

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AL-HAJJ MALIK LEWIS,	§	
	§	No. 244, 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. 0107006531
Appellee.	§	

Submitted: June 17, 2009

Decided: September 15, 2009

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

**ORDER**

This 15<sup>th</sup> day of September 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 appellant, Al-Hajj Malik Lewis, filed this appeal from the Superior Court's summary denial of his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The appellee, State of Delaware, has moved to affirm the judgment of the

Superior Court on the ground that it is manifest on the face of Lewis' opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) In February 2002, Lewis pled guilty to one count each of Murder in the Second Degree and Possession of a Firearm by a Person Prohibited. The Superior Court sentenced Lewis to a total of twenty-six years at Level V suspended after eleven years for Level IV and probation. Lewis did not file a direct appeal.

(3) In October 2006, more than three years after his convictions became final, Lewis filed a motion for postconviction relief. Lewis contended that his defense counsel failed to investigate his case and pressured him into pleading guilty. The Superior Court summarily denied the motion as untimely under Rule 61(i)(1) and did not reach the merit of Lewis' ineffective assistance of counsel claims. On appeal, this Court affirmed.<sup>2</sup>

(4) In September 2008, Lewis filed his third motion for postconviction relief.<sup>3</sup> Lewis raised the same claims that he did in his first postconviction motion. By order dated April 21, 2009, the Superior Court

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<sup>1</sup> Del. Supr. Ct. R. 25(a).

<sup>2</sup> *Lewis v. State*, 2007 WL 2010841 (Del. Supr.).

<sup>3</sup> The record reflects that Lewis' second motion for postconviction relief, filed on October 4, 2007, was thereafter withdrawn "without prejudice," *i.e.*, without procedural penalties. *State v. Lewis*, Del. Super. Ct., Cr. ID No. 0107006531, Del Pesco, J. (Oct. 30, 2007).

denied the motion as untimely pursuant to Rule 61(i)(1) and as formerly adjudicated pursuant to Rule 61(i)(4). This appeal followed.

(5) It is well-settled that the Superior Court and this Court must address the procedural requirements of Rule 61 before considering the merit of a postconviction motion.<sup>4</sup> In this case, the Superior Court determined that there was no support for Lewis' untimely postconviction motion raising formerly adjudicated claims of ineffective assistance of counsel and no basis for relief from those procedural bars.

(6) After careful consideration of Lewis' opening brief and the State's motion to affirm, we have concluded that the judgment of the Superior Court should be affirmed. Lewis raised his ineffective assistance of counsel claims in his first postconviction motion, which was filed more than three years after his conviction became final.<sup>5</sup> In the absence of a claim that the court lacked jurisdiction, a colorable claim that there was a miscarriage of justice because of a constitutional violation, or any indication that reconsideration of the formerly adjudicated claims was warranted in the

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<sup>4</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (citing *Harris v. Reed*, 489 U.S. 255 (1989)).

<sup>5</sup> See Del. Super. Ct. Crim. R. 61(i)(1) (barring motion filed more than three years after judgment of conviction is final) (amended 2005 to reduce limitations period to one year for conviction final after July 1, 2005)).

interest of justice, Lewis' untimely postconviction motion was appropriately dismissed as procedurally barred without exception.<sup>6</sup>

(7) 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/ Henry duPont Ridgely  
Justice

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<sup>6</sup> See Del. Super. Ct. Crim. R. 61(i)(4) (barring any formerly adjudicated claim unless reconsideration of the claim is warranted in the interest of justice); Del. Super. Ct. Crim. R. 61(i)(5) (barring untimely postconviction motion except for a jurisdictional claim or a colorable claim of a miscarriage of justice because of a constitutional violation).