

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ABUDLLAH G. HUBBARD,	§
a/k/a GREGORY C. HUBBARD,	§
	§ No. 514, 2004
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Cr.A. No. IN94-12-1414
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: June 17, 2005  
Decided: August 5, 2005

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

**ORDER**

This 5th day of August 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Abdullah G. (formerly Gregory C.) Hubbard, filed an appeal from the Superior Court's November 8, 2004 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) In April 1995, Hubbard pleaded guilty to Robbery in the First Degree. He was sentenced to five years incarceration at Level V, to be suspended after two years for decreasing levels of probation. In April 2000,

a violation of probation (“VOP”) hearing was held and Hubbard was found to have committed a VOP in connection with his original Robbery sentence and he was sentenced to two years incarceration at Level V. In September 2001, this Court affirmed Hubbard’s new Robbery convictions as well as the finding of a VOP.<sup>1</sup>

(3) In this appeal, Hubbard claims that the Superior Court lacked jurisdiction to hear the VOP because he had already served his probationary sentence on the original Robbery conviction at the time the new robberies were committed and the VOP report was filed by the probation officer. To the extent that Hubbard has not argued other grounds to support his appeal that were previously raised in the Superior Court, those grounds are deemed waived and will not be addressed by this Court.<sup>2</sup>

(4) A motion for postconviction relief must be filed within 3 years of the date on which the conviction became final.<sup>3</sup> As the Supreme Court docket reflects, the mandate in this matter issued on September 21, 2001. A timely postconviction motion had to be filed on or before September 21,

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<sup>1</sup> *Hubbard v. State*, 782 A.2d 264 (Table) (Del. 2001).

<sup>2</sup> *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his motion for postconviction relief filed in the Superior Court, Hubbard also argued that he received inadequate notice of the VOP hearing.

<sup>3</sup> Super. Ct. Crim. R. 61(i) (1).

2004. Thus, Hubbard's motion, which was filed on November 2, 2004, was clearly untimely.

(5) Additionally, Hubbard's motion is procedurally defective since he did not raise his claim in his direct appeal of his VOP<sup>4</sup> and has failed to show cause for relief from the procedural default and prejudice from a violation of his rights.<sup>5</sup>

(6) Also, there was no basis to consider Hubbard's claim under Criminal Rule 61(i)(5). Hubbard alleged that the Superior Court lacked jurisdiction to convict him of a VOP because he had already completed his probation sentence by the time his Probation Officer filed a violation report. Hubbard's factual claim is not supported by the record. The Superior Court made Hubbard's five-year sentence for his Robbery conviction effective March 10, 1995. Hubbard spent the first two years of that five-year sentence in prison. Hubbard would have completed his sentence on March 10, 2000 had he followed every condition of his probation, he would have completed his sentence on March 10, 2000. Hubbard committed new robberies and a drug offense in May 1999. Hubbard's probation officer filed the violation report on January 6, 2000. Thus, both the triggering events resulting in the

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<sup>4</sup> Super. Ct. Crim. R. 61(i) (3).

<sup>5</sup> Super. Ct. Crim. R. 61(i) (3) (A) and (B).

violation of his probation and the filing of the report itself took place before Hubbard's term of probation would have concluded on March 10, 2000.

(7) Hubbard's conclusory statements that the interests of justice required consideration of his lack of jurisdiction allegations were insufficient to overcome this procedural bar.<sup>6</sup> Hubbard has failed to demonstrate how the bars to relief presented by either Rule 61(i)(1) or (3) are rendered inapplicable by Rule 61(i)(5). This Court has held that the fundamental fairness exception found in Rule 61(i)(4) is to be limited to circumstances such as the recognition of retroactive rights after the time for a direct appeal has already passed.<sup>7</sup> Given the factual inaccuracy of Hubbard's argument, it follows that there was no basis for the Superior Court to review Hubbard's claim under Rule 61(i)(5). As a result, the Superior Court did not abuse its discretion in summarily denying Hubbard's motion.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>6</sup> See *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

<sup>7</sup> See *Maxion v. State*, 686 A.2d 148, 150-51 (Del. 1996).