

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PHILLIP JONES, III,	§
	§
Defendant Below-	§ No. 523, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID. No. 9705011087
Plaintiff Below-	§
Appellee.	§

Submitted: March 21, 2003
Decided: April 10, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices

ORDER

This 10th day of April 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Phillip Jones, III, filed an appeal from the Superior Court's August 30, 2002 and October 28, 2002 orders denying his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61¹ and denying his motion for transcripts at State expense. We find no merit to the appeal. Accordingly, we AFFIRM.

¹The motion was filed in July 2002.

(2) On July 8, 1997, Jones pleaded guilty to Maintaining a Vehicle for Keeping Controlled Substances and Conspiracy in the Second Degree. On the first charge, he was sentenced to 3 years incarceration at Level V. On the second charge, he was sentenced to 2 years incarceration at Level V, including participation in Residential Drug/Alcohol Treatment and the Key Program, to be suspended for 2 years at Level III probation upon successful completion of the Key Program.² Jones did not file an appeal from his convictions or sentences. He did, however, file a motion for reduction of sentence. The Superior Court denied the motion and this Court affirmed.³

(3) Jones filed postconviction motions in March 2000 and in September 2001 arguing in both that his counsel was ineffective for not objecting to the inclusion of the Key Program in his sentencing order on the ground that it had not been part of his plea agreement with the State. The Superior Court denied both motions and this Court affirmed.⁴

²On the same date, Jones was also found to have violated his probationary sentences for earlier robbery and conspiracy convictions.

³*Jones v. State*, Del. Supr., No. 524, 1999, Walsh, J. (Apr. 14, 2000).

⁴*Jones v. State*, Del. Supr., No. 495, 2000, Holland, J. (Jan. 16, 2001); *Jones v. State*, Del. Supr., No. 578, 2001, Steele, J. (Feb. 21, 2002).

(4) In this appeal, Jones claims that the Superior Court abused its discretion by: a) denying his postconviction motion as procedurally barred; b) denying his motion for transcripts; and c) re-sentencing him on October 8, 1998 and modifying his sentence on April 5, 1999 in his and his attorney's absence.⁵

(5) Jones' claims are unavailing. The Superior Court properly denied Jones' postconviction motion as time-barred⁶ and procedurally barred as repetitive⁷ and properly denied his claim concerning the Key Program as formerly adjudicated.⁸ There is, moreover, no evidence that consideration of the claims is warranted in the interest of justice⁹ and no evidence of a miscarriage of justice because of a constitutional violation.¹⁰ The Superior Court also properly denied Jones' request for transcripts. The record reflects

⁵In his reply brief, Jones also requests the Court to strike the State's answering brief because it was filed out of time without any legitimate reason.

⁶Because Jones' conviction became final in November 1997, any postconviction motion had to be filed by November 2000. SUPER. CT. CRIM. R. 61(i) (1).

⁷Jones' claim that the Superior Court improperly re-sentenced him and modified his sentence in his absence was not asserted in his previous postconviction motions. SUPER. CT. CRIM. R. 61(i) (2).

⁸SUPER. CT. CRIM. R. 61(i) (4).

⁹SUPER. CT. CRIM. R. 61(i) (2) and (4).

¹⁰SUPER. CT. CRIM. R. 61(i) (5).

that there were no court proceedings on October 8, 1998 and April 5, 1999 and, therefore, no transcripts of any such proceedings exist.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.¹¹

BY THE COURT:

/s/ Carolyn Berger
Justice

¹¹Jones' request that the Court strike the State's answering brief is denied since the State's motion for leave to file its answering brief out of time provided exceptional circumstances justifying the request. SUPR. CT. R. 15(b).