

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDMUND F. BAILEY,	§
	§
Defendant Below-	§ No. 672, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0009007758
Plaintiff Below-	§
Appellee.	§

Submitted: September 3, 2010  
Decided: November 22, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 22<sup>nd</sup> day of November 2010, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Edmund Bailey, filed this appeal from the Superior Court's denial of his second motion for postconviction relief. The Superior Court concluded that Bailey's motion was procedurally barred and that he had not established a miscarriage of justice sufficient to overcome the procedural hurdles. After careful consideration of the parties' positions, we affirm the Superior Court's judgment.

(2) The record reflects that a Superior Court jury convicted Bailey in April 2002 of multiple drug and weapon charges. Prior to trial, Bailey had

filed a motion to suppress evidence. The basis for the motion involved a videotaped recording of Bailey's rented storage locker. Police officers had rented the storage unit across from Bailey's unit and set up a video camera to tape the outside of Bailey's unit. The videotape captured Bailey, with the door on his storage unit raised up, repackaging marijuana. Based on this videotape, police obtained a search warrant for Bailey's residence, which produced further evidence against him. The Superior Court denied Bailey's motion to suppress on the ground that Bailey had no reasonable expectation of privacy with respect to acts he performed in his commercial storage unit while the door was open.<sup>1</sup> This Court affirmed that decision on direct appeal.<sup>2</sup> Thereafter, the Superior Court denied Bailey's first motion for postconviction relief.<sup>3</sup> Bailey's appeal from that order was dismissed because he failed to file his opening brief.

(3) In April 2009, Bailey filed his second motion for postconviction relief. Bailey argued that the procedural bars of Superior Court Criminal Rule 61(i) should not bar his motion for postconviction relief because of a miscarriage of justice. Specifically, Bailey argued that this Court's decisions

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<sup>1</sup> *Bailey v. State*, 2001 WL 1739445 (Del. Super. Nov. 30, 2001).

<sup>2</sup> *Bailey v. State*, 2003 WL 193540 (Del. Jan. 24, 2003).

<sup>3</sup> *Bailey v. State*, 2004 WL 2914320 (Del. Super. Dec. 13, 2004).

in *LeGrande v. State*<sup>4</sup> and *Culver v. State*,<sup>5</sup> changed the law regarding the procedures police must follow when acting upon a tip from an informant. Bailey argued that the retroactive application of the holdings in these cases would result in a finding that Bailey was denied due process at his 2002 trial because the Superior Court allowed the admission of illegally seized evidence. Bailey also argued that his attorneys were ineffective for failing to raise this issue.

(4) After careful consideration of the parties' respective positions on appeal, we find it manifest on the face of Bailey's opening brief that his appeal is without merit. It is unnecessary for us to address Bailey's retroactivity claim because it is clear that the rulings in *LeGrande* and *Culver* have no bearing on Bailey's case. The search warrant in Bailey's case was issued as a result of the police officer's videotaped surveillance of Bailey's storage locker. The issue was whether Bailey had a reasonable expectation of privacy in that unit. The Superior Court held that he did not. The officers' reliance on a tipster's information in deciding to set up the videotaped surveillance was not relevant to the Superior Court's holding. Thus, the decisions in *LeGrande* and *Culver* are simply not on point with the facts of

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<sup>4</sup> 947 A.2d 1103 (Del. 2008).

<sup>5</sup> 956 A.2d 5 (Del. 2008).

Bailey's case. Accordingly, we find no error in the Superior Court's conclusion that Bailey's second motion for postconviction relief was procedurally barred and that Bailey had failed to overcome the procedural hurdles.

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

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice