

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BYRON S. DICKERSON,	§
	§ No. 563, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 90011926DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 7, 2010
Decided: November 29, 2010

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

ORDER

This 29th day of November 2010, upon consideration of the appellant's opening brief¹ and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Byron S. Dickerson, filed an appeal from the Superior Court's August 19, 2010 order adopting the August 2, 2010 report of the Superior Court commissioner, which recommended that Dickerson's second motion for postconviction relief pursuant to Superior

¹ The appellant also filed a motion to amend his appendix to include three pages of trial transcript.

Court Criminal Rule 61 be denied.² 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.³ We agree and affirm.

(2) The record reflects that, in June 1992, Dickerson and a co-defendant, Meriya Baker, were found guilty by a Superior Court jury of Murder in the First Degree, Conspiracy in the First Degree and Possession of a Firearm During the Commission of a Felony. Dickerson received a life sentence, plus 20 years at Level V. This Court affirmed Dickerson's convictions on direct appeal.⁴ Dickerson filed his first postconviction motion in January 1995. The Superior Court denied the motion. Following remand and an evidentiary hearing, this Court affirmed the Superior Court's denial of the motion.⁵

(3) In this appeal from the Superior Court's denial of his second postconviction motion, Dickerson claims that: a) his trial counsel provided ineffective assistance by failing to request an accomplice liability instruction pursuant to Del. Code Ann. tit. 11, §274; b) his trial counsel provided ineffective assistance by failing to object, under *Bruton v. United States*, 391

² Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

³ Supr. Ct. R. 25(a).

⁴ *Dickerson v. State*, Del. Supr., No. 353, 1992, Veasey, C.J. (Dec. 21, 1993).

⁵ *Dickerson v. State*, Del. Supr., No. 176, 1996, Veasey, C.J. (Jan. 7, 1998) (*en Banc*).

U.S. 123 (1968), to the reference in Baker's counsel's opening statement to Baker's statement to police; c) the trial judge erred by failing to advise him of his rights under Del. Code Ann. tit. 11, §274; and d) the trial court erred by permitting his constitutional rights to be violated under *Bruton*.

(4) Before considering the merits of claims made in motions for postconviction relief, the Superior Court must first address the procedural requirements of Rule 61.⁶ In this case, all of Dickerson's claims are time-barred under Rule 61(i)(1) because they were raised approximately 15 years after the judgment of conviction became final.⁷ Moreover, Dickerson's claims are procedurally barred under Rule 61(i)(2), which bars claims that could have been, but were not, asserted in previous postconviction motions. Finally, Dickerson's attempt to use the provisions of Rule 61(i)(5) to overcome the time and procedural bars is unavailing. There is no evidence of a miscarriage of justice due to a constitutional violation under *Bruton* that undermined the fundamental fairness of the proceedings. Nor, contrary to Dickerson's arguments, does *Allen v. State*, 970 A.2d 203 (Del. 2009),

⁶ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁷ At the time of Dickerson's trial and direct appeal, Rule 61(i)(1) provided a 3-year time limitation.

provide for a new substantive right regarding §274, recognized for the first time since Dickerson's direct appeal.⁸

(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.⁹

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁸ *Richardson v. State*, 3 A.3d 233 (Del. 2010) (holding that the Court's decision in *Allen* did not articulate a new substantive right under §274 and, therefore, is not retroactively applicable).

⁹ Dickerson's motion to amend his appendix is hereby denied as moot. Even if the motion had been granted, that would not have altered the outcome of these proceedings.