

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERIC GARNETT,	§
	§ No. 148, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 9512000763
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 3, 2008

Decided: July 7, 2008

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

ORDER

This 7th day of July 2008, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25, it appears to the Court that:

(1) The defendant-appellant, Eric Garnett, filed an appeal from the Superior Court's February 19, 2008 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court 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 August 1996, Garnett was found guilty by a Superior Court jury of Burglary in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony, Possession of a Deadly Weapon By a Person Prohibited, Carrying a Concealed Deadly Weapon, Possession of Burglar Tools, and Misdemeanor Theft. In November 1996, upon motion by the State, the Superior Court declared Garnett to be a habitual offender on the basis of his third burglary conviction.¹ He was sentenced to life in prison. Garnett did not file a direct appeal of his convictions, but instead filed a motion for correction of sentence pursuant to Rule 35(a). This Court affirmed the Superior Court's denial of that motion.² Garnett subsequently filed several motions for postconviction relief, all of which were denied by the Superior Court.

(3) In this appeal from the Superior Court's denial of his latest postconviction motion, Garnett claims that a) the State did not meet its burden of proof when it moved for habitual offender status; b) his attorney provided ineffective assistance by failing to properly investigate the evidence allegedly supporting his habitual offender status; and c) for these reasons, the Superior Court abused its discretion by applying the procedural bars to his claims.

¹ Del. Code Ann. tit. 11, § 4214(b).

² *Garnett v. State*, Del. Supr., No. 529, 1997, Berger, J. (Apr. 9, 1998).

(4) When reviewing a Rule 61 motion, the Superior Court must first consider the procedural requirements of the Rule before addressing any substantive claims.³ We conclude that the Superior Court properly reviewed Garnett's motion under the procedural requirements of the Rule and properly determined that the motion was time-barred under Rule 61(i) (1) and procedurally barred under Rules 61(i) (2) and (3). Moreover, we conclude that there was no error or abuse of discretion on the part of the Superior Court in applying the time and procedural bars to Garnett's claims, since the record reflects neither a lack of jurisdiction on the part of the Superior Court nor a colorable claim of a miscarriage of justice due to a constitutional violation, as required by Rule 61(i) (5). As such, the judgment of the Superior Court must be affirmed.

(5) 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.

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

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

BY THE COURT:

/s/ Carolyn Berger
Justice