

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT SAUNDERS,	§
	§ No. 18, 2013
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. 89008879DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 15, 2013

Decided: April 11, 2013

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

ORDER

This 11th day of April 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, Robert Saunders, filed an appeal from the Superior Court’s December 26, 2012 order adopting the Commissioner’s August 6, 2012 report, which recommended that Saunders’ eighth motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s

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

judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.² We agree and affirm.

(2) The record before us reflects that, in 1976, Saunders was found guilty by a Superior Court jury of Murder in the First Degree, Conspiracy in the First and Second Degrees, Possession of a Deadly Weapon During the Commission of a Felony, Burglary in the Third Degree and Theft. He was sentenced to life in prison. Saunders' convictions were affirmed by this Court on direct appeal.³

(3) Since that time, Saunders has filed numerous postconviction motions pursuant to Rule 61. None of Saunders' motions has been successful, including his second motion for which, according to the record before us, he was afforded court-appointed counsel. In 2012, Saunders filed his eighth postconviction motion, accompanied by a motion for the appointment of counsel, which was denied by the Superior Court. This appeal ensued.

(4) In his appeal from the Superior Court's denial of his eighth postconviction motion, Saunders claims that a) the Superior Court erred by denying his motion for the appointment of counsel because he suffers from a number of physical ailments; b) the Superior Court erred by not requesting that his trial and postconviction counsel file affidavits in response to his ineffectiveness

² Supr. Ct. R. 25(a).

³ *Saunders v. State*, 401 A.2d 629 (Del. 1979).

claims; and c) his trial counsel never conveyed a plea offer to him that would have resulted in a 50-year, rather than a life, term of incarceration.

(5) When considering a motion for postconviction relief pursuant to Rule 61, the Superior Court must apply the procedural requirements of the rule before reaching the merits of the claims.⁴ In this case, Saunders' postconviction motion was not only time-barred,⁵ but also procedurally barred because he asserted claims that could have been, but were not, asserted in prior postconviction proceedings.⁶

(6) Moreover, Saunders failed to demonstrate that the bars were inapplicable due to a miscarriage of justice.⁷ Specifically, he offered no factual support for his claim that his trial counsel failed to tender a plea offer to him in the 1970's, nor has he offered any such support in his brief to this Court. Neither has he offered any legal support for his claims that the Superior Court erred by failing to appoint him counsel⁸ and failing to require affidavits from counsel who represented him decades ago.⁹

(7) 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

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁵ Super. Ct. Crim. R. 61(i) (1).

⁶ Super. Ct. Crim. R. 61(i) (2).

⁷ Super. Ct. Crim. R. 61(i) (5).

⁸ The Superior Court has discretion to appoint counsel in a postconviction proceeding only for "good cause shown." Super. Ct. Crim. R. 61(e) (1).

⁹ The Superior Court has discretion to require counsel to submit affidavits in a postconviction proceeding when it deems such material to be relevant. Super. Ct. Crim. R. 61(g) (1) and (2).

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/ Henry duPont Ridgely
Justice