

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAKA S. MUMITT,	§	
	§	No. 756, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0803009083
Appellee.	§	

Submitted: April 4, 2011
Decided: June 20, 2011

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

O R D E R

This 20th day of June 2011, 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 appellant, Shaka S. Mumitt, filed this appeal from the Superior Court’s denial of his second motion for postconviction relief as procedurally barred pursuant to Superior Court Criminal Rule 61(i) (“Rule 61(i)”).¹ The appellee, State of Delaware, has moved to affirm the judgment

¹ See Del. Super. Ct. Crim. R. 61(i)(listing procedural bars to relief).

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

(2) After a three-day jury trial in 2008, Mumitt was found guilty as charged of thirteen offenses, including Assault in the Third Degree.³ The evidence at Mumitt's trial included the victims' testimony as well as redacted videotaped interviews of the victims by a forensic interviewer with the Children's Advocacy Center ("CAC").

(3) In his first postconviction motion, Mumitt alleged trial court error when admitting the CAC videotapes into evidence and related claims of ineffective assistance of counsel. By order dated May 28, 2010, the Superior Court denied Mumitt's first postconviction motion as without merit.⁴ On appeal, this Court affirmed the Superior Court's judgment.⁵

(4) In his second postconviction motion filed on November 10, 2010, Mumitt again alleged trial court error and ineffective assistance of counsel related to the procedure used to admit the victims' CAC interviews. Specifically, Mumitt alleged that the timing of the admission of the

² Del. Supr. Ct. R. 25(a).

³ The other convictions were for Continuous Sexual Abuse of a Child, Sexual Solicitation of a Child, Rape in the Fourth Degree, four counts of Unlawful Sexual Contact in the First Degree, Offensive Touching, Terroristic Threatening, Endangering the Welfare of a Child, and two counts on Non-Compliance with Bond Conditions. On direct appeal, Mumitt challenged only the assault conviction, and this Court affirmed the Superior Court's judgment. *Mumitt v. State*, 2009 WL 3191709 (Del. Supr.).

⁴ *State v. Mumitt*, 2010 WL 5551838 (Del. Super.).

⁵ *Mumitt v. State*, 2010 WL 3860658 (Del. Supr.).

interviews was improper, and that his counsel was ineffective for failing to obtain unredacted versions of the interviews. Mumitt also claimed that his counsel lied to him about judicial rulings.

(5) By order dated November 19, 2010, the Superior Court denied Mumitt's second postconviction motion as procedurally barred under Rule 61(i)(1), (2) and (4), that is as untimely,⁶ repetitive⁷ and formerly adjudicated.⁸ This appeal followed. When reviewing the Superior Court's denial of postconviction relief, this Court first must consider the procedural requirements of Rule 61 before addressing any substantive issues.⁹

(6) In this case, the Superior Court properly determined that Mumitt's second postconviction motion was subject to the procedural bars of Rule 61(i)(1), (2), and (4). To gain relief from the procedural bars, Mumitt must demonstrate that an otherwise barred claim warrants consideration under an enumerated exception provided in Rule 61(i).¹⁰ Having carefully considered the parties' positions on appeal and the

⁶ See Del. Super. Ct. Crim. R. 61(i)(1) (barring a postconviction motion filed more than one year after the judgment of conviction is final).

⁷ See Del. Super. Ct. Crim. R. 61(i)(2) (barring any ground for relief not asserted in a prior postconviction proceeding).

⁸ See Del. Super. Ct. Crim. R. 61(i)(4) (barring formerly adjudicated claim).

⁹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁰ *Id.* See Del. Super. Ct. Crim. R. 61(i)(2), (4) (barring claims unless consideration is warranted in the interest of justice); Del. Super. Ct. Crim. R. 61(i)(5) (providing that the procedural bars of (i)(1) and (i)(2) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

Superior Court record, the Court has concluded that Mumitt has not demonstrated that his untimely and repetitive postconviction motion raising formerly adjudicated claims warrants further consideration “in the interest of justice”¹¹ or because of “a miscarriage of justice.”¹²

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

¹¹ Del. Super. Ct. Crim. R. 61(i)(2), (4).

¹² Del. Super. Ct. Crim. R. 61(i)(5).