

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WALTER ALLEN,	§
	§ No. 182, 2011
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0304013214
Plaintiff Below-	§
Appellee.	§

Submitted: May 17, 2011
Decided: July 11, 2011

Before **HOLLAND, BERGER, and JACOBS**, Justices

ORDER

This 11th day of July 2011, upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the record on appeal, it appears to the Court that:

(1) The appellant, Walter Allen, filed this appeal from the Superior Court’s denial of his second motion for postconviction relief.¹ The State has filed a motion to affirm the judgment below on the ground that it is manifest

¹ The Superior Court issued two orders dated April 11, 2011. One order denied Allen’s petition for a writ of habeas corpus, and the other order denied Allen’s motion for postconviction relief. The only issue Allen raises in his opening brief on appeal relates to his counsel’s alleged ineffectiveness. Given Allen’s failure to brief any argument concerning the Superior Court’s denial of habeas relief, the Court does not address that order in this appeal.

on the face of Allen's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Allen pled guilty in October 2005 to one count each of first degree robbery and possession of a firearm during the commission of a felony. The Superior Court sentenced him to a total period of eight years at Level V incarceration to be suspended after serving five years for a period of probation. Allen did not appeal his convictions or sentence to this Court. In January 2011, Allen filed his first motion for postconviction relief, asserting that his counsel was ineffective for failing to inform him that a starter pistol was not a "firearm" under Delaware law and for failing to inform him that his convictions carried minimum mandatory sentences. The Superior Court denied Allen's motion on the ground that it was untimely. Allen did not appeal.

(3) Instead, Allen filed a second motion for postconviction relief, reiterating the claims contained in his first motion and arguing that the first motion should not be considered untimely because he had been incarcerated in another state and had lacked access to Delaware legal resources. The Superior Court again rejected Allen's second motion on the ground that it was not timely filed and because Allen had not asserted a claim that the

court lacked jurisdiction or asserted a colorable claim that there was a miscarriage of justice because of a constitutional violation.²

(4) After careful consideration of the parties' briefs and the record on appeal, we find it manifest that the judgment below should be affirmed on the basis of the Superior Court's well-reasoned decision dated April 11, 2011. The Superior Court did not err in concluding that Allen's second motion for postconviction relief was untimely and that appellant had failed to overcome this procedural hurdle.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

² See Del. Super. Ct. Crim. R. 61(i)(5) (2011).