

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID COLES,	§
	§ No. 117, 2012
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0301011099
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 23, 2013

Decided: June 12, 2013

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

ORDER

This 12th day of June 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, David Coles, filed an appeal from the Superior Court’s February 29, 2012 order adopting the July 14, 2011 report of the Superior Court Commissioner, which recommended that Coles’ first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ For the reasons that follow, we conclude that the Superior Court’s judgment must be reversed and the matter remanded to the Superior Court for further proceedings in accordance with this Order.

¹ Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

(2) On January 18, 2013, Coles' appeal was stayed pending this Court's decision in *Holmes v. State*, Del. Supr., No. 350, 2012, which concerned the issue of the appointment of counsel in an indigent movant's first postconviction proceeding. By order dated May 6, 2013, the Superior Court amended Rule 61 of its Rules of Criminal Procedure to provide that the Superior Court would "appoint counsel for an indigent movant's first postconviction proceeding." The amended Rule further specified that it "shall be effective on May 6, 2013 and shall apply to postconviction motions filed on or after that date." On May 23, 2013, this Court issued its decision in *Holmes v. State*, reversing the June 7, 2012 order of the Superior Court, which denied Holmes' motion for postconviction relief.

(3) Although Coles filed his Rule 61 motion before the effective date of the Superior Court's Rule 61 amendment, we reach the same result as if the amended Rule were applicable to his case. We conclude that, under the particular circumstances of this case, Coles should have been appointed counsel in connection with his first postconviction motion.² Because we reverse and remand to the Superior Court for the appointment of counsel for Coles in connection with his first postconviction motion, we decline to address the merits of Coles' Rule 61 motion in this appeal.

² *Holmes v. State*, Del. Supr., No. 350, 2012, Jacobs, J. (May 23, 2013).

NOW, THEREFORE, IT IS ORDERED that the Superior Court's February 29, 2012 order denying Coles' motion for postconviction relief is REVERSED and this matter is REMANDED for further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice