

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDMUND F. BAILEY,	§	
	§	No. 407, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0009007758
Appellee.	§	

Submitted: August 16, 2013
Decided: October 15, 2013

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

O R D E R

This 15th day of October 2013, upon consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) After a bench trial in April 2002, the appellant, Edmund F. Bailey, was convicted of multiple drug and weapon offenses. Prior to trial, the Superior Court denied Bailey's motion to suppress after finding that he had no reasonable expectation of privacy with respect to his activities in a rented commercial storage unit.¹ On direct appeal, this Court affirmed the Superior Court's decision.²

¹ *State v. Bailey*, 2001 WL 1739445 (Del. Super. Nov. 30, 2001).

(2) In 2004, Bailey filed his first motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”). As grounds for relief, Bailey challenged the video surveillance of his rental storage unit and argued that he was denied a preliminary hearing and the effective assistance of counsel. By order dated December 13, 2004, the Superior Court denied Bailey’s claims as procedurally barred under Rule 61(i) and as without merit.³ Bailey’s appeal from that order was dismissed in 2005 for his failure to file his opening brief.⁴ In 2010, we affirmed the Superior Court’s denial of Bailey’s second motion for postconviction relief⁵ as procedurally barred.⁶

(3) In December 2011, Bailey filed his third motion for postconviction relief. By order dated June 26, 2012, the Superior Court summarily dismissed two of the three claims raised by Bailey and denied the third claim after considering the State’s response and Bailey’s reply.⁷

(4) On appeal, Bailey argues that the denial of his postconviction motion was an abuse of discretion. Bailey also argues, as he did in his postconviction

² *Bailey v. State*, 2003 WL 193540 (Del. Jan. 24, 2003).

³ *See* Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to relief). *State v. Bailey*, 2004 WL 2914320 (Del. Super. Dec. 13, 2004).

⁴ *Bailey v. State*, 2005 WL 850415 (Del. April 11, 2005).

⁵ *State v. Bailey*, 2009 WL 3688013 (Del. Super. Oct. 19, 2009).

⁶ *Bailey v. State*, 2010 WL 4734864 (Del. Nov. 22, 2010).

⁷ *State v. Bailey*, 2012 WL 2995070 (Del. Super. June 26, 2012).

motion, that the retroactive application of the Superior Court's 2010 decision in *State v. Holden* mandates the suppression of evidence in Bailey's case.⁸

(5) After careful consideration of the parties' briefs, we conclude that the denial of Bailey's third motion for postconviction relief should be affirmed on the basis of the Superior Court's well-reasoned decision of June 26, 2012.⁹ The Superior Court did not err when determining that Bailey's third postconviction raised claims that were either procedurally barred or were without merit. On appeal, Bailey has not demonstrated that consideration of his claims is warranted "in the interest of justice,"¹⁰ because of "a miscarriage of justice"¹¹ or based on a newly recognized "retroactively applicable right."¹²

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁸ See *State v. Holden*, 54 A. 3d 1123 (Del. Super. 2010) (holding that, absent exigent circumstances, the warrantless use of a GPS device to track a suspect 24 hours a day constitutes an illegal search).

⁹ *State v. Bailey*, 2012 WL 2995070 (Del. Super. June 26, 2012).

¹⁰ Del. Super. Ct. Crim. R. 61(i)(4).

¹¹ Del. Super. Ct. Crim. R. 61(i)(5).

¹² Del. Super. Ct. Crim. R. 61(i)(1).