

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTAN K. WASHINGTON,	§
	§ No. 193, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0104011899
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 27, 2009

Decided: June 5, 2009

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

**ORDER**

This 5<sup>th</sup> day of June 2009, 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 defendant-appellant, Christan K. Washington, filed an appeal from the Superior Court’s March 25, 2009 order adopting the Superior Court commissioner’s March 6, 2009 report, which recommended that Washington’s second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.<sup>1</sup> The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court

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<sup>1</sup> Del. Code Ann. tit. 10, § 512(b); Super. Ct. Crim. R. 62.

on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>2</sup> We agree and affirm.

(2) In November 2002, Washington was found guilty by a Superior Court jury of two counts of Robbery in the First Degree, one count of Reckless Endangering in the First Degree, and three weapon offenses. He was sentenced to a total of 10 years imprisonment at Level V. Washington's convictions were affirmed by this Court on direct appeal.<sup>3</sup> The Superior Court's denial of Washington's first postconviction motion also was affirmed by this Court.<sup>4</sup>

(3) In this appeal from the Superior Court's denial of his second postconviction motion, Washington claims that, at his trial, the prosecutor engaged in misconduct by asking him two improper questions on cross examination, thereby causing him prejudice and violating his due process rights.

(4) Before reviewing the merits of a petitioner's postconviction claims, a court must address whether any of the time and procedural bars of Rule 61 are applicable.<sup>5</sup> Because the record reflects that Washington's conviction became final in November 2003, his present postconviction

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<sup>2</sup> Supr. Ct. R. 25(a).

<sup>3</sup> *Washington v. State*, 836 A.2d 485 (Del. 2003).

<sup>4</sup> *Washington v. State*, Del. Supr., No. 480, 2007, Jacobs, J. (Mar. 17, 2008).

<sup>5</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

motion, filed in February 2009, is plainly time-barred.<sup>6</sup> Moreover, to the extent that his claim was raised in his first postconviction motion, it is now barred as formerly adjudicated.<sup>7</sup> To the extent that Washington failed to raise his claim in his first postconviction motion, it is now procedurally defaulted in the absence of any evidence of cause or prejudice.<sup>8</sup>

(5) To the extent that Washington argues that his claim should be considered because of a miscarriage of justice,<sup>9</sup> that argument also must fail. The record reflects that, during trial, the prosecutor asked him two questions on cross-examination to which Washington's attorney objected. The Superior Court ruled at sidebar that the questions were without foundation and immediately instructed the jury to disregard the prosecutor's questions and Washington's answers. Under these circumstances, Washington has failed to demonstrate any prejudice as a result of the prosecutor's questions and we, therefore, conclude that his claim of a miscarriage of justice is without merit.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

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<sup>6</sup> Super. Ct. Crim. R. 61(i) (1).

<sup>7</sup> Super. Ct. Crim. R. 61(i) (4).

<sup>8</sup> Super. Ct. Crim. R. 61(i) (3).

<sup>9</sup> Super. Ct. Crim. R. 61(i) (5).

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice