

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS A. MORGAN,	§
	§ No. 10, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 92S05729DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 4, 2008  
Decided: March 19, 2008

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 19<sup>th</sup> day of March 2008, 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, Thomas A. Morgan, filed an appeal from the Superior Court’s December 14, 2007 order denying his fifth 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 1993, Morgan was found guilty by a Superior Court jury of Unlawful Sexual Intercourse in the First Degree, Unlawful Sexual Intercourse in the Second Degree, and Kidnapping in the Second Degree. He was sentenced to 36 years of Level V incarceration, to be suspended after 32 years for decreasing levels of supervision. This Court affirmed Morgan's convictions and sentences on direct appeal.<sup>1</sup>

(3) In this appeal, Morgan claims that there was insufficient evidence presented at trial to support the second-degree kidnapping charge.

(4) When considering a postconviction motion pursuant to Rule 61, the Superior Court must review whether the procedural requirements of the rule have been met before reaching the merits of the claims.<sup>2</sup> Morgan's convictions became final in 1994 and, as such, his current claim is time-barred.<sup>3</sup> To the extent the claim was not asserted previously, it is procedurally barred.<sup>4</sup> To the extent the claim previously was asserted in the proceedings leading to the judgment of conviction or a prior postconviction motion, it is procedurally barred.<sup>5</sup> Moreover, Morgan has failed to overcome the procedural bars by demonstrating cause for relief and

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<sup>1</sup> *Morgan v. State*, Del. Supr., No. 386, 1993, Moore, J. (May 5, 1994). This Court also affirmed the Superior Court's denial of Morgan's four previous postconviction motions.

<sup>2</sup> *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

<sup>3</sup> Super. Ct. Crim. R. 61(i) (1).

<sup>4</sup> Super. Ct. Crim. R. 61(i) (2) and (3).

<sup>5</sup> Super. Ct. Crim. R. 61(i) (4).

prejudice to his rights,<sup>6</sup> that reconsideration of the claim is warranted in the interest of justice,<sup>7</sup> or a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.<sup>8</sup>

(5) Because Morgan's claim is procedurally barred, we will not review its merits. We conclude that the Superior Court correctly denied Morgan's fifth postconviction motion.

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

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.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice

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<sup>6</sup> Super. Ct. Crim. R. 61(i) (3).

<sup>7</sup> Super. Ct. Crim. R. 61(i) (2) and (4).

<sup>8</sup> Super. Ct. Crim. R. 61(i) (5).