

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAMMEYIN A. JOHNSON,	§	
	§	No. 61, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9709009665
Appellee.	§	

Submitted: June 20, 2008  
Decided: September 9, 2008

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

**ORDER**

This 9<sup>th</sup> day of September 2008, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that:

(1) In September 1998, a Superior Court jury convicted the appellant, Dammeyin A. Johnson, of the lesser-included offenses of Unlawful Sexual Intercourse in the Second Degree, Unlawful Imprisonment in the Second Degree and Unlawful Sexual Contact in the Third Degree as well as the charged offenses of Assault in the Third Degree and Aggravated Intimidation.<sup>1</sup> Johnson was sentenced to eighteen years at Level V

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<sup>1</sup> Johnson was found not guilty of Unlawful Sexual Intercourse in the First Degree, Kidnapping in the First Degree, and Felony Theft.

incarceration suspended after thirteen years for decreasing levels of supervision. On direct appeal, this Court affirmed Johnson's conviction and sentence.<sup>2</sup>

(2) Six years later, in June 2006, Johnson filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). Johnson's postconviction motion raised several claims, including ineffective assistance of counsel. In response to his trial counsel's affidavit responding to the allegations of ineffective assistance of counsel, Johnson filed a September 2006 amendment to the postconviction motion. In June 2007, Johnson filed a second amendment to the postconviction motion.<sup>3</sup>

(3) By order dated January 10, 2008, the Superior Court denied Johnson's motion for postconviction relief.<sup>4</sup> The Superior Court denied Johnson's ineffective counsel claim as without merit and the other claims as procedurally barred pursuant to Rule 61(i).<sup>5</sup> This appeal followed.

(4) In his opening brief on appeal, Johnson restates the claims that he raised in his postconviction motion as amended in September 2006. Also, Johnson contends that the Superior Court did not address the claim that he raised in his June 2007 amendment, *i.e.*, that his trial counsel did not

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<sup>2</sup> *Johnson v. State*, 753 A.2d 438 (Del. 2000).

<sup>3</sup> Johnson also filed a reply to the State's response to the postconviction motion

<sup>4</sup> *State v. Johnson*, 2008 WL 134829 (Del. Super.).

<sup>5</sup> See Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to relief).

properly consult with him about his direct appeal. Johnson argues that the Superior Court's failure to address that claim was an abuse of discretion.

(5) In the absence of the Superior Court's express consideration of the June 2007 amendment to Johnson's postconviction motion, this Court has considered the merit of Johnson's claim that his counsel failed to consult with him about the direct appeal. The Court has discerned no evidence of prejudice in the record as a result of counsel's alleged failings and thus reject Johnson's claim as without merit.<sup>6</sup>

(6) Moreover, after further consideration of the parties' briefs, we conclude that the Superior Court's denial of Johnson's motion for postconviction relief should be affirmed on the basis of the Superior Court's well-reasoned decision dated January 10, 2008.<sup>7</sup> The Superior Court did not err when concluding that Johnson's motion was time-barred under Rule 61(i)(1), that his allegations of ineffective assistance of counsel claim were without merit, and that the remaining claims were subject to the procedural bars of Rule 61(i)(3) or Rule 61(i)(4), without exception.

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<sup>6</sup> See *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984) (holding that a defendant claiming ineffective assistance of counsel must show that counsel's representation fell below an objective standard of reasonableness and was prejudicial).

<sup>7</sup> The Court notes that by separate order issued on January 10, 2008, the Superior Court denied Johnson's motion for modification of sentence. Johnson's appeal from that decision was recently affirmed. *Johnson v. State*, 2008 WL 3990838 (Del. Supr.).

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

BY THE COURT:

/s/ Carolyn Berger  
Justice