

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                                |
|--------------------|--------------------------------|
| AARON CARTER,      | §                              |
|                    | § No. 732, 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. 0105020018A       |
|                    | §                              |
| Plaintiff Below-   | §                              |
| Appellee.          | §                              |

Submitted: May 28, 2010

Decided: August 2, 2010

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

**ORDER**

This 2<sup>nd</sup> day of August 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Aaron Carter, filed an appeal from the Superior Court’s August 18, 2009 order, which adopted the July 27, 2009 report of the Superior Court Commissioner recommending that Carter’s second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be summarily dismissed.<sup>1</sup> We find no merit to the appeal. Accordingly, we affirm.

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

(2) The record reflects that, in March 2002, Carter was found guilty by a Superior Court jury of 1 count of Burglary in the First Degree, 3 counts of Robbery in the First Degree, 5 counts of Kidnapping in the Second Degree, 3 counts of Aggravated Menacing, 12 counts of Possession of a Firearm During the Commission of a Felony, and 1 count each of Conspiracy in the Second Degree and Wearing a Disguise During the Commission of a Felony. He was sentenced to a total of 57 years of Level V incarceration, to be followed by probation. Carter's convictions were affirmed by this Court on direct appeal.<sup>2</sup> On Carter's first postconviction motion, the Superior Court vacated his convictions of Aggravated Menacing and the associated weapon offense, but denied relief in all other respects. This Court affirmed.<sup>3</sup>

(3) In this appeal from the denial of his second postconviction motion, Carter claims that the Superior Court erred and abused its discretion by summarily dismissing his motion as time-barred. Carter contends that his untimely motion should be considered on its merits because of various violations of his constitutional rights, primarily the admission into evidence of an out-of-court statement at his 2002 trial.

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<sup>2</sup> *Carter v. State*, Del. Supr., No. 182, 2002, Steele, J. (Oct. 16, 2002).

<sup>3</sup> *Carter v. State*, Del. Supr., No. 166, 2006, Holland, J. (Oct. 27, 2006).

(4) Prior to considering the merits of a postconviction claim, the Superior Court must first consider the procedural requirements of Rule 61.<sup>4</sup> At the time of Carter's trial and direct appeal, Rule 61(i)(1) required that a motion for postconviction relief be filed within 3 years of the date the conviction became final. Carter's conviction became final in November 2002, when this Court issued its mandate.<sup>5</sup> Carter's second postconviction motion, filed in June 2009, was clearly untimely. This default may be excused only if the defendant asserts a newly-recognized, retroactively applicable right or if the defendant demonstrates that his conviction was the product of a miscarriage of justice.<sup>6</sup>

(5) Carter seeks to avoid the time bar by arguing that the admission into evidence of an out-of-court statement by one Larry Washington, who informed police of Carter's possible involvement in the crimes, constituted a violation of the Confrontation Clause of the United States Constitution.<sup>7</sup> However, the record reflects that Larry Washington was a witness at Carter's trial and was subject to cross-examination by the defense. As such, the rulings set forth in *Crawford* are not relevant to Carter's case and the

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<sup>4</sup> *Younger v. State*, 588 A.2d 1121, 1127 (Del. 1991).

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

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

<sup>7</sup> *Crawford v. Washington*, 541 U.S. 36 (2004) (the admission into evidence of a testimonial out-of-court statement violates the confrontation clause when the declarant is not a witness at trial and is not subject to cross-examination).

Superior Court properly dismissed this claim. Carter's other claims of constitutional violations are that he was dressed in prison garb during the trial; his attorney was ineffective for failing to investigate the case and for failing to call an alibi witness; he was not given a lesser-included offense instruction; and that the accomplice liability instruction was erroneous. However, Carter has failed to offer any factual or legal support for any of these claims. As such, we conclude that the Superior Court correctly dismissed them.

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice