

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WALTER L. SMITH, SR.,	§	
	§	No. 533, 2007
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0105019765
Appellee.	§	

Submitted: December 21, 2007

Decided: March 20, 2008

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

ORDER

This 20th day of March 2008, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Walter L. Smith, Sr., 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 on the ground that it is manifest on the face of Smith’s opening brief that the appeal is without merit. We agree and affirm the Superior Court judgment.

(2) In 2002, a Superior Court jury convicted Smith of Attempted Rape in the First Degree, Assault in the First Degree, Burglary in the First Degree and Wearing a Disguise During the Commission of a Felony. On direct appeal, Smith alleged in part that the trial judge erred when limiting defense counsel's cross-examination of a police officer. This Court affirmed Smith's convictions.¹

(3) In 2004, Smith filed his first motion for postconviction relief. Smith alleged insufficient evidence and ineffective assistance of counsel. Moreover, Smith alleged a "*Batson* violation," *i.e.*, that the prosecutor used a peremptory challenge in a discriminatory manner in violation of *Batson v. Kentucky*.² By order dated April 7, 2004, the Superior Court denied the ineffective counsel claim on the merits and denied the claims of insufficient evidence and a *Batson* violation as procedurally defaulted. Smith's appeal from the denial of his postconviction motion was dismissed as untimely.³

(4) In 2007, Smith filed his second motion for postconviction relief. Again, Smith alleged insufficient evidence and a *Batson* violation. Smith also alleged, as he did on direct appeal, that the Superior Court improperly limited the cross-examination of a police officer. By order dated

¹ *Smith v. State*, 2002 WL 31873704 (Del. Supr.).

² *Batson v. Kentucky*, 476 U.S. 79 (1986).

³ *Smith v. State*, 2004 WL 1874668 (Del. Supr.).

September 27, 2007, the Superior Court denied Smith's claims of insufficient evidence and a *Batson* violation as formerly adjudicated.⁴ The Superior Court denied Smith's evidentiary claim as untimely⁵ and procedurally defaulted.⁶ This appeal followed.

(5) In his opening brief on appeal, Smith advances the claims that he raised in his postconviction motion. Smith also alleges a "*Brady* violation," *i.e.*, that the prosecutor failed to disclose exculpatory evidence in violation of *Brady v. Maryland*.⁷

(6) After careful consideration of the opening brief and the motion to affirm, it is clear to the Court that the Superior Court appropriately barred Smith's second motion for postconviction relief as untimely,⁸ procedurally defaulted⁹ and formerly adjudicated.¹⁰ The Court agrees with the Superior Court that reconsideration of Smith's formerly adjudicated claims is not

⁴ See Del. Super. Ct. Crim. R. 61(i)(4) (providing 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").

⁵ See Del. Super. Ct. Crim. R. 61(i)(1) (barring claim filed more than three years after judgment is final or after newly recognized retroactively applicable right) (amended 2005 to reduce limitations period to one year for conviction final after July 1, 2005).

⁶ See Del. Super. Ct. Crim. R. 61(i)(3) (providing that any ground for relief that was not previously asserted is barred unless the movant demonstrates cause for relief from the procedural default and prejudice as a result of the violation of the movant's rights).

⁷ *Brady v. Maryland*, 373 U.S. 83 (1963).

⁸ Del. Super. Ct. Crim. R. 61(i)(1).

⁹ Del. Super. Ct. Crim. R. 61(i)(3).

¹⁰ Del. Super. Ct. Crim. R. 61(i)(4).

warranted in the interest of justice.¹¹ As for the alleged *Brady* violation, Smith has not made the requisite showing of a colorable claim of a miscarriage of justice because of a constitutional violation to warrant application of the exception to the procedural bar.¹²

(7) It is manifest on the face of Smith's opening brief that the appeal is without merit. The issues raised on appeal are clearly controlled by settled Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

¹¹ *Id.*

¹² *See* Del. Super. Ct. Crim. R. 61(i)(5) (providing that bars to relief are inapplicable to a colorable claim "of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction").