

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES MATOS,	§
	§ No. 414, 2013
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 1003000386
Plaintiff Below-	§
Appellee.	§

Submitted: November 22, 2013

Decided: December 5, 2013

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

ORDER

This 5th day of December 2013, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, James Matos, filed this appeal from the Superior Court's order, dated July 26, 2013, which adopted the Commissioner's report and recommendation to deny Matos' first motion for postconviction relief. Throughout the proceedings below, Matos filed several motions requesting the appointment of counsel to represent him but was denied.

(2) On May 6, 2013, prior to the trial court's ruling on Matos' motion, the Superior Court amended Superior Court Criminal Rule 61(e)(1) to provide that the court "will appoint counsel for an indigent movant's first postconviction

proceeding.”¹ The amended Rule specifies that it “shall be effective on May 6, 2013 and shall apply to postconviction motions filed on or after that date.”²

(3) Although Matos filed his Rule 61 motion prior to the effective date of amended Rule 61(e)(1), we nonetheless conclude that this matter must be remanded for the appointment of counsel. We conclude that the Superior Court’s denial of Matos’ applications for the appointment of counsel was an abuse of discretion. Accordingly, the Superior Court’s order denying Matos’ first motion for postconviction relief is hereby VACATED and the matter REMANDED for the appointment of counsel to represent Matos in presenting his postconviction claims to the Superior Court in the first instance.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court denying Matos’ Rule 61 motion is VACATED. The case is REMANDED for further proceedings consistent with this Order.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹ Del. Super. Ct. Crim. R. 61(e)(1) (Supp. 2013).

² *Holmes v. State*, 2013 WL 2297072 (Del. May 23, 2013).