

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY M. HAMILTON,	§
	§
Defendant Below-	§ No. 229, 2013
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 92009719DI
Plaintiff Below-	§
Appellee.	§

Submitted: June 19, 2013

Decided: July 15, 2013

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

ORDER

This 15th day of July 2013, upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Gary Hamilton, filed this appeal from the Superior Court’s denial of his motion for postconviction relief and/or motion for correction of illegal sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Hamilton’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Hamilton in 1974 of Murder in the First Degree, Kidnapping in the First

Degree, and two counts of Possession of a Deadly Weapon During the Commission of a Felony. The Superior Court sentenced Hamilton to life imprisonment with the possibility of parole on the murder conviction and to additional terms of imprisonment on his other convictions. This Court affirmed his convictions and sentence on direct appeal.¹ Since that time, Hamilton has filed multiple unsuccessful petitions seeking various forms of postconviction relief.

(3) In February 2013, Hamilton filed his latest motion seeking postconviction relief and/or correction of illegal sentence. He essentially argued that his sentence of life imprisonment should be treated as a fixed term of forty-five years. After review, a Superior Court Commissioner recommended denial of the motion. The Superior Court adopted the Commissioner's report and recommendation. This appeal followed.

(4) Hamilton raises two issues in his opening brief on appeal. First, he contends that the Superior Court erred in adopting the Commissioner's recommendation without giving due consideration to his objections to the Commissioner's report. Second, Hamilton argues that the Superior Court erred in failing to apply the sentencing laws that were in effect at the time he was convicted.

¹ *Hamilton v. State*, Del. Supr., No. 63, 1977, McNeilly, J. (Dec. 20, 1977).

(5) We find no merit to Hamilton's appeal. The Superior Court correctly held that Hamilton's life sentence with eligibility for parole requires Hamilton to serve his sentence for the remainder of his natural life *unless* he applies for and is granted a discretionary parole under 11 Del. C. § 4346(c).² His life sentence may not be treated as a fixed term of forty-five years entitling him to conditional release, a form of mandatory parole, pursuant to 11 Del. C. § 4348.³ Hamilton's argument is controlled by settled Delaware law.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

² *Jackson v. Multi-Purpose Criminal Justice Facility*, 700 A.2d 1203, 1205 (Del. 1997); *Evans v. State*, 872 A.2d 539, 558 (Del. 2005).

³ *Id.* at 1206.