

IN THE SUPREME COURT OF THE STATE OF DELAWARE

YAH-YA MANDELAKA,	§
	§
Defendant Below-	§ No. 195, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN87-01-0586–0590
Plaintiff Below-	§
Appellee.	§

Submitted: August 15, 2003  
Decided: September 25, 2003

Before **BERGER, STEELE** and **JACOBS**, Justices

**ORDER**

This 25<sup>th</sup> day of September 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Yah-Ya Mandelaka, filed an appeal from the Superior Court’s March 19, 2003 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 1987 Mandelaka<sup>1</sup> was found guilty by a Superior Court jury of Burglary in the First Degree, Kidnaping in the First Degree, and three counts of

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<sup>1</sup>Mandelaka’s name at the time was Jonathan K. Murray.

Unlawful Sexual Intercourse in the First Degree. He was sentenced to four life terms, plus 30 years. On appeal, this Court affirmed Mandelaka's convictions and sentences.<sup>2</sup> This Court also affirmed the Superior Court's denial of Mandelaka's first motion for postconviction relief.<sup>3</sup> This is Mandelaka's second motion for postconviction relief.

(3) In this appeal, Mandelaka claims that: a) the Superior Court abused its discretion by not reviewing his claims under Rule 61's "miscarriage of justice" exception;<sup>4</sup> and b) his trial counsel provided ineffective assistance by not protecting his constitutional rights.<sup>5</sup>

(4) The Superior Court correctly denied Mandelaka's claims. First, the claims are time-barred because they were filed more than three years after Mandelaka's conviction became final in 1989.<sup>6</sup> Second, the claim of ineffective assistance of counsel based upon the allegedly flawed indictment is procedurally barred because it was not raised in Mandelaka's first motion for postconviction

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<sup>2</sup>*Murray v. State*, Del. Supr., No. 394, 1987, Holland, J. (July 19, 1989).

<sup>3</sup>*Murray v. State*, Del. Supr., No. 432, 1992, Moore, J. (Feb. 26, 1993).

<sup>4</sup>SUPER. CT. CRIM. R. 61(i) (5). The factual basis for this claim is Mandelaka's allegation that the State improperly amended its indictment against him and then failed to re-submit it to the grand jury, thereby violating his constitutional rights.

<sup>5</sup>Mandelaka claims that his counsel should have objected to the State's improper amendment of the indictment and argued that the Superior Court lacked jurisdiction.

<sup>6</sup>SUPER. CT. CRIM. R. 61(i) (1); *Jackson v. State*, 654 A.2d 829, 832-33 (Del. 1995).

relief.<sup>7</sup> Third, the underlying claim of an allegedly flawed indictment is procedurally barred because it was formerly adjudicated by the Superior Court at trial.<sup>8</sup> Mandelaka's argument that his claims are reviewable under Rule 61's "miscarriage of justice" exception<sup>9</sup> is unavailing because the record does not reflect that the indictment was ever amended or, indeed, that the State ever requested that the indictment be amended. As the Superior Court noted, there was an office conference at which the language of the jury instructions was discussed in light of the language of the indictment. However, the record does not reflect, nor does Mandelaka claim, that the Superior Court improperly instructed the jury.

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

BY THE COURT:

/s/ Myron T. Steele  
Justice

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<sup>7</sup>SUPER. CT. CRIM. R. 61(i) (2).

<sup>8</sup>SUPER. CT. CRIM. R. 61(i) (4).

<sup>9</sup>SUPER. CT. CRIM. R. 61(i) (5).