

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAHEEM POTEET,	§
	§ No. 187, 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 No. 0204003487
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 20, 2010

Decided: September 24, 2010

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

ORDER

This 24th day of September 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Raheem Poteet, filed an appeal from the Superior Court's March 9, 2010 order adopting the Superior Court Commissioner's February 17, 2010 report, which recommended that Poteet's second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ We find no merit to the appeal. Accordingly, we affirm.

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

(2) The record reflects that, in December 2002, Poteet was found guilty by a Superior Court jury of 6 counts of Possession of a Firearm During the Commission of a Felony, 3 counts of Robbery in the First Degree, 3 counts of Aggravated Menacing, 2 counts of Conspiracy in the Second Degree, 2 counts of Wearing a Disguise, and a single count of Endangering the Welfare of a Child. He was sentenced to a total of 24 years of Level V incarceration. On direct appeal, this Court held that the 3 aggravated menacing convictions and the 3 related weapon convictions were merged with the first degree robbery convictions and remanded the matter back to the Superior Court for re-sentencing.² On remand, the Superior Court re-sentenced Poteet in accordance with this Court's ruling. The Superior Court's subsequent denial of Poteet's first postconviction motion was affirmed by this Court.³

(3) In this appeal from the Superior Court's denial of his second postconviction motion, Poteet claims that a) the out-of-court statements of his co-defendants were improperly admitted into evidence; b) he was improperly tried in prison garb; c) the jury should have been instructed,

² *Poteet v. State*, 840 A.2d 599 (Del. 2003).

³ *Poteet v. State*, Del. Supr., No. 219, 2005, Steele, C.J. (Nov. 23, 2005).

pursuant to Del. Code Ann. tit. 11, §274,⁴ to consider his individual accountability for the use of the firearm during the robbery; and d) the Superior Court abused its discretion when it ruled on his postconviction motion before it reviewed his objections to the Commissioner's report.

(4) This Court has directed that, prior to considering the merits of claims asserted in postconviction proceedings, the Superior Court must first determine whether the procedural requirements of Rule 61 have been met.⁵ In this case, the record reflects that Poteet's conviction became final in 2004.⁶ However, Poteet's second postconviction motion was not filed until 2009---well beyond the 3 year limitation provided in Rule 61(i)(1).⁷ Poteet's second postconviction motion also is procedurally barred under Rule 61(i)(2) as repetitive. In order to avoid the time and procedural bars of Rule 61, Poteet must demonstrate either that his conviction was the result of a manifest injustice or that a new rule, retroactively applicable to his case, renders his conviction unjust.⁸

⁴ Under §274, if a defendant is found guilty of a criminal offense under a theory of accomplice liability, and if the offense is divided into degrees, the jury must determine the defendant's individual mental state and individual degree of culpability. *Johnson v. State*, 711 A.2d 18, 29-30 (Del. 1998).

⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁶ Super. Ct. Crim. R. 61(m)(2).

⁷ The 3 year time limitation has since been reduced to 1 year.

⁸ Super. Ct. Crim. R. 61(i)(5).

(5) Arguing that his first claim should not be barred, Poteet contends that the “new rule” regarding the out-of-court statements of non-testifying declarants established by *Crawford v. Washington*, 541 U.S. 36 (2004) must be applied to him retroactively. Consequently, he argues, the inculpatory out-of-court statements of his co-defendants should not have been admitted into evidence at his trial. However, as the record reflects, both of Poteet’s co-defendants testified at trial and were subject to cross-examination by the defense, making the *Crawford* analysis inapplicable to his case.

(6) Poteet next contends that he was improperly tried in prison garb. However, he offers no explanation for why this claim was not pursued at trial, on direct appeal or in his first postconviction motion and no explanation for why the procedural bars should not be applied.⁹ Moreover, having offered no objection at trial to being tried in prison garb, the proscribed element of compulsion is lacking¹⁰ and the claim is without merit in any case.

(7) Poteet’s third claim is that, under the retroactive application of *Allen v. State*, 970 A.2d 203 (Del. 2009), the jury should have been instructed under Del. Code Ann. tit. 11, §274 regarding his individual

⁹ Super. Ct. Crim. R. 61(i)(1), (2) and (5).

¹⁰ *Estelle v. Williams*, 425 U.S. 501 (1976).

culpability for the use of the firearm during the robbery. However, *Allen* has no applicability to Poteet's case. In *Allen*, an instruction under §274 was warranted because the defendant only served as a lookout during the robbery and did not himself carry a firearm. In Poteet's case, all of the co-conspirators carried firearms, rendering an instruction under §274 unnecessary.

(8) Poteet's fourth, and final, claim is that the Superior Court improperly failed to consider his objections to the Commissioner's report before denying his postconviction motion. The record reflects that Poteet's objections were not filed within the 10-day period required under the Superior Court Rules.¹¹ The Superior Court's order, which was not issued until March 10, 2010, actually gave Poteet an extra 10 days in which to file his objections. In these circumstances, we find no error or abuse of discretion on the part of the Superior Court.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹¹ Super. Ct. Crim. R. 62(a)(5)(ii).