

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SAMUEL LAYTON,	§
	§ No. 173, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0205011859
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 24, 2010
Decided: August 3, 2010

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

ORDER

This third 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, Samuel Layton, filed an appeal from the Superior Court’s March 12, 2010 order denying his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has 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.¹ We agree and affirm.

(2) The record reflects that, in December 2002, Layton was found guilty by a Superior Court jury of four counts of Rape in the First Degree, six counts of Unlawful Sexual Contact in the Second Degree, and one count of Continuous Sexual Abuse of a Child. He was sentenced to a total of seventy-two years of Level V incarceration. This Court affirmed Layton's convictions on direct appeal.² Layton, through counsel, filed his first postconviction motion on the grounds of multiple instances of ineffective assistance of counsel at trial and on direct appeal. The Superior Court denied the motion and this Court affirmed the Superior Court's judgment.³

(3) In this appeal from the Superior Court's denial of his second postconviction motion, Layton claims that the Superior Court a) abused its discretion when it refused to conduct an evidentiary hearing on various issues alleged in his motion; and b) committed legal error when it denied his various contentions of ineffective assistance of counsel.

(4) When considering a postconviction motion, the Superior Court must apply the procedural requirements of Rule 61 before reaching the

¹ Supr. Ct. R. 25(a).

² *Layton v. State*, Del. Supr., No. 74, 2003, Jacobs, J. (Aug. 4, 2003).

³ *Layton v. State*, Del. Supr., No. 55, 2007, Berger, J. (Sept. 7, 2007).

merits of the claims.⁴ Layton's convictions became final approximately seven years ago.⁵ As such, his claims are clearly time-barred.⁶ To the extent that Layton's claims have previously been adjudicated, they are procedurally barred in this proceeding.⁷ To the extent that his claims were not raised in his previous postconviction motion, they are barred as repetitive.⁸ To the extent that his claims were not raised in the proceedings leading to the judgment of conviction, they are procedurally defaulted.⁹ Finally, to the extent that Layton fails to raise claims in this appeal that were raised below, any such claims are waived and will not be considered in this appeal.¹⁰ Moreover, Layton has failed to demonstrate a miscarriage of justice with respect to any of his claims that would overcome the time and procedural bars.¹¹

(5) Even viewing Layton's claims on the merits, they are unavailing. The decision whether to hold an evidentiary hearing in the context of a postconviction proceeding is within the discretion of the

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

⁵ Super. Ct. Crim. R. 61(m)(2).

⁶ Super. Ct. Crim. R. 61(i)(1).

⁷ Super. Ct. Crim. R. 61(i)(4).

⁸ Super. Ct. Crim. R. 61(i)(2).

⁹ Super. Ct. Crim. R. 61(i)(3).

¹⁰ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

¹¹ Super. Ct. Crim. R. 61(i)(5).

Superior Court.¹² There is no evidence that the Superior Court abused its discretion by not holding a hearing in this case. Layton also claims that the Superior Court committed legal error when it denied his allegations of ineffective assistance. However, our review of the Superior Court's legal analysis reveals no error. We agree with the Superior Court's determination that Layton's conclusory allegations of ineffective assistance of counsel fail to demonstrate any actual prejudice.¹³

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

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

¹² Super. Ct. Crim. R. 61(h)(1) and (3).

¹³ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).