

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RECARDO B. WEATHERSPOON,	§	
	§	No. 94, 2007
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Def. ID No. 0001003156
Appellee.	§	

Submitted: April 13, 2007
Decided: July 20, 2007

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

ORDER

This 20th day of July 2007, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Recardo Weatherspoon, filed this appeal from the Superior Court’s denial of his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). The State has filed a motion to affirm the Superior Court’s judgment on the basis that it is manifest on the face of Weatherspoon’s opening brief that this appeal is without merit. We agree and affirm.

(2) The record reflects that Weatherspoon pleaded guilty in June 2000 to one count of delivery of cocaine and two counts of second degree conspiracy. On the State's motion and as contemplated in the plea agreement, Weatherspoon was declared a habitual offender and was sentenced to a total of seventeen years imprisonment, suspended after thirteen years for four years of probation. Weatherspoon did not appeal his conviction or sentence.

(3) In August 2002, Weatherspoon filed his first motion for postconviction relief. Weatherspoon raised ineffective assistance of counsel and several other claims. The Superior Court considered each claim and denied Weatherspoon's motion on its merits. On appeal, this Court affirmed the Superior Court's decision.¹

(4) In August 2003, Weatherspoon unsuccessfully moved to modify his sentence. The Superior Court's denial of the modification motion was affirmed on appeal.² In May 2006, Weatherspoon unsuccessfully moved to correct his sentence. Again, the Superior Court's denial of Weatherspoon's motion was affirmed on appeal.³

¹ *Weatherspoon v. State*, 2003 WL 723992 (Del. Supr.).

² *Weatherspoon v. State*, 2004 WL 542163 (Del. Supr.).

³ *Weatherspoon v. State*, 2006 WL 2950487 (Del. Supr.).

(5) In December 2006, Weatherspoon filed his second motion for postconviction relief. Weatherspoon complained that the prosecution did not establish that Weatherspoon was eligible for sentencing as a habitual offender. In a related claim, Weatherspoon alleged that his defense counsel was ineffective.

(6) By decision dated January 26, 2007, the Superior Court denied Weatherspoon's motion on the basis that the claims were barred pursuant to Rule 61.⁴ The Superior Court also noted that Weatherspoon's habitual offender claim was without merit.⁵ This appeal followed.

(7) Having carefully considered the parties' positions on appeal and the Superior Court record, the Court concludes that this appeal should be affirmed on the basis of the Superior Court's well-reasoned decision of January 26, 2007. The Superior Court did not err in its determination that Weatherspoon's motion for postconviction relief was procedurally barred as untimely,⁶ repetitive,⁷ and defaulted.⁸ Moreover, the Court concludes on appeal that reconsideration of Weatherspoon's claims is not warranted in the interest of justice,⁹ on the basis that the Superior Court lacked jurisdiction,¹⁰

⁴ *State v. Weatherspoon*, 2007 WL 441945 (Del. Super. Ct.).

⁵ *Id.* at 9.

⁶ Del. Super. Ct. Crim. R. 61(i)(1) (2004).

⁷ Del. Super. Ct. Crim. R. 61(i)(2) (2007).

⁸ Del. Super. Ct. Crim. R. 61(i)(3) (2007).

⁹ Del. Super. Ct. Crim. R. 61(i)(2) (2007).

on the basis of a constitutional violation,¹¹ or on the basis of a newly recognized retroactively applicable right.¹²

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

¹⁰ Del. Super. Ct. Crim. R. 61(i)(5) (2007).

¹¹ *Id.*

¹² Del. Super. Ct. Crim. R. 61(i)(1) (2004).