

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KELLY V. CHURCHILL,	§	
	§	No. 601, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0107004333
Appellee.	§	

Submitted: December 31, 2008

Decided: March 20, 2009

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

ORDER

This 20th day of March 2009, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Kelly V. Churchill, filed this appeal from the Superior Court's order of December 2, 2008 that summarily dismissed his second motion for postconviction relief pursuant to several subsections of Superior Court Criminal Rule 61(i).¹ The State of Delaware has filed a motion to affirm the Superior Court's judgment on the ground that it is

¹ See Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to postconviction relief).

manifest on the face of Churchill’s opening brief that the appeal is without merit.² We agree and affirm.

(2) In October 2001, a Superior Court jury convicted Churchill of Delivery of Cocaine. At sentencing, the Superior Court declared that Churchill was a habitual offender and sentenced him to life in prison without parole.³ On direct appeal, this Court affirmed Churchill’s conviction and sentence.⁴ Thereafter, the Superior Court denied Churchill’s first motion for postconviction relief. Churchill’s appeal from that decision was dismissed as untimely.⁵

(3) On appeal, Churchill contends that the Superior Court abused its discretion when dismissing his postconviction motion pursuant to Rule 61(i). Churchill argues that his sentencing claim raises a constitutional violation that warrants application of the Rule 61(i)(5) exception⁶ to a claim

² Del. Supr. Ct. R. 25(a).

³ Del. Code Ann. tit. 11, § 4214(b) (2007).

⁴ *Churchill v. State*, 2002 WL 31780197 (Del. Supr.).

⁵ *Churchill v. State*, 2005 WL 534920 (Del. Supr.).

⁶ *See* Del. Super. Ct. Crim. R. 61(i)(5) (providing that bars to relief are inapplicable to a jurisdictional claim “or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction”).

that is otherwise barred as untimely pursuant to Rule 61(i)(1)⁷ or as procedurally defaulted pursuant to Rule 61(i)(3).⁸ Second, Churchill claims that the claim was not formerly adjudicated pursuant to Rule 61(i)(4) as was determined by the Superior Court.⁹

(4) After careful consideration of Churchill’s opening brief and the State’s motion to affirm, we have concluded that the judgment of the Superior Court should be affirmed. It appears from the record that Churchill raised his sentencing claim, first, at the March 2002 sentencing hearing and then in his second postconviction motion, which was filed nearly six years after his conviction became final. In the absence of demonstrated cause and prejudice and any indication that reconsideration is warranted in the interest of justice, the untimely claim was appropriately summarily dismissed as procedurally barred without exception.

⁷ 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).

⁸ 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 “[c]ause for relief from the procedural default” and “[p]rejudice from violation of the movant’s rights”).

⁹ 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) It is manifest on the face of the opening brief that the appeal is without merit. The issues presented on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice