

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VICTOR HACKETT,	§	
	§	No. 90, 2009
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. 0609019128
Appellee.	§	

Submitted: May 4, 2009

Decided: May 5, 2009

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

ORDER

This 5th day of May 2009, upon consideration of the motion to remand and the motion under Rule 15(b) filed by the appellee-State of Delaware, it appears to the Court that:

(1) On December 4, 2006, the appellant, Victor Hackett, pled guilty to one count of Possession with Intent to Deliver Cocaine. Hackett was sentenced on February 16, 2007.

(2) On January 2, 2008, Hackett filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 and a letter requesting the appointment of counsel. As the time, Hackett's case was before this Court

on appeal from the Superior Court's December 12, 2007 denial of his motion for correction of an illegal sentence.

(3) By letter dated March 4, 2008, the Superior Court properly advised Hackett that it was without jurisdiction to consider his postconviction motion until this Court had decided his pending appeal and returned jurisdiction. By letter order dated March 10, 2008, the Superior Court denied Hackett's request for the appointment of counsel and advised him that the Court would "continue [its] review" of his postconviction motion.

(4) By order dated May 28, 2008, this Court affirmed the denial of Hackett's motion for correction of sentence. The mandate returning jurisdiction to the Superior Court issued on June 16, 2008.

(5) On September 17, 2008, Hackett filed an amendment to his January 2, 2008 postconviction motion. By order dated February 2, 2009, the Superior Court denied Hackett's amendment as untimely, indicating that his underlying postconviction motion had been denied by the Superior Court's letter of March 10, 2008.

(6) Hackett filed his opening brief and appendix on April 14, 2009. On April 20, 2009, the State filed a motion to remand. The State suggests that the Superior Court's February 2, 2009 denial of Hackett's

postconviction amendment, as untimely filed, was issued in error.¹ The State requests that this Court remand the appeal to permit the Superior Court to address Hackett's claims under Superior Court Criminal Rule 61. Hackett has not filed a response to the motion to remand.

NOW, THEREFORE, IT IS ORDERED, that the State's motion to remand is GRANTED. This appeal is hereby REMANDED to the Superior Court to conduct such proceedings that the Court determines in its discretion are necessary to address Hackett's claims under Superior Court Criminal Rule 61. The State's motion under Rule 15(b) is moot. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹ The State suggests, and we agree, that the Superior Court's February 2, 2009 order appears to have issued in reliance upon a docket entry on March 10, 2008, which mistakenly indicated that Hackett's motion for postconviction relief was "Denied."