

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD F. MASSEY,	§
	§ No. 82, 2009
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 85002855DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 10, 2009

Decided: August 7, 2009

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

ORDER

This 7th day of August 2009, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Richard F. Massey, filed an appeal from the Superior Court's January 30, 2009 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) The record reflects that, in June 1978, Massey and his co-defendant, Robert Martin, were convicted of Felony Murder in the First Degree and a number of related offenses. Massey's convictions and

sentences were affirmed by this Court on direct appeal.¹ Massey's subsequent motion for a new trial was denied by the Superior Court. This Court affirmed the Superior Court's judgment.²

(3) In this appeal from the Superior Court's denial of his motion for postconviction relief, Massey claims that the Superior Court erred and abused its discretion a) when it rejected his claim that his conviction for felony murder³ should be vacated pursuant to *Williams v. State*, 818 A.2d 906 (Del. 2002); b) when it rejected his claim that the erroneous language of the jury instructions pertaining to second degree burglary⁴ improperly caused the jury to convict him of felony murder; and c) when it held him to a more stringent standard under Rule 61(i)(1) than has been applied to other litigants in postconviction proceedings, resulting in prejudice to him.

(4) When deciding a motion for postconviction relief, the Superior Court is first required to determine whether the movant has satisfied the procedural requirements of Rule 61.⁵ In this case, Massey's convictions became final in 1981 when this Court issued the mandate following its decision on Massey's direct appeal.⁶ Because Massey's convictions became

¹ *Martin v. State*, 433 A.2d 1025 (Del. 1981).

² *Massey v. State*, 541 A.2d 1254 (Del. 1988).

³ Del. Code Ann. tit. 11, § 636(a)(2).

⁴ Del. Code Ann. tit. 11, § 825.

⁵ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

⁶ Super. Ct. Crim. R. 61(m)(2).

final before Rule 61 was promulgated, he had until January 1, 1989 in which to file a postconviction motion.⁷ Massey's most recent motion, which was filed in June 2008, was plainly untimely, as the Superior Court determined.⁸

(5) Moreover, the record reflects that the indictment and the jury instructions given by the Superior Court at Massey's trial were consistent with the rule announced in *Williams*. Specifically, the indictment charged that Massey "in the course of and in furtherance of the commission of a felony, to wit: Burglary Second Degree . . . recklessly cause[d] the death of [the victim] by shooting her in the head with a gun." Likewise, the jury was instructed that, in order to find the defendant guilty, they had to find beyond a reasonable doubt that he "caused the death in the course of the commission of the felony, namely, Burglary in the Second Degree" and that he "caused the death in the furtherance of the commission of Burglary in the Second Degree" Because the language of the indictment and the jury instructions was fully consistent with the ruling in *Williams*, the "miscarriage of justice" exception of Rule 61(i)(5) does not assist Massey in

⁷ *Boyer v. State*, 562 A.2d 1186, 1187-88 (Del. 1989).

⁸ Massey argues that his claim is not untimely because, in 2007, this Court held, in *Chao v. State*, 931 A.2d 1000 (Del. 2007), that the *Williams* case, which reinterpreted the "in furtherance of" language of the felony murder statute, was to be retroactively applied. We disagree. Under the plain language of Rule 61(i)(1), the Superior Court correctly determined that Massey's motion also was untimely because it was filed more than 3 years after the *Williams* decision was issued in 2002.

overcoming the time bar of Rule 61(i)(1). We, therefore, conclude that Massey's first claim is without merit.

(6) Massey's second claim is that the erroneous language of the jury instructions relating to the underlying felony of second degree burglary caused the jury to improperly convict him of felony murder.⁹ The second degree burglary statute states that, "[a] person is guilty of burglary in the second degree when the person knowingly enters or remains unlawfully . . . [i]n a dwelling with intent to commit a crime therein" According to Massey, if this language had been quoted correctly by the Superior Court in its jury instructions, the jury would have understood that he could not be found guilty of felony murder because, in accordance with the evidence presented at trial, the underlying burglary was "complete immediately upon entry" into the home where the murder occurred.

(7) Massey's interpretation of the law is incorrect. The Superior Court properly determined that a defendant may still be convicted of felony murder, based upon the underlying felony of second degree burglary, even though the victim was killed after the defendant entered the victim's home in

⁹ Massey argues that this claim, like his first, survives the time bar of Rule 61(i)(1) under the "miscarriage of justice" exception of Rule 61(i)(5).

order to burglarize it.¹⁰ In this case, the Superior Court's determination that the murder was accomplished in order to facilitate the burglary was fully supported by the evidence presented at trial¹¹ and fully in accordance with the language of the felony murder statute.¹² We, therefore, conclude that Massey's second claim is without merit.

(8) Massey's third, and final, claim is that the Superior Court held him to a higher standard under Rule 61(i)(1) than other litigants in postconviction proceedings, resulting in prejudice to him. He cites to four Superior Court cases in support of his claim.¹³ Because the decision of the Superior Court in this case was fully consistent with Delaware law and free of any abuse of discretion, and because the cases cited are either factually distinguishable or the movant did not prevail on his postconviction claims, we conclude that Massey's claim of prejudice as a result of the Superior Court's application of an inappropriately stringent standard to him to be without merit.¹⁴

¹⁰ *Zarychta v. State*, 44 S.W. 3d 155, 169-70 (Tex. Ct. App. 2001); *State v. Dennison*, 801 P.2d 193, 197 (Wash. 1990).

¹¹ *Id.*

¹² *Spielberg v. State*, 558 A.2d 291, 293, 295 (Del. 1989); *Coastal Barge Corp. v. Coastal Zone Indust. Control Bd.*, 492 A.2d 1242, 1247 (Del. 1985).

¹³ *State v. Hill*, 2008 WL 361227 (Del. Super.); *State v. Blizzard*, 2008 WL 5206769 (Del. Super.); *State v. Outten*, 2008 WL 100117 (Del. Super.); *State v. Fatir*, Del. Super, Cr. ID. No. IN75-06-092, Slight, J. (Dec. 11, 2007).

¹⁴ Massey's claim that the Superior Court violated the Equal Protection Clause also is without merit. *Moyer v. State*, 452 A.2d 948, 950 (Del. 1982).

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice