

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH YOUNG,	§
	§
Defendant Below-	§ No. 462, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0701026598
Plaintiff Below-	§
Appellee.	§

Submitted: April 16, 2010  
Decided: June 28, 2010

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

**ORDER**

This 28<sup>th</sup> day of June 2010, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Joseph Young, filed this appeal from the Superior Court's summary dismissal of his first motion for postconviction relief. After careful consideration of the parties' contentions on appeal, we find no error in the Superior Court's judgment. Accordingly, we affirm.

(2) The record reflects that Young was convicted following a suppression hearing and bench trial based on stipulated facts in July 2007. The Superior Court found him guilty of trafficking in more than 100 grams of cocaine and sentenced him to fourteen years at Level V imprisonment to be

suspended after serving eight years for decreasing levels of supervision. This Court affirmed Young's convictions and sentence on direct appeal.<sup>1</sup> The mandate on appeal was issued on April 18, 2008.<sup>2</sup> Young filed his motion for postconviction relief on May 11, 2009. The Superior Court summarily dismissed Young's motion as untimely because it was not filed within one year after the issuance of the mandate on appeal<sup>3</sup> and because Young had failed to establish a "miscarriage of justice"<sup>4</sup> in order to overcome the procedural bar.

(3) Young raises five issues in his opening brief on appeal. All five issues address the merits of his postconviction claims, which challenge the State's reliance upon information supplied by a confidential informant as well as the constitutionality of the search and seizure leading to his arrest. None of the issues in Young's opening brief were presented to the Superior Court for review as part of his postconviction motion. Thus, to the extent Young has failed to brief claims that he raised below, those claims are deemed waived.<sup>5</sup>

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<sup>1</sup> *Young v. State*, 2008 WL 880164 (Del. Apr. 2, 2008).

<sup>2</sup> In its order denying Young's motion for postconviction relief, the Superior Court mistakenly asserted that the Supreme Court mandate issued on April 23, 2008. In fact, this Court issued the mandate on April 18, 2008. The Superior Court received and filed the mandate on April 23, 2008.

<sup>3</sup> *See* Del. Super. Ct. Crim. 61(i)(1).

<sup>4</sup> *See* Del. Super. Ct. Crim. R. 61(i)(5).

<sup>5</sup> *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

(4) Before we can address the substantive merits of Young's claims on appeal, this Court must first consider the procedural requirements of Superior Court Criminal Rule 61.<sup>6</sup> Rule 61(i)(1) provides that a motion for postconviction relief may not be filed more than one year after the judgment of conviction is final. The Superior Court found in this case that Young's motion was time-barred and that Young had failed to establish that his claims warranted consideration under the fundamental fairness exception of Rule 61(i)(5).

(5) In his opening brief, Young does not challenge the correctness of the Superior Court's holding, nor do we find any basis for such a challenge. Young's motion for postconviction relief clearly was not filed within the one-year time limitation of Rule 61(i)(1). Moreover, Young has failed to establish that consideration of his untimely claims is warranted under Rule 61(i)(5).

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

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>6</sup>*Younger v. State*, 580 A.2d 552, 554 (Del. 1990).