

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CRAIG O. JACKSON,	§	
	§	No. 255, 2008
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. 30604822DI
Appellee.	§	

Submitted: August 11, 2008  
Decided: November 12, 2008

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

**ORDER**

This 12<sup>th</sup> day of November 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, Craig O. Jackson, filed this appeal from the Superior Court’s denial of his 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 Jackson’s opening brief that the appeal is without merit. We agree and affirm the Superior Court judgment.

(2) In January 1987, Jackson was indicted on charges of first degree rape, first degree unlawful sexual intercourse and third degree unlawful sexual

penetration. Prior to trial, Jackson pled guilty to second degree unlawful sexual intercourse, a lesser-included offense of first degree unlawful sexual intercourse. In turn, the prosecution agreed to enter a *nolle prosequi* on the remaining counts in the indictment and on a sexual assault charge that was pending in the Family Court. After conducting an extensive plea colloquy, the Superior Court accepted the plea and sentenced Jackson to life imprisonment as was required by Delaware law.<sup>1</sup>

(3) In January 1988, Jackson filed his first motion for postconviction relief. Jackson alleged that his defense counsel and the Superior Court trial judge had not told him that he would be sentenced to life imprisonment. By order dated March 21, 1988, the Superior Court summarily denied Jackson's motion, and on appeal, this Court affirmed.<sup>2</sup> Jackson then applied for federal habeas corpus relief, contending that his defense counsel had been ineffective. By order dated February 13, 1990, the District Court denied relief.<sup>3</sup>

(4) Nearly twenty years later, Jackson again moved for postconviction relief. Jackson sought to withdraw his guilty plea on the basis that this Court's 2005 decision in *Evans v. State* had retroactively increased his sentence.<sup>4</sup> Jackson

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<sup>1</sup> See Del. Code Ann. tit. 11, §§ 774, 4205(b)(1) (1987) (providing that second degree unlawful sexual intercourse was a class A felony punishable by life imprisonment).

<sup>2</sup> *Jackson v. State*, 1988 WL 93402 (Del. Supr.).

<sup>3</sup> *Jackson v. Redman*, No. 88-592 (D. Del. Feb. 13, 1990) (adopting and affirming Magistrate Judge's Report and Recommendation).

<sup>4</sup> *Evans v. State*, 872 A.2d 539 (Del. 2005).

also complained, again, that his defense counsel had not informed him that he would be sentenced to life imprisonment. By order dated April 30, 2008, the Superior Court summarily denied Jackson's ineffective assistance of counsel claim as formerly adjudicated.<sup>5</sup> The Superior Court denied Jackson's retroactive sentencing claim as untimely.<sup>6</sup> This appeal followed.

(5) After careful consideration of the opening brief and the motion to affirm, it is clear that the Superior Court appropriately barred Jackson's postconviction motion as untimely pursuant to Rule 61(i)(1)<sup>7</sup> and as formerly adjudicated pursuant to Rule 61(i)(4).<sup>8</sup> The postconviction motion, filed nearly twenty years after Jackson's conviction became final,<sup>9</sup> is time-barred unless he can assert a retroactively applicable right that is newly recognized<sup>10</sup> or can demonstrate a miscarriage of justice because of a constitutional violation.<sup>11</sup> Jackson can do neither. Jackson was sentenced to a life sentence with the possibility of parole not

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<sup>5</sup> *State v. Jackson*, 2008 WL 1891712 (Del. Super.).

<sup>6</sup> *Id.*

<sup>7</sup> 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).

<sup>8</sup> 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").

<sup>9</sup> Jackson's conviction became final in March 1987 upon the expiration of the time for filing a direct appeal to this Court. Del. Super. Ct. Crim. R. 61(m)(1).

<sup>10</sup> Del. Super. Ct. Crim. R. 61(i)(1).

<sup>11</sup> Del. Super. Ct. Crim. R. 61(i)(5).

“a sentence of forty-five years” as he argues.<sup>12</sup> The *Evans* decision, which clarified whether an inmate who receives a paroleable life sentence is eligible for conditional release, did not serve to enhance Jackson’s sentence.<sup>13</sup> Reconsideration of Jackson’s formerly adjudicated ineffective assistance of counsel claim is not warranted in the interest of justice.<sup>14</sup>

(6) It is manifest on the face of Jackson’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/ Henry duPont Ridgely  
Justice

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<sup>12</sup> *But cf.* Del. Code Ann. tit. 11, § 4346(c) (2007) (providing that a life sentence is considered a forty-five year term for the purpose of determining parole eligibility).

<sup>13</sup> Both this Court and the District Court have rejected contentions that the *Evans* decision had the effect of retroactively increasing a prisoner’s sentence. See *Shockley v. Carroll*, 489 F. Supp.2d 397 (D. Del. 2007) (holding that the applicable statutory provision fairly warned petitioner that his 1982 life sentence would be considered a forty-five year term only for the purpose of determining his parole eligibility date); *Evans v. State*, 2005 WL 5118396 (Del. Supr.); *Nash v. State*, 2005 WL 2662770 (Del. Supr.).

<sup>14</sup> Del. Super. Ct. Crim. R. 61(i)(4).