

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CRAIG O. JACKSON,	§	
	§	No. 130, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
	§	New Castle County
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 30604822DI
Appellee.	§	

Submitted: June 22, 2012
Decided: September 18, 2012

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

ORDER

This 18th day of September 2012, upon consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) The appellant, Craig O. Jackson, filed this appeal from the Superior Court's February 23, 2012 order denying his third motion for postconviction relief. We have concluded that there is no merit to the appeal and affirm the judgment of the Superior Court.

(2) The relevant background of this appeal is as follows. Jackson was sentenced to life in prison in 1987. The following year Jackson filed his first postconviction motion and a federal habeas corpus petition alleging that his life sentence should be vacated because his defense counsel had led him to believe that

he would only have to serve forty-five years. By order dated March 21, 1988, the Superior Court denied the postconviction motion, and on appeal, this Court affirmed.¹ Thereafter by order dated February 13, 1990, the District Court denied the habeas petition.²

(3) Jackson filed his second postconviction motion nearly twenty years later in 2008. In it, Jackson raised the same ineffective claim that he had raised without success in his first postconviction motion and federal habeas petition. Jackson also claimed an ex post facto violation, arguing that this Court's 2005 decision in *Evans v. State* had retroactively increased his sentence.³ By order dated April 30, 2008, the Superior Court denied both the ineffective counsel and ex post factor claims as without merit and/or as procedurally barred under Superior Court Criminal Rule 61 (hereinafter "Rule 61"). On appeal, we affirmed the Superior Court's judgment.⁴

(4) Jackson next raised the ineffective counsel and ex post facto claims in his third postconviction motion filed on June 29, 2011. Jackson also claimed that he was entitled to good time credits to achieve conditional release. On February 3, 2012, a Superior Court Commissioner issued a report recommending that Jackson's claims should be procedurally barred as untimely under Rule 61(i)(1)

¹ *Jackson v. State*, 1988 WL 93402 (Del. Supr.).

² *Jackson v. Redman*, No. 88-592 (D. Del. Feb. 13, 1990) (adopting and affirming Magistrate Judge's Report and Recommendation).

³ *Evans v. State*, 872 A.2d 539 (Del. 2005).

⁴ *Jackson v. State*, 2008 WL 4892732 (Del. Supr.).

and/or as formerly adjudicated under Rule 61(i)(4). On February 23, 2012, the Superior Court adopted the Commissioner's report and denied Jackson's motion. This appeal followed.

(5) When reviewing the Superior Court's denial of postconviction relief, this Court first must consider the procedural requirements of Rule 61 before addressing any substantive issues.⁵ In this case it is clear that the substance of Jackson's ineffective counsel and ex post facto claims has been considered and rejected in prior proceedings and that both claims have been procedurally barred. Both claims, therefore, continue to be procedurally barred unless Jackson can demonstrate that either claim warrants consideration under a Rule 61(i) exception.

(6) Having carefully considered the parties' briefs and the Superior Court record, we conclude that Jackson's ineffective counsel and ex post facto claims do not warrant further consideration "in the interest of justice,"⁶ because of "a miscarriage of justice,"⁷ or on the basis of a newly-recognized "retroactively applicable right."⁸ We also conclude, as did the Superior Court, that Jackson's claim to good time credit is procedurally barred as untimely under Rule 61(i)(1)

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

⁶ *See* Del. Super. Ct. Crim. R. 61(i)(4) (barring a formerly adjudicated claim unless consideration is warranted in the interest of justice).

⁷ *See* Del. Super. Ct. Crim. R. 61(i)(5) (providing that the procedural time bar of (i)(1) shall not apply to a colorable claim of a miscarriage of justice because of a constitutional violation).

⁸ *See* Del. Super. Ct. Crim. R. 61(i)(1) (providing that a postconviction motion asserting a retroactively applicable right is not time-barred if it is filed within one year after such right is "newly recognized" by the Delaware Supreme Court or the United States Supreme Court).

without exception. Jackson was properly sentenced to a life term in 1987 prior to the 1989 Truth in Sentencing Act. As such, Jackson is not and never has been entitled to conditional release or a reduction of his sentence by good time credits.⁹

(7) Finally, to the extent Jackson attempts to argue that the recent United States Supreme Court decisions in *Lafler v. Cooper* and *Missouri v. Frye* create a newly-recognized retroactively-applicable right, we decline to consider those arguments as part of this appeal.¹⁰ The *Lafler v. Cooper* and *Missouri v. Frye* decisions issued in March 2012 subsequent to the Superior Court's decision in Jackson's case. As a result, Jackson's arguments were not presented to the Superior Court in the first instance and are not ripe for review by this Court.¹¹

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁹ See *Weaver v. State*, 2006 WL 1911330 (Del. Supr.) (citing *Evans v. State*, 872 A.2d 539 (Del. 2005)).

¹⁰ *Lafler v. Cooper*, 132 S. Ct. 1376 (2012); *Missouri v. Frye*, 132 S. Ct. 1399 (2012).

Both decisions address a defense counsel's duty to effectively communicate a plea offer.

¹¹ Del. Supr. Ct. R. 8.