

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES G. BROWN,	§
	§
Defendant Below-	§ No. 386, 1999
Appellant,	§
	§
v.	§ Court Below— Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN88-06-0851
Plaintiff Below-	§
Appellee.	§

Submitted: February 10, 2000

Decided: March 16, 2000

Before **VEASEY**, Chief Justice, **HARTNETT** and **BERGER**, Justices

**ORDER**

This 16th day of March 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, James G. Brown, filed this appeal from an order of the Superior Court denying his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). We find no merit to the appeal. Accordingly, we AFFIRM.<sup>1</sup>

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<sup>1</sup>On February 16, 2000, Brown filed a document entitled “Motion for Authorization Order,” which seeks an Order of this Court directing New Castle County to release certain emergency records. The motion is hereby stricken as a non-conforming document. Supr. Ct. R. 34.

(2) Brown asserts the following grounds for this appeal: 1) the Superior Court failed to hold an evidentiary hearing regarding his claims, thus denying him due process; 2) the Superior Court failed to notify him of its October 1992 decision on his second postconviction motion with the intent to deprive him of his right to appeal, thus unfairly manipulating the criminal process; 3) his arrest was based upon police misconduct; 4) his trial was tainted by prosecutorial misconduct consisting of conspiring with defense counsel, committing perjury, manufacturing false fingerprint evidence and suppressing Brady materials, including DNA test results; 5) his defense counsel provided ineffective assistance by refusing to carry out his instructions; and 6) his counsel's ineffective assistance amounted to a denial of counsel.

(3) Brown was indicted on charges of unlawful sexual intercourse in the first degree, kidnapping in the first degree and robbery in the second degree. His jury trial began on March 20, 1989. On March 21, 1989, Brown elected to plead guilty to unlawful sexual intercourse in the first degree. He was sentenced to life in prison, with no eligibility for parole for a period of 20 years. Brown did not file a direct appeal of his conviction or sentence.

(4) In April 1989, Brown moved to withdraw his guilty plea. This Court affirmed the Superior Court's denial of Brown's motion.<sup>2</sup> In 1992, after unsuccessfully pursuing a petition for a writ of habeas corpus in the federal court, Brown filed a second motion for postconviction relief in the Superior Court, which was denied. This Court affirmed the decision of the Superior Court on appeal.<sup>3</sup> After again moving unsuccessfully for federal habeas relief, Brown filed a third motion for postconviction relief in the Superior Court.

(5) When reviewing a motion under Rule 61, this Court must first determine that the motion satisfies the procedural requirements of the rule before addressing any substantive issues.<sup>4</sup> A motion for postconviction relief may not be filed more than three years after the judgment of conviction is final.<sup>5</sup> Brown's conviction became final in 1992. As such, his motion for postconviction relief is time-barred. Moreover, there is no evidence that the

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<sup>2</sup>*Brown v. State*, Del. Supr., No. 186, 1989, Walsh, J., 1989 WL 114629 (Sept. 11, 1989) (ORDER).

<sup>3</sup>*Brown v. State*, Del. Supr., No. 216, 1993, Horsey, J., 1993 WL 478072 (Nov. 5, 1993) (ORDER).

<sup>4</sup>*Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991).

<sup>5</sup>Super. Ct. Crim. R. 61(i) (1).

Superior Court lacked jurisdiction over his claims or that there was a miscarriage of justice because of a constitutional violation.<sup>6</sup>

(6) Brown's claims, except for the first two, are also procedurally barred as formerly adjudicated.<sup>7</sup> A review of the record indicates that these claims have been fully addressed either in the prior proceedings in Superior Court or in the federal habeas corpus proceedings. Moreover, there is no evidence that consideration of the claims is warranted in the interest of justice.

(7) Brown's claim that the Superior Court should have held an evidentiary hearing is without merit. Whether an evidentiary hearing is desirable on a motion for postconviction relief is within the discretion of the Superior Court.<sup>8</sup> In this case, the Superior Court properly determined that Brown's claims were barred. There was, thus, no abuse of discretion in deciding that an evidentiary hearing was unnecessary and summary disposition of the matter was appropriate.<sup>9</sup>

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<sup>6</sup>Super. Ct. Crim. R. 61(i) (5).

<sup>7</sup>Super. Ct. Crim. R. 61(i) (4).

<sup>8</sup>Super. Ct. Crim. R. 61(h).

<sup>9</sup>*Maxion v. State*, Del. Supr., 686 A.2d 148, 151 (1996).

(8) Brown claims the Superior Court intentionally failed to notify him of its October 1992 decision on his second postconviction motion in order to deprive him of his right to appeal. There is no indication Brown presented this claim to the Superior Court below and it may not be considered for the first time on appeal.<sup>10</sup> Even if considered on the merits, the claim is unavailing. The record indicates that, when Brown filed his notice of appeal in this Court, the Clerk's office issued a rule to show cause. However, following remand to the Superior Court<sup>11</sup> and the re-issuance of its decision, the rule to show cause was discharged and Brown's appeal proceeded in the normal fashion. Brown's claim of intent on the part of the Superior Court to deprive him of his right to appeal is without foundation. Moreover, the Superior Court's failure to send a copy of its decision to Brown resulted in no prejudice to him.

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

<sup>11</sup>*Brown v. State*, Del. Supr., No. 216, 1993, Walsh, J. (July 2, 1993) (INTERIM ORDER).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/Carolyn Berger  
Justice