

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD TORRES,	§	
	§	No. 504, 2008
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware in and
	§	for New Castle County
STATE OF DELAWARE	§	
	§	ID No. 89003504D1
Appellee.	§	

Submitted: February 4, 2009

Decided: May 1, 2009

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

ORDER

This 1st day of May 2009, upon consideration of the briefs of the parties and their contentions at oral argument, it appears to the Court that:

(1) Appellant Donald Torres appeals from the Superior Court's denial of his motion for postconviction relief alleging that his mandatory sentence of life imprisonment without the possibility of parole amounts to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution. Torres contends that, beginning with the United States Supreme Court's decision in *Roper v. Simmons*,¹ standards of decency regarding the punishment of juveniles have evolved to the point that a sentence of life without parole for children aged fourteen and under is cruel and unusual. In the

¹ 543 U.S. 551 (2005).

alternative, Torres contends that the mandatory nature of the sentence imposed by 11 *Del. C.* § 4209 prohibited the sentencing court from considering his age and background in violation of his Eight Amendment rights as recognized in *Roper*. We find no merit to his arguments and affirm.

(2) Just before midnight on February 24, 1989, Torres, fourteen-years-old at the time, broke into the house of a neighbor, Harry Godt, knowing that Mr. Godt, his wife and two young children were asleep on the second floor. Torres spread kerosene over the kitchen floor and stairway to the second floor of the house. Then, using his lighter and some newspaper, he ignited the kerosene. From outside his apartment, Torres watched the flames spread through the Godt's home. He watched Mr. Godt run outside his home and then back inside in an attempt to save his family. Mr. Godt, his wife and two young children all perished in the fire.

(3) Torres was arrested two months later and was subsequently convicted of four counts of intentional murder in the first degree and four counts of felony murder. On April 3, 1990, the Superior Court sentenced Torres pursuant to 11 *Del. C.* § 4209(a), imposing the mandatory sentence of eight consecutive terms of life imprisonment without possibility of probation, parole, or any other reduction of sentence. We affirmed Torres's conviction and sentence on direct appeal.²

² *Torres v. State*, 1992 WL 53406 (Del. Feb. 7, 1992), *rehearing denied*.

(4) On August 20, 1993, Torres filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The Superior Court denied the motion and we affirmed.³ On July 21, 2004, Torres filed a second Rule 61 motion challenging his convictions for felony murder in light of our interpretation of 11 *Del. C.* § 636(a)(2) in *Williams v. State*.⁴ The Superior Court vacated the original sentence and resentenced Torres to four life terms for intentional murder. On January 30, 2008, Torres raised several claims of ineffective assistance of counsel in a third Rule 61 motion, which the Superior Court denied.

(5) This appeal concerns Torres's fourth motion for postconviction relief, filed on February 29, 2008 and alleging that (a) a sentence of life imprisonment without possibility of parole imposed upon a defendant who was aged fourteen or younger at the time of the offense was a *per se* violation of the Eighth Amendment's prohibition against cruel and unusual punishment; or (b) in the alternative, that the Eighth Amendment prohibited the mandatory imposition of such a sentence without consideration of the defendant's age, background, and other mitigating evidence. On September 2, 2008, the Superior Court summarily dismissed Torres's motion for postconviction relief on the basis that our decision in *Wallace v. State*⁵ foreclosed relief for Torres.⁶ This appeal followed.

³ *Torres v. State*, 1994 WL 144264 (Del. Apr. 15, 1994).

⁴ 818 A.2d 906 (Del. 2002).

⁵ 956 A.2d 630 (Del. 2008).

(6) We review the Superior Court’s denial of a motion for postconviction relief for abuse of discretion.⁷ However, claims of alleging a violation of the defendant’s constitutional rights are questions of law and are reviewed *de novo*.⁸

(7) Before addressing the substantive merits of a claim for postconviction relief, the Court must determine whether the defendant has satisfied the procedural requirements of Rule 61.⁹ Rule 61(i) establishes four procedural bars to motions for post conviction relief: (1) the motion must be filed within three years of a final judgment or conviction or a newly-recognized retroactive right;¹⁰ (2) any grounds for relief which were not asserted previously in any prior postconviction proceeding are barred; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules; and (4) any basis for relief must not have been formerly adjudicated in any proceeding. However, a defect under Rule 61(i)(1), (2), or (3) will not bar a movant’s “claim that the court lacked jurisdiction or ... a colorable claim that there was a miscarriage of justice because of a

⁶ *State v. Torres*, Del. Super., No. 89003504D1, Barbiarz, J. (Sept. 2, 2008).

⁷ *Outten v. State*, 720 A.2d 547, 551 (Del. 1998); *Dawson v. State*, 673 A.2d 1186, 1190, 1196 (Del. 1996) *cert. denied*, 519 U.S. 844 (1996).

⁸ *Outten*, 720 A.2d at 551; *Dawson*, 673 A.2d at 1190.

⁹ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁰ The motion must be filed within three years if the final order of conviction occurred before July 1, 2005, and within one year if the final order of conviction occurred on or after July 1, 2005. See SUPER. CT. CRIM. R. 61 annot. *Effect of amendments.*; *Ortiz v. State*, 918 A.2d 1171 (Del. 2007) (new one year statute of limitations is “only applicable to cases in which the conviction was obtained after July 1, 2005.”).

constitutional violation that undermined the fundamental legality, reliability, integrity, or fairness of the proceedings leading to the judgment of conviction.”¹¹

(8) Prior to its amendment on July 1, 2005, Rule 61(i)(1) provided that:

Time limitation. A motion for postconviction relief may not be filed more than three years after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than three years after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.¹²

Torres’s conviction became final on February 28, 1992, when our mandate issued following Torres’ direct appeal.¹³ Thus, Torres had until February 28, 1995 in which to timely file a motion for postconviction relief. Torres’s motion was filed on February 29, 2008 and, as such, is untimely by thirteen years. Torres, however, contends that his motion is premised on a retroactively applicable right, newly recognized by the United States Supreme Court decision in *Roper v. Simmons*.¹⁴ As *Roper* was decided on March 1, 2005, if that decision recognizes a relevant retroactive right, Torres’s motion is timely.

¹¹ SUPER. CT. CRIM. R. 61(i)(5); *see also* *Steckel v. State*, 882 A.2d 168, 171-72 (Del. 2005)(holding that the procedural bars are inapplicable only when there is a violation of constitutional protections as they existed at the time the original proceedings took place).

¹² SUPER. CT. CRIM. R. 61(i)(1); *see* SUPER. CT. CRIM. R. 61 annot. *Effect of amendments*.

¹³ SUPER. CT. CRIM. R. 61(m) (“A judgment of conviction is final for the purpose of this rule as follows: ... (2) If the defendant files a direct appeal or there is an automatic statutory review of a death penalty, when the Supreme Court issues a mandate or order finally determining the case on direct review”)

¹⁴ 543 U.S. 551 (2005).

(9) A decision does not introduce a new retroactive “right” under Rule 61(i)(1) unless it meets the standard set out by the United States Supreme Court in *Teague v. Lane*¹⁵ for determining whether a ruling announces a retroactively applicable “rule.”¹⁶ A plurality of the Court found that, in general, “a case announces a new rule when it breaks new ground or imposes a new obligation on the states or the Federal Government.”¹⁷ The *Teague* plurality explained that “a case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant’s conviction became final.”¹⁸

(10) Torres contends that the “retroactive” nature of the rule announced in *Roper* extends to the United States Supreme Court’s “newfound understanding of juvenile development and created a new framework for juvenile sentencing.” However, the “new rule” announced in *Roper v. Simmons* was that the Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.¹⁹ This rule applied retroactively to all juveniles then serving death sentences. Torres’s argument extends *Roper* well beyond its holding and while such an extension may form the

¹⁵ 489 U.S. 288, 301 (1989) (plurality).

¹⁶ See *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Flamer v. State*, 585 A.2d 736, 749 (Del. 1990)

¹⁷ *Teague*, 489 U.S. at 301.

¹⁸ *Id.* (emphasis in original).

¹⁹ 543 U.S. 551, 570-71 (2005).

basis for a good faith argument for an extension of existing law, it is insufficient to create a retroactively applicable right.

(11) *Roper* did not create a newly-recognized retroactive right applicable to Torres as required by Rule 61(i)(1) to prevent a procedural bar. As such, Torres' claim is not timely and is barred. The Superior Court did not err when it summarily dismissed Torres' motion for postconviction relief.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice