

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LOU G. PRICE, SR.,	§	
	§	No. 469, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 0106010693
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: April 4, 2014  
Decided: June 4, 2014

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

**ORDER**

This 4<sup>th</sup> day of June 2014, upon consideration of the parties’ briefs and the record on appeal, it appears to the Court that:

(1) This appeal is from the Superior Court denials of the appellant’s second motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”) and his related request for the appointment of counsel. The appellant also appeals the denial of his motion for recusal of the judge (hereinafter “the Judge”) who presided over his jury trial and first postconviction motion. We find no merit to the appeal and affirm the Superior Court judgments.

(2) It appears from the record that the appellant, Lou G. Price, Sr. (“Price”), was convicted of Murder in the First Degree and Possession of a Firearm During the Commission of a Felony in April 2003. On September 12, 2003, the Superior Court sentenced Price to life imprisonment plus twenty years. On direct appeal, we affirmed Price’s convictions and sentence.<sup>1</sup>

(3) Price’s first motion for postconviction relief, filed on August 12, 2005, was summarily denied by the Superior Court on October 26, 2006. On appeal from that decision, we remanded the case to the Superior Court with instructions to (i) expand the record to include trial counsel’s affidavit in response to Price’s allegations of ineffective assistance of counsel and (ii) make supplemental findings and conclusions based upon the expanded record. In its order after remand, the Superior Court made supplemental findings based on trial counsel’s affidavit and Price’s response and concluded that Price’s ineffective assistance of counsel claims lacked merit. Thereafter, by order dated March 26, 2009, we affirmed the Superior Court denial of Price’s first postconviction motion.<sup>2</sup>

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<sup>1</sup> *Price v. State*, 858 A.2d 930 (Del. 2004).

<sup>2</sup> *Price v. State*, 2009 WL 790357 (Del. March 26, 2009). Price then filed a petition seeking federal habeas corpus relief, which was dismissed in September 2012. *Price v. Phelps*, 894 F. Supp. 2d 504 (D. Del. 2012).

(4) In his second motion for postconviction relief, filed on April 25, 2013, Price argued that, under the United States Supreme Court’s decision in *Martinez v. Ryan*, the Superior Court was required to (i) appoint counsel to assist him in the proceedings and (ii) reevaluate his formerly unsuccessful claims for postconviction relief.<sup>3</sup> In a separate motion, Price sought the Judge’s recusal on the basis that the Judge had “a longtime relationship” with Price’s spiritual advisor and friend, Pastor Linda Henry. According to Price, Pastor Henry “had promised to persuade” the Judge to provide Price “favorable treatment” under Rule 61.

(5) By order dated July 18, 2013, the Superior Court denied Price’s request for appointment of counsel, after determining that neither the *Martinez* decision nor Rule 61 required the appointment of counsel on a second motion for postconviction relief, and that Price had failed to establish good cause for such an appointment.<sup>4</sup> By order dated August 16, 2013, the Judge denied the motion for recusal after determining that the allegations in the motion were “completely unfounded.” The order provided:

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<sup>3</sup> See *Martinez v. Ryan*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1309, 172 L. Ed. 2d 272 (2012) (holding that a procedural default will not bar a federal court from hearing a claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel, or counsel in that proceeding was ineffective).

<sup>4</sup> See DEL. SUPER. CT. CRIM. R. 61(e)(1) (providing that the court will appoint counsel for a movant’s second postconviction proceeding “only in the exercise of discretion and for good cause shown”).

The undersigned does not recall ever having met Pastor Henry. Nor has he permitted anyone to convey or have any knowledge that anyone conveyed the impression that Pastor Henry could influence the Court in any way whatsoever. As far as the undersigned can recall, there have not been any discussions with anyone regarding the case other than the direct participants.<sup>5</sup>

Finally, in a separate order dated August 16, 2013, the Superior Court denied the postconviction motion after applying the procedural bar found in Rule 61(i)(1). The order provided:

[Price] has simply restated legal arguments that are not viable and asked the Court to revisit them. The Court denied those arguments for sound legal reasoning affirmed by the Delaware Supreme Court. Nothing has changed. As a consequence, the Court finds that [Price's] motion is barred by the passage of time.<sup>6</sup>

This appeal followed.

(6) Having carefully considered the parties' briefs and the record on appeal, the Court has determined that the July 18, 2013 order denying Price's request for appointment of counsel and the August 16, 2013 orders denying Price's motion for recusal and second motion for postconviction

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<sup>5</sup> *State v. Price*, Cr. ID No. 0106010693, at 3 (Del. Super. Aug. 16, 2013) (Order denying motion for recusal).

<sup>6</sup> *State v. Price*, Cr. ID No. 0106010693, at 8 (Del. Super. Aug. 16, 2013) (Opinion and Order denying postconviction motion).

relief should be affirmed. The Superior Court did not err by denying the request for appointment of counsel as without merit and the second postconviction motion as procedurally barred without exception. Also, the Judge properly denied the motion for recusal after performing the required analysis.<sup>7</sup> After a *de novo* review, we discern no basis in the record for a reasonable person to question the Judge's impartiality.<sup>8</sup>

(7) When reviewing a Superior Court denial of postconviction relief, this Court will address any applicable procedural bars before considering the merits of any claim for relief.<sup>9</sup> Having considered the Rule 61(i) procedural bars in this case, the Court has determined, as did the Superior Court, that Price's second postconviction motion is barred as untimely under Rule 61(i)(1).<sup>10</sup> The Court has further determined that Price's second postconviction motion is barred as repetitive under Rule 61(i)(2)<sup>11</sup> and, to the extent the motion raises formerly adjudicated claims, it is barred under

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<sup>7</sup> See *Los v. Los*, 595 A.2d 381, 384-85 (Del. 1991) (establishing two-part analysis to determine judicial impartiality).

<sup>8</sup> See *Fritzing v. State*, 10 A.3d 603, 611 (Del. 2010) (providing that the Court reviews *de novo* a judge's objective analysis of a recusal motion).

<sup>9</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>10</sup> See DEL. SUPER. CT. CRIM. R. 61(i)(1) (barring motion filed more than three years after judgment is final) (amended 2005 to reduce filing period to one year).

<sup>11</sup> See *id.* 61(i)(2) (barring "[a]ny ground for relief that was not asserted in a prior postconviction proceeding" unless consideration is warranted in the interest of justice).

Rule 61(i)(4).<sup>12</sup> Price has not established that his postconviction motion involves a colorable claim of a manifest injustice because of a constitutional violation,<sup>13</sup> or a newly-recognized retroactively applicable right.<sup>14</sup> Nor has he shown any indication that consideration of his claims is warranted in the interest of justice.<sup>15</sup> We therefore conclude that the Superior Court did not err by denying Price's second motion for postconviction relief, his related request for the appointment of counsel, and his motion for recusal.

NOW, THEREFORE, IT IS ORDERED, that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>12</sup> *See id.* 61(i)(4) (barring formerly adjudicated claims).

<sup>13</sup> *See id.* 61(i)(5) (providing that the procedural bars of (i)(1) and (i)(2) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

<sup>14</sup> *See id.* 61(i)(1) (providing that an untimely motion may be considered when the movant asserts a newly recognized retroactively applicable right).

<sup>15</sup> *See id.* 61(i)(2), (4) (barring repetitive motions and formerly adjudicated claims unless consideration is warranted in the interest of justice).