

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                                |
|--------------------|--------------------------------|
| JOE L. TRAVIS,     | §                              |
|                    | § No. 200, 2013                |
| 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. 30109075DI        |
|                    | §                              |
| Plaintiff Below-   | §                              |
| Appellee.          | §                              |

Submitted: June 10, 2013

Decided: June 26, 2013

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

**ORDER**

This 26<sup>th</sup> day of June 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, Joe L. Travis, filed an appeal from the Superior Court’s March 25, 2013 order denying his fourth 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 this appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record before us reflects that, in February 1992, Travis was found guilty by a Superior Court jury of Murder in the First Degree. He was sentenced to life imprisonment. This Court affirmed Travis' conviction on direct appeal.<sup>2</sup> Travis subsequently filed three postconviction motions pursuant to Rule 61, all of which were denied by the Superior Court. This Court affirmed the Superior Court's judgment in Travis' appeal from the Superior Court's denial of his first postconviction motion.<sup>3</sup> Travis' appeal from the denial of his second postconviction motion was dismissed as untimely.<sup>4</sup> This Court affirmed the Superior Court's judgment in Travis' appeal from the denial of his third postconviction motion.<sup>5</sup> Travis now appeals the Superior Court's denial of his fourth postconviction motion.

(3) In his appeal, Travis asserts several claims that may fairly be summarized as follows: a) his counsel's initial failure to file a timely direct appeal and her subsequent filing of a postconviction motion on the ground of

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> *Travis v. State*, 1993 WL 541923 (Del. Dec. 22, 1993). Travis' counsel initially failed to file a timely direct appeal. However, after considering Travis' counsel's postconviction motion alleging her own ineffectiveness, the Superior Court resentenced Travis, permitting a timely appeal to be filed.

<sup>3</sup> *Travis v. State*, 1998 WL 171091 (Del. Mar. 23, 1998).

<sup>4</sup> *Travis v. State*, 2008 WL 836967 (Del. Apr. 21, 2008).

<sup>5</sup> *Travis v. State*, 2010 WL 2854133 (Del. July 21, 2010).

her own ineffectiveness prejudiced him; b) the Superior Court abused its discretion by deciding his postconviction motion and that of his co-defendant in the same order; and c) the Superior Court decided his postconviction motion with a closed mind. To the extent that Travis raised issues in his postconviction motion in the Superior Court that have not been fairly raised in this proceeding, all such issues are deemed to be waived.<sup>6</sup>

(4) Prior to deciding the substantive merits of a postconviction motion, the Superior Court must consider whether the time and/or procedural bars of Rule 61 apply.<sup>7</sup> In this case, the Superior Court correctly determined that Travis' motion was time-barred pursuant to Rule 61(i) (1). As the Superior Court also correctly concluded, Travis' claims were procedurally barred as repetitive pursuant to Rule 61(i) (2).

(5) Nor is there any basis in the record to support Travis' claim that his untimely motion should be considered in the interest of justice pursuant to Rule 61(i) (2) or of a constitutional violation that resulted in a miscarriage of justice pursuant to Rule 61(i) (5). There is no support for Travis' claim that he was prejudiced by his counsel's postconviction motion alleging her own ineffectiveness. There is likewise no support for his claim that the Superior Court violated his rights by deciding his and his co-defendant's

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<sup>6</sup> *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

<sup>7</sup> *Maxon v. State*, 686 A.2d 148, 150 (Del. 1996).

claims in the same order or his claim that the Superior Court decided his motion with a closed mind. The Superior Court's decision reflects that both Travis' and his co-defendant's claims were fully and fairly considered, resulting in no prejudice to either of them.

(6) 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.

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