

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES R. GETZ, JR.,	§
	§ No. 172, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 88K00683DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 6, 2013

Decided: October 15, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 15th day of October 2013, upon consideration of the appellant’s opening brief and the record below,¹ it appears to the Court that:

(1) The defendant-appellant, Charles R. Getz, Jr., filed an appeal from the Superior Court’s March 14, 2013 order denying his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

¹ The State of Delaware’s motion for leave to file a motion to affirm or an answering brief out of time was denied on August 21, 2013. On August 22, 2013, the Clerk notified the parties that the appeal would be decided on the basis of the opening brief and appendix and the record below.

(2) The record before us reflects that, in 1989 following a retrial on remand from this Court,² Getz was found guilty by a Superior Court jury of Rape in the First Degree. He was sentenced to life in prison. Getz's conviction was affirmed by this Court on direct appeal.³ Getz subsequently filed two motions for postconviction relief. This Court affirmed the Superior Court's denial of both motions.⁴ Getz now appeals from the Superior Court's denial of his third postconviction motion.

(3) In his appeal, Getz asserts seven claims that may fairly be summarized as follows: a) the Superior Court improperly failed to conduct an evidentiary hearing regarding his postconviction motion; b) the Superior Court judge was biased; c) the Superior Court improperly invoked the time and procedural bars of Rule 61; d) he was entitled to the assistance of counsel to prosecute his claims of ineffective assistance of his trial counsel in his first postconviction motion; and e) the public defender who represented him at trial had a conflict of interest because the Office of the Public Defender is linked to the Office of the Attorney General.

(4) Getz's first claim is that the Superior Court improperly failed to conduct an evidentiary hearing on his postconviction motion. Rule 61(h) (1)

² *Getz v. State*, 538 A.2d 726 (Del. 1988).

³ *Getz v. State*, 1990 WL 168288 (Del. Sept. 13, 1990).

⁴ *Getz v. State*, 1994 WL 622022 (Del. Oct. 31, 1994); *Getz v. State*, 2011 WL 5868403 (Del. Nov. 22, 2011).

provides that, in postconviction proceedings, the Superior Court in its discretion may schedule an evidentiary hearing after considering the postconviction motion, the State's response, the record and any other materials the Superior Court deems to be relevant. Rule 61 does not mandate the scheduling of an evidentiary hearing in every case, but, rather, leaves it to the Superior Court to determine whether an evidentiary hearing is needed. Concluding in its discretion that the issues raised in Getz's third postconviction motion did not require an evidentiary hearing, the Superior Court denied Getz's motion for such a hearing. Having reviewed Getz's opening brief and the record below, we find that the Superior Court acted well within its discretion in denying Getz's motion. As such, we conclude that Getz's first claim is without merit.

(5) Getz's second claim is that the Superior Court was biased against him. He requests that the judge who denied his postconviction motion be disqualified and a new judge appointed. Rule 2.11 of the Delaware Judges' Code of Judicial Conduct provides that a judge should disqualify himself from deciding a case if he has a personal bias or prejudice concerning a party, if he served as a lawyer in the matter in controversy, if he has a personal financial interest in the matter or if he or his spouse or a

relative is a party to the proceeding or has an interest in the proceeding.⁵ In a situation not covered by the Rule, the judge must, first, satisfy himself that he can hear the matter free of bias and, second, objectively examine whether there is an appearance of bias sufficient to cast doubt on his impartiality.⁶ Our review of Getz's opening brief and the record below reflect no bias or impropriety of any kind on the part of the Superior Court judge who considered, and denied, Getz's third postconviction motion. There is, thus, no basis for his disqualification. We, therefore, conclude that Getz's second claim also is without merit.

(6) Getz's third claim is that the Superior Court improperly invoked the time and procedural bars of Rule 61 in denying his postconviction motion. Delaware law requires the Superior Court to first ascertain whether any of the procedural bars of Rule 61 applies prior to considering the merits of a defendant's postconviction claims.⁷ In this case, the Superior Court invoked Rule 61(i) (1), (2) and (4) in denying Getz's postconviction motion as time-barred, repetitive and asserting claims that were previously adjudicated. The record supports the Superior Court's reliance on the mandated time and procedural bars to deny Getz's third

⁵ *Los v. Los*, 595 A.2d 381, 384 (Del. 1991).

⁶ *Stevenson v. State*, 782 A.2d 249, 255 (Del. 2001).

⁷ *Younger v. State*, 580 A.2d 552, 554 (Del.1990).

postconviction motion. We, therefore, conclude that Getz's third claim also is without merit.

(7) Getz's fourth claim is that he was entitled to the appointment of counsel to prosecute his claims of ineffective assistance of his trial counsel in his first postconviction motion. The record reflects that Getz raised 10 separate claims in his first postconviction motion, all of which related to his trial counsel's alleged ineffective assistance. In a 25-page decision, the Superior Court analyzed those claims and found them to be meritless. This Court, in turn, reviewed all of Getz's claims of ineffective assistance in detail and affirmed the Superior Court's judgment. In the absence of any evidence that Getz's allegations of ineffective assistance in his first postconviction motion were not fully and fairly considered, or that he experienced any prejudice in connection with the adjudication of those allegations, we conclude that his fourth claim is meritless.

(8) Getz's fifth, and final, claim is that the public defender who represented him at trial had a conflict of interest because the Office of the Public Defender is linked to the Office of the Attorney General. Specifically, Getz alleges that "a Public Defender has little to no concern at all with providing any actual, legitimate advocacy for a person" for the reason that "a Public Defender is a subordinate client to the Attorney

General, and therefore is subject to the demands of the Attorney General.”

There is no factual support for any of Getz’s allegations concerning the Office of the Public Defender. We, therefore, conclude that Getz’s fifth, and final, claim is likewise without merit.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice