

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VINCENT CLEVELAND,	§
	§ No. 380, 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. 0301006634
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 16, 2009

Decided: November 12, 2009

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

**ORDER**

This 12<sup>th</sup> day of November 2009, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Vincent Cleveland, filed an appeal from the Superior Court's June 23, 2009 order adopting the April 22, 2009 report of the Superior Court Commissioner,<sup>1</sup> which recommended that Cleveland's postconviction motion pursuant to Superior Court Criminal Rule 61 be denied. We find no merit to the appeal. Accordingly, we affirm.

(2) In June 2003, a Superior Court jury found Cleveland guilty of Trafficking in Cocaine and Possession With Intent to Deliver Cocaine. He

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

was sentenced to a total of 15 years of Level V incarceration, to be suspended after 10 years for decreasing levels of supervision. This Court affirmed Cleveland's convictions on direct appeal.<sup>2</sup>

(3) In this appeal from the Superior Court's denial of his second motion for postconviction relief, Cleveland claims that a) his attorney provided ineffective assistance at trial by failing to raise the defense of entrapment; b) his attorney also provided ineffective assistance by failing to object to the fact that the chemist who analyzed the cocaine was not called as a witness by the State; and c) he is actually innocent. To the extent that Cleveland attempts to raise claims that were not raised in the Superior Court in the first instance, we decline to address them for the first time in this appeal.<sup>3</sup>

(4) In postconviction proceedings, the Superior Court must first determine whether the procedural requirements of Rule 61 have been met before addressing the merits of the movant's claims.<sup>4</sup> Here, Cleveland's claims are plainly barred by Rule 61(i)(1), which prohibits the Superior Court from considering a postconviction motion filed outside the applicable time period. Under the version of Rule 61(i)(1) in effect at the time

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<sup>2</sup> *Cleveland v. State*, Del. Supr., No. 445, 2003, Steele, J. (Jan. 27, 2004).

<sup>3</sup> Supr. Ct. R. 8. Cleveland appears to raise the claim, for the first time in this appeal, that the jury should have been instructed on a lesser-included offense.

<sup>4</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

Cleveland's convictions became final in February 2004, Cleveland had 3 years in which to file his postconviction motion. Because Cleveland did not file his postconviction motion until March 2009, more than 2 years after the 3-year time deadline, his claims are time-barred. Moreover, because the claims raised in his current motion were not raised in his first motion, his current motion is procedurally barred as repetitive under Rule 61(i)(2). Finally, because Cleveland has offered no reason why his claims should be considered on their merits in the interest of justice,<sup>5</sup> advances no colorable claim of a miscarriage of justice due to a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction,<sup>6</sup> and offers no valid support for his claim of actual innocence, the Superior Court's denial of his motion for postconviction relief must be affirmed.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>5</sup> Super. Ct. Crim. R. 61(i)(2).

<sup>6</sup> Super. Ct. Crim. R. 61(i)(5).