

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS A. MORGAN,	§	
	§	No. 314, 2006
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	the State of Delaware, in and
v.	§	Sussex County.
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Def. ID No. 92S05729DI
Appellee.	§	

Submitted: June 28, 2006  
Decided: September 26, 2006

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 26<sup>th</sup> day of September 2006, upon consideration of the appellant's opening brief and the State's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) In 1993, a Superior Court jury convicted the appellant, Thomas Morgan, of Unlawful Sexual Intercourse in the First Degree, Unlawful Sexual Contact in the Second Degree and Kidnaping in the Second Degree. On direct appeal, this Court affirmed the convictions pursuant to Supreme Court Rule 26(c).<sup>1</sup>

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<sup>1</sup>See *Morgan v. State*, 1993 WL 202272 (Del. Supr.) (affirming convictions after conducting independent review of record and determining that record was "totally devoid

(2) In 1994, 1998 and 2004, Morgan filed *pro se* motions for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). On appeal from the denial of each of those motions, this Court affirmed.<sup>2</sup>

(3) On March 14, 2006, Morgan filed his fourth *pro se* motion for postconviction relief. By order dated May 25, 2006, the Superior Court denied the motion as procedurally barred. This appeal followed.

(4) Having considered the opening brief and the motion to affirm, we find it manifest that this appeal should be affirmed on the basis of the Superior Court’s order dated May 25, 2006.<sup>3</sup> The Superior Court did not err in its determination that Morgan’s fourth motion for postconviction relief was procedurally barred pursuant to Rule 61(i)(1), (3) and (4).<sup>4</sup> Moreover on appeal, this Court concludes that consideration of Morgan’s claims is not

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of arguably appealable issues”).

<sup>2</sup>*See Morgan v. State*, 1995 WL 57368 (Del. Supr.) (affirming denial of first postconviction motion); *Morgan v. State*, 1998 WL 280353 (Del. Supr.) (affirming denial of second postconviction motion); *Morgan v. State*, 2005 WL 53272 (Del. Supr.) (affirming denial of third postconviction motion). *See also State v. Morgan*, Del. Super. Ct., Def. ID No. 92S05729DI, Stokes, J. (Dec. 7, 2005) (denying Rule 61 motion for postconviction relief pursuant to Superior Court Criminal Rule 33 governing motions for new trial).

<sup>3</sup>Del. Supr. Ct. R. 25(a) (2006).

<sup>4</sup>*See* Del. Super. Ct. Crim. R. 61(i)(1) (2005) (amended 2005) (providing that motion must be filed within three years); Del. Super. Ct. Crim. R. 61(i)(3) (2006) (barring claim not previously raised, absent cause for relief and prejudice); (i)(4) (barring formerly adjudicated claim).

warranted in the interest of justice, on the basis that the Superior Court lacked jurisdiction, or on the basis of a constitutional violation.<sup>5</sup>

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>5</sup>See Del. Super. Ct. Crim. R. 61(i)(4) (2006) (providing for reconsideration of formerly adjudicated claim in interest of justice); (i)(5) (providing that procedural bar is inapplicable to a jurisdictional claim or to a colorable claim of a constitutional violation).