

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES A. FELTON,	§
	§ No. 364, 2007
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0201017660
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 21, 2007

Decided: February 1, 2008

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This first day of February 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, James A. Felton, filed an appeal from the Superior Court's June 21, 2007 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) In November 2002, Felton was found guilty by a Superior Court jury of Unlawful Sexual Intercourse in the First Degree. He was sentenced to twenty years of Level V incarceration, to be suspended after

fifteen years for five years of decreasing levels of supervision. This Court affirmed Felton's conviction and sentence on direct appeal.¹

(3) In this appeal, Felton claims that the Superior Court abused its discretion by denying his postconviction claim of ineffective assistance of counsel as time-barred and his claim of prosecutorial misconduct as both time-barred and procedurally defaulted.²

(4) A postconviction motion must first meet the procedural requirements of Rule 61 before the Superior Court may consider the substantive issues raised.³ A postconviction motion must be filed within the applicable statute of limitations, which, in Felton's case, was three years.⁴ The limitations period begins to run on the date when the direct appeal process is complete; that is, on the date the mandate is issued.⁵ Because Felton filed his motion for postconviction relief on August 9, 2006, more than three years from the date the mandate was issued, his claims are time-barred. Moreover, because Felton's claim of prosecutorial misconduct was not raised in his direct appeal, it is procedurally defaulted.⁶ The procedural

¹ *Felton v. State*, Del. Supr., No. 24, 2003, Veasey, C.J. (July 3, 2003).

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

³ *Flamer v. State*, 585 A.2d 736, 745 (Del. 1990).

⁴ Super. Ct. Crim. R. 61(i) (1). Because Felton's conviction became final before July 1, 2005, his postconviction motion is governed by the three-year statute of limitations.

⁵ *Jackson v. State*, 654 A.2d 829, 833 (Del. 1995). The mandate was issued in Felton's case on July 21, 2003.

⁶ Super. Ct. Crim. R. 61(i) (3).

default may be overcome by demonstrating cause and prejudice.⁷ The time bar, as well as the procedural default, may be overcome by demonstrating the existence of a colorable claim of a miscarriage of justice as the result of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.⁸

(5) Felton first attempts to overcome the time and procedural bars by arguing that his appointed counsel's ineffective assistance was prejudicial and resulted in a miscarriage of justice. Specifically, he contends that his counsel failed to conduct a complete investigation and failed to move for a judgment of acquittal. In order to prevail on his claim, Felton must demonstrate that his counsel's actions fell below an objective standard of reasonableness and that, but for his counsel's errors, there is a reasonable probability that the outcome of the trial would have been different.⁹ Moreover, Felton must make concrete allegations of actual prejudice, and substantiate them, or risk summary dismissal.¹⁰

(6) The record reflects that Felton was charged with raping his thirteen year-old daughter in 1998. The rape was not reported until 2002.

⁷ Super. Ct. Crim. R. 61(i) (3) (A) and (B).

⁸ Super. Ct. Crim. R. 61(i) (5).

⁹ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

¹⁰ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

There were no witnesses except for Felton and the victim. The prosecution rested its case entirely upon the testimony of the victim. Felton does not offer any specifics as to the investigation his counsel should have undertaken that would have affected the outcome of the trial. Nor does Felton allege any specific grounds for an acquittal. The jury was within its authority as the trier of fact to base its finding of guilt solely on the testimony of Felton's daughter.¹¹ As such, Felton's ineffectiveness claims are without merit and do not serve to overcome the time and procedural bars.

(7) Felton also attempts to overcome the time and procedural bars by arguing that misconduct on the part of the prosecutor was prejudicial and resulted in a miscarriage of justice. Specifically, he contends that the prosecutor improperly introduced evidence of an investigation in Maryland that Felton had abused his daughter there. The record reflects that Felton's counsel inadvertently elicited testimony about an investigation in Maryland concerning Felton's alleged abuse of his daughter. Following the testimony, the prosecutor was concerned enough to raise the possibility of a mistrial with the judge at sidebar. Defense counsel stated that she had not intended to elicit the testimony. Ultimately, the judge asked defense counsel to reflect on whether a curative instruction would be needed at the end of the

¹¹ *Farmer v. State*, 844 A.2d 297, 300 (Del. 2004).

trial. The record does not reflect any evidence of misconduct on the part of the prosecutor. As such, Felton's claim is unavailing and does not serve to overcome the time and procedural bars. We, therefore, conclude that the Superior Court properly denied Felton's postconviction motion.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice