § 6902; *Hall v. Carr*, Del. Supr., 692 A.2d 888, 891 (1997).

⁶ *Haskins v. State*, Del. Supr., No. 135, 1989, Holland, J., 1989 WL 47831 (May 1, 1989) (ORDER). See *Jones v. Anderson*, Del. Supr., 183 A.2d 177 (1962).

competent jurisdiction and a valid commitment of the prisoner to enforce the sentence.”⁷

(6) In this case, Parker was incarcerated pending his trial on various felony charges when he petitioned for habeas corpus relief. Parker’s petition for a writ of habeas corpus did not challenge the validity of his commitment to state custody. Instead, Parker complained about police misconduct leading to his arrest. Thereafter, Parker was tried in a court of competent jurisdiction, was convicted of several offenses, and was sentenced. Parker is validly committed to prison in connection with that sentence.

(7) On appeal, Parker reiterates his complaints about police misconduct and alleges ineffective assistance of his trial counsel both prior and subsequent to his petition for a writ of habeas corpus. Such claims do not provide a basis for habeas corpus relief.⁸ The Superior Court was correct in summarily dismissing Parker’s petition for a writ of habeas corpus.

⁷ *Skinner v. State*, Del. Supr., 135 A.2d 612, 613 (1957) (citing *Curran v. Woolley*, Del. Supr., 104 A.2d 771, 773 (1954)).

⁸ *Cf. Golla v. State*, Del. Supr., 135 A.2d 137 (1957) (ruling that habeas corpus can not be used to review error in conduct of trial).

(8) It is manifest on the face of Parker's opening brief that the appeal is without merit because the issues presented are clearly controlled by settled Delaware law. To the extent that judicial discretion was involved, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED, that the appellant's motion for the appointment of counsel is DENIED. The appellee's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Maurice A. Hartnett, III

Justice