

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| JONATHAN L. STEVENS, | § |
| | § No. 196, 2013 |
| Defendant Below, | § |
| Appellant, | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| | § in and for Kent County |
| STATE OF DELAWARE, | § Cr. ID No. 0808022374 |
| | § |
| Plaintiff Below, | § |
| Appellee. | § |

Submitted: July 29, 2013

Decided: September 10, 2013

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

ORDER

This 10th day of September 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, Jonathan L. Stevens, filed an appeal from the Superior Court's January 30, 2013 order adopting the Superior Court Commissioner's July 24, 2012 report that recommended that Stevens' first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ We conclude that this matter must be remanded to the

¹ DEL. CODE ANN. tit. 10, § 512(b); SUPER. CT. CRIM. R. 62.

Superior Court for the appointment of counsel to assist Stevens in pursuing his claims of ineffective assistance of trial counsel identified in his first motion for postconviction relief.

(2) During the pendency of Stevens' appeal, the Superior Court, by order dated May 6, 2013, amended Rule 61 of its Rules of Criminal Procedure to provide that the Superior Court "will appoint counsel for an indigent movant's first postconviction proceeding." The amended Rule further specifies that it "shall be effective on May 6, 2013 and shall apply to postconviction motions filed on or after that date."

(3) Although Stevens filed his postconviction motion before the effective date of the Superior Court's Rule 61 amendment, we reach the same result as we would were the amended Rule applicable to this case. We conclude that, without the assistance of counsel, Stevens did not have an adequate opportunity to present a cognizable claim of ineffective assistance of trial counsel on his first postconviction motion.² Because we remand to the Superior Court to appoint counsel for Stevens to pursue his first postconviction motion, we decline to address the merits of his motion in this appeal.

² See *Holmes v. State*, 67 A.3d 1022, 2013 WL 2297072 (Del. May 23, 2013) (Jacobs, J.) (concluding that the defendant was entitled to the appointment of counsel on his first postconviction motion, even though his motion was filed before the effective date of the Superior Court's rule amendment).

NOW, THEREFORE, IT IS ORDERED that the Superior Court's January 30, 2013 judgment is VACATED and this matter is REMANDED to the Superior Court for further proceedings in accordance with this Order. The State's motion to affirm is moot. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs
Justice