

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BENJAMIN F. WHITEMAN,	§	
	§	No. 418, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 30604628DI
Appellee.	§	

Submitted: November 14, 2012

Decided: February 4, 2013

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

O R D E R

This 4th day of February 2013, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Benjamin Whiteman, filed this appeal from the Superior Court's July 10, 2012 order denying his motion for postconviction relief. The appellee, State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Whiteman's opening brief that the appeal is without merit. We agree and affirm.

(2) In 1987, Whiteman pled guilty to Burglary in the Second Degree. At sentencing, Whiteman was declared to be a habitual offender

and was sentenced to ten years at Level V, suspended after three years for seven years of decreasing levels of supervision.

(3) In 1989, Whiteman was found guilty by a Superior Court jury of Unlawful Sexual Penetration in the Third Degree. Whiteman was sentenced to life imprisonment as a habitual offender. This Court affirmed Whiteman's conviction on direct appeal.¹

(4) Over the years Whiteman has filed numerous motions attacking his 1987 and 1989 convictions and sentences on various grounds, all without success.² In this appeal from the Superior Court's denial of his most recent motion for postconviction relief, Whiteman continues to challenge the validity of his 1987 guilty plea and his 1989 life sentence.

(5) Having carefully considered the parties' positions on appeal, the Court concludes, as did the Superior Court, that Whiteman's motion for postconviction relief is time-barred³ and repetitive⁴ and raises claims that are either procedurally defaulted⁵ or formerly adjudicated.⁶ Moreover, the Court concludes, as did the Superior Court, that Whiteman's postconviction

¹ *Whiteman v. State*, 1991 WL 12112 (Del. Supr.).

² *Whiteman v. State*, 2009 WL 3086567 (Del. Supr.).

³ Del. Super. Ct. Crim. R. 61(i)(1).

⁴ Del. Super. Ct. Crim. R. 61(i)(2).

⁵ Del. Super. Ct. Crim. R. 61(i)(3).

⁶ Del. Super. Ct. Crim. R. 61(i)(4).

motion does not warrant consideration in the interest of justice⁷ or because of a miscarriage of justice.⁸

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/ Myron T. Steele
Chief Justice

⁷ *Id.*

⁸ Del. Super. Ct. Crim. R. 61(i)(5).