

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CURTIS E. McALLISTER,	§
	§ No. 645, 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. 9703008409
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 16, 2010

Decided: August 30, 2010

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 30th 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, Curtis E. McAllister, filed an appeal from the Superior Court's October 6, 2009 order adopting the Superior Court Commissioner's September 16, 2009 report, which recommended that McAllister's third postconviction motion pursuant to Superior Court Criminal Rule 61 be denied.¹ We agree and affirm.

(2) The record reflects that, in February 2000, McAllister was found guilty by a Superior Court jury of Trafficking in Heroin, Possession

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

With Intent to Deliver Heroin, Possession of Drug Paraphernalia, Maintaining a Dwelling for Keeping Controlled Substances and Conspiracy in the Second Degree. He was sentenced as a habitual offender² to life in prison. McAllister's convictions were affirmed on direct appeal.³ McAllister 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, McAllister claims that a) probation officers violated departmental regulations during the search that produced the illegal drugs upon which his conviction was based; and b) his trial attorney provided ineffective assistance when he failed to advance that argument at the suppression hearing. McAllister contends that the procedural bars do not apply to these claims.

(4) When considering a postconviction motion, the Superior Court must first apply the procedural requirements of Rule 61 before addressing the substantive merits of the claims.⁴ In this case, McAllister's claims are clearly time-barred.⁵ Moreover, because this was McAllister's third

² Del. Code Ann. tit. 11, §4214(b).

³ *McAllister v. State*, 807 A.2d 1119 (Del. 2002).

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

⁵ Super. Ct. Crim. R. 61(i)(1).

postconviction motion, it is barred as repetitive.⁶ Finally, because the issue raised by McAllister in his latest motion was previously addressed by this Court on direct appeal, it is barred as formerly adjudicated.⁷

(5) In order to overcome the time and procedural bars, McAllister argues that this Court's decision in *Culver v. State*, 956 A.2d 5 (Del. 2008) creates a new rule that must be applied retroactively.⁸ McAllister's argument fails for two reasons. First, *Culver* did not create a new rule, but merely applied the well-established doctrine that an uncorroborated anonymous tip does not provide "reasonable suspicion" to conduct a residential search.⁹ Second, the factual basis for the *Culver* decision is clearly distinguishable from the facts of the present case. While *Culver* dealt with an "anonymous" tip from a police officer to a probation officer, in this case the tip concerning McAllister, a probationer, came from a known informant directly to the probation officers without any action on the part of the police. Moreover, unlike the situation in *Culver*, the tip contained details that were independently corroborated. Finally, McAllister attempted to flee the scene once he realized that the police were about to conduct the search,

⁶ Super. Ct. Crim. R. 61(i)(2).

⁷ Super. Ct. Crim. R. 61(i)(4).

⁸ Super. Ct. Crim. R. 61(i)(5).

⁹ *Culver v. State*, 956 A.2d at 11-14.

further bolstering the probation officers' suspicions that McAllister had violated his probation by engaging in illegal activity.

(6) McAllister's claim that his trial counsel provided ineffective assistance is likewise unavailing. Because the substantive claim made by McAllister is meritless, his attorney cannot be faulted for not having asserted it during the suppression proceedings.¹⁰

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹⁰ *Rogers v. State*, Del. Supr., No. 247, 2004, Berger, J. (Nov. 30, 2004); *Strickland v. Washington*, 466 U.S. 668 (1984).