

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEVEN J. LUCAS,	§
	§ No. 183, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID Nos. 9605020926
	§ 9604013921
Plaintiff Below-	§
Appellee.	§

Submitted: May 26, 2010

Decided: August 2, 2010

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

ORDER

This 2nd day of August 2010, 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 defendant-appellant, Steven J. Lucas, filed an appeal from the Superior Court's October 29, 2009 order adopting the October 2, 2009 report of the Superior Court Commissioner, which recommended that Lucas' third motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ The plaintiff-appellee, the State of Delaware, has

¹ Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62. Lucas also appeals the Superior Court's March 8, 2010 denial of his motion for reconsideration.

moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.²

We agree and affirm.

(2) The record reflects that, in May 1997, Lucas pleaded guilty to Attempted Assault in the First Degree, Possession of a Firearm During the Commission of a Felony, Assault in the Second Degree, and Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced to a total of 43 years incarceration at Level V, to be suspended after 37 years for decreasing levels of supervision. Lucas did not file a direct appeal from his convictions. He subsequently filed two motions for postconviction relief, both of which were unsuccessful.

(3) In this appeal from the Superior Court's denial of his third postconviction motion, Lucas claims that a) his defense counsel provided ineffective assistance by advising him to plead guilty to an offense that had been dismissed; b) his guilty plea was involuntary; and c) his sentence for possession of a deadly weapon during the commission of a felony is illegal.

(4) Before addressing the merits of claims raised in postconviction motions, the Superior Court must first determine whether the procedural

² Supr. Ct. R. 25(a).

requirements of Rule 61 have been met.³ The record reflects that Lucas' convictions became final in August 1997.⁴ His latest motion, filed in August 2009, is clearly time-barred.⁵ Moreover, Lucas' claims were previously adjudicated in his first postconviction motion.⁶ In order to overcome the time and procedural bars, Lucas must demonstrate the existence of a retroactively applicable right that is newly-recognized after the judgment of conviction becomes final or a colorable claim of a miscarriage of justice.⁷ Lucas does neither. In the absence of any factual or legal support for overcoming the time and procedural bars of Rule 61, we conclude that the Superior Court correctly denied Lucas' motion for postconviction relief.⁸

(5) It is manifest on the face of the opening brief that the appeal is without merit because the issues presented are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴ Super. Ct. Crim. R. 61(m)(1).

⁵ Super. Ct. Crim. R. 61(i)(1).

⁶ Super. Ct. Crim. R. 61(i)(4); *Lucas v. State*, Del. Supr., No. 91, 2003, Holland, J. (Aug. 20, 2003).

⁷ Super. Ct. Crim. R. 61(i)(5).

⁸ Moreover, we conclude that the Superior Court properly denied Lucas' motion for reconsideration.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm pursuant to Supreme Court Rule 25(a) is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice