

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEAN CARTER,	§
	§
Defendant Below-	§ No. 110, 2005
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0309011756
Plaintiff Below-	§
Appellee.	§
	§

Submitted: April 18, 2005

Decided: May 16, 2005

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

ORDER

This 16th day of May 2005, upon consideration of the opening brief, the State's motion to affirm and the appellant's motion for the appointment of counsel, it appears to the Court that:

(1) The defendant-appellant, Dean Carter, filed this appeal from the Superior Court's order, dated February 22, 2005 and docketed March 10, 2005, denying his first motion for postconviction relief. The State has filed a motion to affirm the Superior Court's judgment, not for the reasons stated by the Superior Court, but on the alternative ground that Carter's motion for postconviction relief was prematurely filed because the mandate has not

issued in his direct appeal. We agree that Carter's motion was premature. We also conclude that the Superior Court lacked jurisdiction to rule on the motion. Accordingly, this matter shall be remanded to the Superior Court with directions to vacate its February 22 order as improvidently issued.

(2) The record reflects that a Superior Court jury convicted Carter of several drug and weapon offenses. The Superior Court sentenced him on September 24, 2004. Through counsel, Carter filed a direct appeal from his convictions and sentences on October 19, 2004 in Supreme Court appeal number 466, 2004. After considering Carter's appeal on the basis of the briefs, a panel of this Court rescheduled Carter's case for oral argument on April 13, 2005. The appeal was argued, and the case remains pending before the Court for decision.

(3) The Superior Court docket reflects that Carter, acting pro se, filed a motion for postconviction relief in the Superior Court on January 11, 2005, *after* his direct appeal was filed but before its conclusion. On February 22, 2005, the Superior Court rejected Carter's postconviction claims of ineffective assistance of counsel on the ground that his claims were procedurally barred.

(4) Superior Court Criminal Rule 61(a)(4) provides that a motion for postconviction relief may not be filed until "the judgment of conviction

is final.”¹ It is well settled that a criminal conviction in Delaware from which an appeal is filed is not final until the mandate on appeal issues from the Supreme Court.² Accordingly, it is manifest that Carter’s postconviction motion was premature and not ripe for consideration because his convictions are not yet final. Moreover, in light of his pending direct appeal, the Superior Court was divested of jurisdiction to rule on the motion filed below.³

NOW, THEREFORE, IT IS ORDERED that this matter is hereby REMANDED to the Superior Court with directions to VACATE its judgment on Carter’s postconviction motion without prejudice to Carter’s right to refile his first postconviction motion when his convictions become final. Jurisdiction is not retained. The motion for appointment of counsel is moot.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

¹ DEL. SUPER. CT. CRIM. R. 61(a)(4) (2005).

² *Jackson v. State*, 654 A.2d 829, 830-31 (Del. 1995); DEL. SUPER. CT. CRIM. R. 61(m)(2) (2005).

³ *Eller v. State*, 531 A.2d 948, 950-51 (Del. 1987).