

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD PAYNE,	§
	§ No. 244, 2013
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 88000107DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 25, 2013  
Decided: December 6, 2013

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

**ORDER**

This 6th day of December 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Ronald Payne, filed an appeal from the Superior Court’s April 23, 2013 order denying his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, in January 1988, Payne was indicted on two counts of Assault in a Detention Facility and one count of Possession of a Deadly Weapon During the Commission of a Felony. Trial

was scheduled for May 1988. On May 4, 1988, the Superior Court declared a mistrial after the jury failed to reach a verdict.

(3) Payne was re-tried in November 1988. The jury found Payne guilty of one count of Assault in a Detention Facility and one count of Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced as a habitual offender to life in prison with the possibility of parole.<sup>1</sup> This Court affirmed Payne's convictions on direct appeal.<sup>2</sup> Payne subsequently filed two postconviction motions, both of which were denied by the Superior Court. Payne appealed the denial of his first postconviction motion and this Court affirmed the Superior Court's judgment.<sup>3</sup> This is Payne's appeal from the Superior Court's denial of his third postconviction motion.

(4) In his appeal, Payne claims that a) the Superior Court should have considered the merits of his claims because he is actually innocent of the crimes of which he was convicted; b) his counsel provided ineffective assistance by failing to impeach the credibility of a racist police officer

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<sup>1</sup> Del. Code Ann. tit. 11, §4214(a).

<sup>2</sup> *Payne v. State*, 1990 WL 84673 (Del. May 29, 1990).

<sup>3</sup> *Payne v. State*, 1994 WL 91244 (Del. Mar. 9, 1994).

witness; and c) he is entitled to the application of good time credits to advance his release date.<sup>4</sup>

(5) Payne's first claim is that the Superior Court should have considered the merits of his postconviction claims pursuant to Rule 61(i) (5) because he is actually innocent of the crimes of which he was convicted and lacked counsel to assert that claim in his previous postconviction motions. The record before us reflects that Payne did not raise the issue of "actual innocence" in the Superior Court in the first instance. Moreover, we can discern no factual or legal basis for Payne's contention that he should have been appointed counsel in connection with his previous two postconviction motions. In the absence of any showing that Payne's first claim should be considered in the interest of justice, we decline to address it for the first time in this appeal.<sup>5</sup>

(6) To the extent that Payne claims that the Superior Court either erred or abused its discretion when it denied his postconviction motion on procedural grounds, we reject that contention as well. In considering a postconviction motion, Delaware law requires the Superior Court to first determine whether a defendant has met the procedural requirements of Rule

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<sup>4</sup> To the extent that Payne has not presented claims in this appeal that were raised previously in the Superior Court, all such claims are deemed to be waived and will not be addressed by the Court. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

<sup>5</sup> Supr. Ct. R. 8.

61 before reaching the merits of his claims.<sup>6</sup> We can discern no error or abuse of discretion on the part of the Superior Court in determining that Payne's postconviction claims were procedurally barred pursuant to Rule 61(i) (1)-(5). For all of the above reasons, we conclude that Payne's first claim is without merit.

(7) Payne's second claim is that his trial counsel provided ineffective assistance by failing to impeach the credibility of a racist police officer witness.<sup>7</sup> In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.<sup>8</sup> The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.<sup>9</sup>

(8) Here, Payne's claim fails for two reasons---first, his claim of racism on the part of the police officer witness is without any factual support in the record and, second, he does not explain why he waited until his third postconviction motion to raise this particular allegation of ineffective

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<sup>6</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>7</sup> We assume for the purposes of this Order that this claim was raised in the Superior Court in the first instance.

<sup>8</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>9</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

assistance. As such, the claim is procedurally barred under Rule 61(i) (2). For all of the above reasons, we conclude that Payne's second claim also is without merit.

(9) Payne's third, and final, claim is that he is entitled to the application of good time credits against his life sentence to advance his release date. The record does not reflect that Payne raised this issue in the Superior Court and it, therefore, is not properly before us.<sup>10</sup> The claim is without merit in any case. Under Delaware law, prisoners serving life sentences with the possibility of parole may advance their parole eligibility dates with good time credits, but are not entitled to use those credits to advance their ultimate release date.<sup>11</sup> We, therefore, conclude that Payne's third, and final, claim is likewise without merit.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>10</sup> Supr. Ct. R. 8.

<sup>11</sup> *Evans v. State*, 872 A.2d 539, 557 (Del. 2005).