

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE WALKER,	§
	§ No. 218, 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. 1005009912
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 13, 2013

Decided: June 28, 2013

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

ORDER

This 28th day of June 2013, upon consideration of the motion to remand and the motion for the appointment of counsel filed by the defendant-appellant, Andre Walker, it appears to the Court that:

(1) This is an appeal from the Superior Court’s April 5, 2013 order denying Walker’s first postconviction motion pursuant to Superior Court Criminal Rule 61. The Superior Court also denied Walker’s motion for the appointment of counsel. The Superior Court docket reflects that Walker was indigent at the time his first postconviction motion was filed, the motion was

timely filed and the motion contained allegations of ineffective assistance of counsel.

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

(3) Although Walker filed his postconviction motion before the effective date of the Superior Court's Rule 61 amendment, we reach the same result as if the amended rule were applicable to this case. Specifically, we conclude that the denial of Walker's motion for the appointment of counsel was an abuse of discretion and, for that reason, will grant the motion to remand this matter to the Superior Court for further proceedings in accordance with this Order.¹

NOW, THEREFORE, IT IS ORDERED that the Superior Court's April 5, 2013 judgment is REVERSED and the motion to remand is GRANTED. This matter is hereby REMANDED to the Superior Court for

¹ *Holmes v. State*, Del. Supr., No. 350, 2012, Jacobs, J. (May 23, 2013).

further proceedings in accordance with this Order. Jurisdiction is not retained.²

BY THE COURT:

/s/ Carolyn Berger
Justice

² Walker's motion for the appointment of counsel is hereby denied as moot.