IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY E. JOHNSON,	§	
	§	No. 648, 2006
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0309013375
Appellee.	§	

Submitted: December 17, 2007
Decided: March 11, 2008

Before **STEELE,** Chief Justice, **HOLLAND** and **RIDGELY,** Justices.

O R D E R

This 11th day of March 2008, upon consideration of the briefs of the parties it appears to the Court that:

(1) The appellant, Larry E. Johnson, has appealed the Superior Court's November 9, 2006 denial of his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").[1] Johnson's appeal is without merit, and we affirm.

(2) The record reflects that Johnson was arrested in 2003 and indicted on murder charges stemming from an August 31, 2001 home invasion in Wilmington, Delaware. In 2004, a Superior Court jury convicted

[1] *State v. Johnson*, 2006 WL 3308200 (Del. Super. Ct.).

Johnson of two counts of Felony Murder in the First Degree and related offenses. The Superior Court sentenced Johnson to life in prison. On direct appeal, this Court affirmed Johnson's conviction and sentence.[2]

(3) In 2006, Johnson filed a motion for postconviction relief. Johnson alleged that the Superior Court made evidentiary errors and that his counsel was ineffective. The Superior Court denied Johnson's claim of ineffective assistance of counsel on the merits and barred the evidentiary claims[3] pursuant to Rule 61(i)(3).[4] This Court reviews the Superior Court's denial of a motion for postconviction relief for abuse of discretion.[5]

(4) In his opening brief on appeal, Johnson advances the evidentiary claims that he raised in his postconviction motion. Johnson does not, however, raise his ineffective assistance of counsel claims. The Court deems Johnson's ineffective counsel claims to be waived.[6]

(5) Johnson's evidentiary claims arise from testimony admitted into evidence from a Delaware State police detective that a gun was seized from

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[2] *Johnson v. State*, 878 A.2d 422 (Del. 2005).
[3] *See Hamilton v. State*, 2004 WL 1097703 (Del. Supr.) (citing *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991) (providing that the Superior Court must apply the procedural requirements of Rule 61 before reaching the merits of the claims)).
[4] *See* Del. Super. Crim. R. 61(i)(3) (providing that a claim that could have been raised but was not is barred unless the movant demonstrates "cause" for his failure to raise the claim and "prejudice" as a result of that default").
[5] *Outten v. State*, 720 A.2d 547, 551 (Del. 1998).
[6] *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997) (citing *Murphy v. State*, 632 A.2d 1150, 1152-53 (Del. 1993)).

Johnson incident to a vehicle stop on November 12, 2001, nearly two and one-half months after the murders. In 2002, Johnson was tried and acquitted in the Federal District Court on possession of firearm charges as a result of the November 12, 2001 vehicle stop.

(6) At trial, the State was allowed to introduce evidence that the gun seized from Johnson incident to the November 12, 2001 vehicle stop was one of the weapons that was used at the murders on August 31, 2001. Johnson, however, was not allowed to present evidence that he was acquitted of the federal gun charges that arose from the November 12 vehicle stop.

(7) In his motion for postconviction relief and now on appeal, Johnson argues that double jeopardy principles should have precluded the State from presenting evidence that he possessed a gun on November 12, 2001. Second, Johnson argues that the Superior Court did not perform a required *Getz* analysis.[7] Finally, Johnson argues that the Superior Court erred when it admitted evidence that he possessed a gun on November 12, 2001, but excluded evidence that he was acquitted of related federal gun charges.

[7] *See Getz v. State*, 538 A.2d 726, 730 (Del. 1988) (holding that Super. Ct. Crim. R. 404(b) forbids the proponent of prior bad act evidence from offering the evidence to support a general inference of bad character).

(8) Because Johnson did not raise any of his arguments on direct appeal, the arguments are procedurally barred pursuant to Rule 61(i)(3) unless Johnson can demonstrate "cause" for failure to raise the claims and "prejudice" as a result of the default.[8] The Superior Court concluded, and we agree, that Johnson has not demonstrated cause for failing to raise the claims on appeal and prejudice.[9] This Court further concludes that Johnson has not demonstrated a basis upon which to apply an exception to the Rule 61(i)(3) procedural bar.[10]

(9) Moreover, as an alternative basis for denying postconviction relief, to the extent Johnson's claims were raised and rejected by the Superior Court at trial, the claims are also barred pursuant to Rule 61(i)(4).[11]

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[8] *See Oney v. State*, 482 A.2d 756, 758 (Del. 1984) (applying Rule 61(i)(3) cause and prejudice analysis to issue that was raised at trial but was not raised on direct appeal).

[9] Johnson's contention that the Superior Court did not conduct a *Getz* analysis is not supported by the record. Trial Tr. at 112-21 (July 22, 2004). Johnson's acquittal on federal gun charges did not automatically prevent the State from presenting evidence that he possessed a gun on November 12, 2001. *See Dowling v. State*, 493 U.S. 342, 348 (1990) (declining to extend collateral estoppel component of double jeopardy clause to exclude in all circumstances relevant and probative evidence that is otherwise admissible under the Rules of Evidence simply because it relates to alleged criminal conduct for which a defendant has been acquitted).

[10] *See* Del. Supr. Ct. Crim. R. 61(i)(5) (providing in pertinent part that the procedural bar of Rule 61(i)(3) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction).

[11] *See* Del. Super. Ct. Crim. R. 61(i)(4) (providng that "[a]ny ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.").

The Court does not conclude that the interests of justice warrant reconsideration of the previously adjudicated claims.[12]

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

[12] *Id.*