

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES G. TRUMP, SR.,	§	
	§	
Defendant Below-	§	No. 404, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 9703005786
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: January 7, 2005

Decided: March 9, 2005

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

ORDER

This 9th day of March 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, James G. Trump, Sr., filed an appeal from the Superior Court's August 2, 2004 order denying his motion for postconviction relief and its September 2, 2004 order denying his motion for reargument. We find no merit to the appeal. Accordingly, we affirm.

(2) In July 1998, Trump was convicted by a Superior Court jury of 15 counts of Unlawful Sexual Intercourse in the First Degree. He was sentenced to a total of 225 years incarceration at Level V. On direct appeal, this Court affirmed

Trump's convictions and sentences.¹ Trump filed a motion for postconviction relief on September 6, 2000. In January 2001, the Superior Court granted his request for leave to withdraw the motion. On December 15, 2003, Trump filed a second motion for postconviction relief and, on January 22, 2004, he filed an amended motion for postconviction relief.

(3) In this appeal, Trump claims that the Superior Court erred: a) by denying his postconviction claims as time barred because his inadvertent failure to introduce the victim's diary into evidence at trial constituted a "miscarriage of justice" that excuses his untimely filing; and b) by denying his motion for reargument.

(4) A motion for postconviction relief "may not be filed more than three years after the judgment of conviction is final" ² The time bar may be overcome only upon a showing by the movant of a "colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction."³

¹ *Trump v. State*, 753 A.2d 963 (Del. 2000). Trump's conviction became final on June 29, 2000, when this Court issued the mandate. *Jackson v. State*, 654 A.2d 829, 832-33 (Del. 1995).

² Super. Ct. Crim. R. 61(i) (1).

³ Super. Ct. Crim. R. 61(i) (5).

(5) Trump does not dispute that his motion for postconviction relief was not filed within the three-year time limitation. Rather, he argues that his untimely motion should be excused because it was a “miscarriage of justice” for the jury not to consider the victim’s diary. Trump argues that he would more likely than not have been acquitted of the charges against him if the victim’s diary had been presented to the jury because it would have shown that she was lying about the dates she allegedly was molested. There is no support in the record for Trump’s claim. As such, it does not rise to the level of a “colorable claim” of a “miscarriage of justice” that would overcome the time bar.⁴

(6) Trump’s second claim is that the Superior Court committed legal error when it denied his motion for reargument. That claim also is without merit. The Superior Court correctly ruled that Trump was not entitled to reargument because there was no evidence that it had overlooked any applicable legal precedent or misapprehended the law or the facts in such a manner as would affect the outcome of Trump’s motion for postconviction relief.⁵

⁴ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990). To the extent Trump seeks to attribute the “miscarriage of justice” to ineffective assistance of his trial counsel, we find no support in the record for such a claim. *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

⁵ *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

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

BY THE COURT:

/s/ Randy J. Holland
Justice