

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY L. WILKERSON,	§
	§
Defendant Below-	§ No. 157, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ C.A. No. 00M-03-010
Plaintiff Below-	§
Appellee.	§

Submitted: June 20, 2000

Decided: July 10, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices

ORDER

This 10th day of July 2000, 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, Gary L. Wilkerson, filed this appeal from an order of the Superior Court denying his petition for a writ of habeas corpus. The State of Delaware has moved to affirm the judgement of the Superior Court on the ground that it is manifest on the face of Wilkerson's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) Wilkerson pleaded guilty in the Superior Court to unlawful sexual intercourse in the second degree. He was sentenced to 20 years in prison at Level V, to be suspended after serving 10 years for decreasing levels of probation. His conviction and sentence were affirmed on direct appeal by this Court.¹ The denial by the Superior Court of his subsequent motion for postconviction relief was affirmed by this Court on appeal,² as was the Superior Court's denial of his motion to vacate sentence.³

(3) In this appeal, Wilkerson claims that the Superior Court's sentencing order is illegal because it lacks a provision providing for out-of-state treatment for sexual dysfunction, which, he contends, was included in the plea agreement negotiated with the State. He further claims that the Superior Court erred in not conducting a hearing on his petition for a writ of habeas corpus.

(4) In Delaware, the writ of habeas corpus provides relief on a very limited basis.⁴ Habeas corpus only provides "an opportunity for one illegally confined or incarcerated to obtain judicial review of the jurisdiction of the court

¹*Wilkerson v. State*, Del. Supr., No. 436, 1996, Walsh, J., 1997 WL 328625 (June 4, 1997) (ORDER).

²*Wilkerson v. State*, Del. Supr., No. 418, 1998, Walsh, J., 1999 WL 504338 (Mar. 29, 1999) (ORDER).

³*Wilkerson v. State*, Del. Supr., No. 322, 1999, Hartnett, J., 1999 WL 1319338 (Dec. 2, 1999) (ORDER).

⁴*Hall v. Carr*, Del. Supr., 692 A.2d 888, 891 (1997).

ordering the commitment.”⁵ “Habeas corpus relief is not available to ‘[p]ersons committed or detained on a charge of treason or felony, the species whereof is plainly and fully set forth in the commitment.’”⁶

(5) It appears from the record that the Superior Court had jurisdiction over Wilkerson’s criminal charge and that Wilkerson was convicted and sentenced in the Superior Court to a term of incarceration. It also appears that Wilkerson continues to be held pursuant to this valid commitment.

(6) Wilkerson is not entitled to a hearing on his petition for a writ of habeas corpus. His claim that the sentencing order does not provide for out-of-state treatment for sexual dysfunction is the same claim he made in his direct appeal, his motion for postconviction relief and his motion for correction of sentence, all of which were resolved against him. Furthermore, the claim is not a proper subject for habeas corpus review.⁷ Under these circumstances, the Superior Court committed no error in summarily dismissing Wilkerson’s petition.

(7) It is manifest on the face of Wilkerson’s opening brief that the appeal is without merit. The issues presented in the appeal are clearly controlled

⁵*Id.*

⁶*Id.* (quoting 10 Del. C. § 6902(1)).

⁷*Hall v. Carr*, 692 A.2d at 891.

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

NOW, THEREFORE IT IS ORDERED, pursuant to Supreme Court Rule 25(a), that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice