

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTONIO LEE TAYLOR,	§
	§ No. 195, 2011
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 9404018838
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 24, 2011

Decided: August 16, 2011

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

**ORDER**

This 16<sup>th</sup> day of August 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 defendant-appellant, Antonio Lee Taylor, filed an appeal from the Superior Court's March 25, 2011 order adopting the Commissioner's February 7, 2011 report, which recommended that Taylor's second motion for postconviction relief pursuant to Superior Court Rule 61 be denied.<sup>1</sup> The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the

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

face of the opening brief that the appeal is without merit.<sup>2</sup> We agree and affirm.

(2) The record reflects that in May 1995, Taylor was found guilty by a Superior Court jury of two counts of Murder in the First Degree (Intentional Murder and Felony Murder), one count of Burglary in the Second Degree, two counts of Possession of a Deadly Weapon During the Commission of a Felony and one count of Violation of Conditions of Bond. He was sentenced to life in prison without the benefit of probation or parole, plus 33 years of Level V incarceration. This Court affirmed Taylor's convictions on direct appeal.<sup>3</sup> Taylor's first postconviction motion was denied by the Superior Court. On appeal, this Court affirmed the Superior Court's judgment.<sup>4</sup>

(3) In his second motion for postconviction relief filed in the Superior Court, Taylor claimed that a) his felony murder conviction should be vacated under *Williams v. State*, 818 A.2d 906 (Del. 2002); b) his conviction of intentional murder should be vacated because it could have been improperly based upon the jury instructions for felony murder; c) the jury instructions for felony murder were faulty; d) he was improperly

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<sup>2</sup> Supr. Ct. R. 25(a).

<sup>3</sup> *Taylor v. State*, 685 A.2d 349 (Del. 1996).

<sup>4</sup> *Taylor v. State*, Del. Supr., No. 220, 1999, Berger, J. (Feb. 23, 2000).

convicted of a felony when he committed only the misdemeanor offense of Breach of Release; and e) the jury was improperly instructed that a defense of extreme emotional distress did not apply to the felony murder charge. In his appeal to this Court, Taylor has not briefed either the second or third claim he presented to the Superior Court. As such, those claims are deemed to be waived and will not be considered by this Court.<sup>5</sup>

(4) Under Delaware law, the Superior Court must first consider whether the defendant has satisfied the procedural requirements of Rule 61 before considering the merits of his postconviction motion.<sup>6</sup> In this case, Taylor's second postconviction motion was filed approximately thirteen years after his conviction became final.<sup>7</sup> As such, it is time barred under Rule 61(i)(1). Moreover, to the extent that Taylor presents issues regarding the jury instructions not previously raised at trial, in his direct appeal or in his first postconviction motion, those issues are procedurally barred under Rule 61(i)(2) and (3). Taylor's claim regarding the defense of extreme emotional distress was previously, and unsuccessfully, raised in his first postconviction motion. As such, it is procedurally barred under Rule 61(i)(4).

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<sup>5</sup> *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

<sup>6</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>7</sup> *Taylor v. State*, 685 A.2d 349 (Del. 1996).

(5) Taylor's attempts to overcome the time and procedural bars of Rule 61 are unavailing.<sup>8</sup> There is no merit to his argument that, under *Williams v. State*, his felony murder conviction should be vacated because no underlying felony was committed. The record reflects that Taylor was convicted of Burglary in the Second Degree, which constituted the underlying felony offense. There also is no merit to his argument that the Superior Court lacked jurisdiction to convict him of Violation of Conditions of Bond. As a court of general jurisdiction, the Superior Court had the authority to convict him of that criminal offense.<sup>9</sup>

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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/ Jack B. Jacobs  
Justice

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<sup>8</sup> Super. Ct. Crim. R. 61(i)(3), (4) and (5).

<sup>9</sup> Del. Code Ann. tit. 11, § 2113; Del. Const. art. IV, § 7; Del. Code Ann. tit. 10, § 541.