

IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | | |
|--------------------|---|---------------------------------|
| AL-HAJJ M. LEWIS, | § | |
| | § | No. 424, 2007 |
| 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. 0101002067 |
| Appellee. | § | |

Submitted: January 11, 2008

Decided: April 1, 2008

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

ORDER

This 1st day of April 2008, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Al-Hajj M. Lewis, filed this appeal from the Superior Court's denial of his first, albeit untimely, motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). There is no merit to Lewis' appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Lewis pled guilty in 2001 to Possession of a Firearm During the Commission of a Felony, Possession of Cocaine

within 1000 Feet of a School and Violation of Probation. Lewis did not file a direct appeal.

(3) In 2006, more than five years after his conviction became final, Lewis filed a motion for postconviction relief.¹ Lewis alleged that, as a result of the ineffectiveness of his former defense counsel, his guilty plea was involuntary. Upon receipt of the postconviction motion, the Superior Court directed that Lewis' former defense counsel file an affidavit in response to the allegations of ineffectiveness. By order dated July 31, 2007, the Superior Court denied relief after considering the merit of the ineffective assistance of counsel claim pursuant to Rule 61(i)(5). This appeal followed.

(4) In its answering brief on appeal, the State suggests that the "Superior Court should have denied Lewis' motion for failing to overcome Rule 61(i)(1)'s procedural hurdle of timeliness." Lewis argues that the untimeliness of his motion should be excused under Rule 61(i)(5) because he alleged "a colorable claim that there was a miscarriage of justice because of a constitutional violation."²

(5) It is well-settled that the Superior Court and this Court must address the procedural requirements of Rule 61 before considering the merit

¹ Lewis' conviction became final on June 22, 2001, thirty days after his May 23, 2001 sentencing. Del. Super. Ct. Crim. R. (61(m)(1).

² Del. Super. Ct. Crim. R. 61(i)(5).

of a postconviction motion.³ Nonetheless, if an untimely motion for postconviction relief contains allegations of ineffective assistance of counsel, it is entirely appropriate for the Superior Court under its Rule 61(i)(5) analysis to direct that counsel respond to those allegations.⁴

(6) In this case, after considering Lewis' former defense counsel's affidavit and the record, the Superior Court determined that there was no support for Lewis' allegations of ineffective assistance of counsel. Having reviewed the record *de novo*, the Court agrees with that evaluation and concludes that Lewis has not demonstrated that he is entitled to relief from the procedural bar of Rule 61(i)(5).⁵

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

BY THE COURT:

/s/ Carolyn Berger
Justice

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (citing *Harris v. Reed*, 489 U.S. 255 (1989)).

⁴ Del. Super. Ct. Crim. R. 61(g)(2). In the context of a guilty plea, a Rule 61 movant must demonstrate that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Albury v. State*, 551 A.2d 53, 59 (Del. 1988). See *Horne v. State*, 887 A.2d 973 (Del. 2005) (determining that Superior Court record required trial counsel's sworn testimony to evaluate claim of ineffective assistance of counsel).

⁵ *Webster v. State*, 604 A.2d 1364, 1366 (Del. 1992) (holding that colorable claim that miscarriage of justice has occurred is a question of law reviewed *de novo*).