

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN S. EPPERSON,	§
	§ No. 558, 2007
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9408009291
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 14, 2008

Decided: March 27, 2008

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 27th day of March 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Kevin S. Epperson, filed an appeal from the Superior Court's October 16, 2007 order denying his twelfth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) In March 1996, Epperson was found guilty by a Superior Court jury of Unlawful Sexual Contact in the Second Degree and Kidnapping in the First Degree. In May 1996, the Superior Court found Epperson to be a habitual offender and sentenced him to a total of 52 years of Level V incarceration, to be followed

by 8 years of probation. Epperson's convictions and sentences were affirmed by this Court on direct appeal.¹

(3) In this appeal from the Superior Court's denial of his latest postconviction motion, Epperson claims that a) the FBI analyst's testimony regarding the DNA testing of the semen sample found by the police at the scene of the crime should have been excluded as hearsay; and b) the prosecution failed to disclose exculpatory evidence in connection with the DNA testing---namely, that only one probe out of five revealed any results that could be interpreted.

(4) When considering a postconviction motion pursuant to Rule 61, the Superior Court must review whether the procedural requirements of the rule have been met before reaching the merits of the claims.² Because Epperson's convictions became final in February 1997, his current claims are time-barred.³ Moreover, Epperson has failed to overcome the time bar by asserting a colorable claim of a miscarriage of justice due to a constitutional violation,⁴ since his first claim is not of constitutional dimension⁵ and his second claim is not supported by the record.

¹ *Epperson v. State*, Del. Supr., No. 214, 1996, Walsh, J. (Feb. 6, 1997).

² *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

³ Super. Ct. Crim. R. 61(i) (1).

⁴ Super. Ct. Crim. R. 61(i) (5).

⁵ *Thomas v. State*, Del. Supr., No. 384, 2004, Berger, J. (Mar. 22, 2005).

(5) We conclude that the Superior Court did not abuse its discretion when it denied Epperson's twelfth postconviction motion as time-barred. The Superior Court's judgment must, therefore, be affirmed.

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice