

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM J. WEBB, JR.,	§
	§ No. 183, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 97030286R1
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 9, 2005
Decided: November 28, 2005

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

ORDER

This 28th day of November 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, William J. Webb, Jr., filed an appeal from the Superior Court's April 6, 2005 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. Because it appears that the Superior Court relied on factually incorrect information, its decision must be REVERSED and this matter REMANDED for further proceedings in accordance with this Order.

(2) In May 1997, Webb pleaded guilty to Burglary in the Second Degree. He was sentenced to 8 years of Level V incarceration, to be

suspended after 1 year for 7 years of probation. In March 2000, Webb pleaded guilty to Assault in the First Degree, Burglary in the First Degree and Endangering the Welfare of a Child. On the basis of these new charges, he was found to have committed a violation of probation (“VOP”) in connection with his burglary sentence. The Superior Court revoked Webb’s probation and he was sentenced to 3 years of Level V incarceration. Webb filed several postconviction motions challenging his March 2000 guilty plea, but only one postconviction motion challenging his May 1997 guilty plea. The instant appeal is from the Superior Court’s denial of this latter postconviction motion.

(3) In this appeal, Webb claims that: a) his postconviction motion challenging his May 1997 guilty plea should have been decided by the Superior Court judge who accepted that plea rather than the judge who accepted his June 2000 guilty plea; b) the Superior Court erroneously decided his postconviction motion challenging his May 1997 guilty plea on the basis of facts pertinent to his March 2000 guilty plea; and c) his 1997 sentence was based on errors of fact in his criminal history.

(4) As the State laudably has conceded, the Superior Court’s April 6, 2005 order reflects that it was based on facts pertinent to Webb’s March 2000 guilty plea rather than his May 1997 guilty plea. While the Superior

Court denied Webb's postconviction claims as repetitive, this was, in fact, Webb's first postconviction motion addressing his May 1997 guilty plea. Although the procedural bar of Rule 61(i)(1) may be applicable here, the State has acknowledged that "the April 6, 2005 decision of the Superior Court should be reversed and the case remanded for further proceedings." The Superior Court should consider Webb's postconviction motion in light of the allegations relating to his May 1997 guilty plea.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's decision is REVERSED and this matter is REMANDED to the Superior Court for proceedings consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/Henry duPont Ridgely
Justice