

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTONIO SERPA,	§
	§ No. 171, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 1106001209
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 26, 2013
Decided: July 30, 2013

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

ORDER

This 30th day of July 2013, 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, Antonio Serpa, filed an appeal from the Superior Court’s March 14, 2013 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 Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, in June 2011, Antonio Serpa was arrested on drug charges and violations of probation ("VOPs"). His brother, Miguel, was arrested at the same time. A lawyer with the Office of the Public Defender was assigned to Miguel's case and met with him on June 22, 2011. On July 1, 2011, Miguel retained private counsel. On July 12, 2011, the same public defender who had been assigned to represent Miguel was assigned to Antonio's case. The affidavit submitted by the public defender in the Superior Court reflects that she only discussed court procedures with Miguel and no substantive legal issues, since the indictment was sealed and no evidentiary information was available.

(3) On October 18, 2011, Antonio Serpa, represented by the public defender who had been assigned to Miguel's case, entered a plea of guilty to Conspiracy in the Second Degree and two counts of Delivery of Cocaine. He also acknowledged three VOPs. After being declared a habitual offender,² he was sentenced to 1 year of Level V incarceration on his conspiracy conviction, to 20 years at Level V, to be suspended after 14 years for 18 months of probation on his first drug conviction and to 10 years at

¹ Supr. Ct. R. 25(a).

² Del. Code Ann. tit. 11, §4214(a).

Level V, to be suspended after 3 years for decreasing levels of supervision on his second drug conviction. Serpa was sentenced on his first VOP to 4 years at Level V, to be suspended for probation. He was discharged as unimproved on his remaining VOPs. Serpa did not appeal his convictions.

(4) In his appeal from the Superior Court's denial of his motion for postconviction relief, Serpa claims that the public defender who represented him in connection with his guilty pleas had a conflict of interest because she also represented his brother, Miguel. Serpa contends that the public defender provided ineffective assistance as a result of the conflict of interest.

(5) When considering a motion for postconviction relief pursuant to Rule 61, the Superior Court must first determine whether the defendant has met the procedural requirements of the rule before considering the merits of the motion.³ In this case, Serpa's claim is barred as untimely pursuant to Rule 61(i) (1) because his postconviction motion raising that claim, which was due to be filed on or before November 17, 2012,⁴ was not filed until December 11, 2012.

(6) Even if Serpa's motion had been timely filed, it is without merit. An application for postconviction relief alleging a conflict of interest

³ *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996).

⁴ *Rubino v. State*, Del. Supr., No. 468, 2008, Holland, J. (Jan. 15, 2009) (the defendant's conviction became final 30 days after sentencing pursuant to Rule 61(m) (1), after which the defendant had 1 year within which to move for postconviction relief pursuant to Rule 61(i) (1)).

must specifically identify the nature of the alleged conflict and make a concrete showing of actual prejudice.⁵ Similarly, an application for postconviction relief on the ground of ineffective assistance of counsel must set forth and substantiate concrete allegations of actual prejudice as a result of counsel's unprofessional errors.⁶ Serpa has failed to support his claims by demonstrating that any alleged error on the part of his counsel resulted in prejudice to him. As such, we conclude that the Superior Court properly denied Serpa's postconviction motion.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented 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 the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁵ *Pettiford v. State*, Del. Supr., No. 290, 2010, Berger, J. (June 13, 2011) (citing *Lewis v. State*, 757 A.2d 709, 718 (Del. 2000)).

⁶ *Id.* (citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) and *Younger v. State*, 580 A.2d 552, 554 (Del. 1990)).