

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HAROLD B. WRIGHT,	§
	§ No. 249, 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. 84006963DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 1, 2013
Decided: September 5, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 5th day of September 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, Harold B. Wright, filed an appeal from the Superior Court’s April 26, 2013 order denying his second 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.¹ We agree and affirm.

(2) The record before us reflects that, in May 1985, Wright was tried and convicted of Rape in the First Degree, Attempted Rape in the First Degree, Kidnapping in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony and Possession of a Deadly Weapon By a Person Prohibited. Wright received 3 sentences of life in prison plus 18 years at Level V. This Court affirmed Wright's convictions on direct appeal.²

(3) In 1990, Wright filed his first motion for postconviction relief. The Superior Court appointed counsel for Wright, conducted a two-day evidentiary hearing and ordered briefing on the motion. Wright's motion was denied. In 1992, this Court affirmed the Superior Court's denial of Wright's first postconviction motion.³ This appeal is from the Superior Court's denial of Wright's second postconviction motion.

(4) In his appeal, Wright claims that the Superior Court improperly denied his second postconviction motion because both his trial counsel and his counsel on his first postconviction motion provided ineffective assistance. Wright's ineffectiveness claims are grounded, for the most part, in his assertion

¹ Supr. Ct. R. 25(a).

² *Wright v. State*, 513 A.2d 1310 (Del. 1986).

³ *Wright v. State*, Del. Supr., No. 114, 1992, Horsey, J. (Oct. 5, 1992).

that his trial counsel failed to communicate the State's plea offer to him, an offer he would have accepted.

(5) Delaware law requires that the Superior Court first apply the procedural requirements of Rule 61 before considering the substantive merits of claims made in postconviction proceedings.⁴ In this case, the Superior Court properly concluded that Wright's postconviction motion was time-barred.⁵ Moreover, because Wright's claims were not previously asserted in his first postconviction motion, they are procedurally barred.⁶

(6) Wright argues that Rule 61's time and procedural bars are inapplicable under Rule 61(i) (5). However, he provides no factual support for his assertion that he received ineffective assistance of counsel. In particular, his claim that his trial counsel failed to communicate a plea offer to him is completely conclusory. It also is highly suspect, given that Wright has had opportunities to assert the claim since his May 1985 conviction, but has failed to do so until now. Despite Wright's argument to the contrary, we conclude that there is no support in the record for a finding of a colorable claim of a miscarriage of justice⁷ and that Wright may not avoid the time and procedural bars on that basis.

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁵ Super. Ct. Crim. R. 61(i) (1).

⁶ Super. Ct. Crim. R. 61(i) (2).

⁷ Super. Ct. Crim. R. 61(i) (5).

(7) 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/ Henry duPont Ridgely
Justice