

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSHUA A. COLLINS,	§
	§ No. 179, 2014
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0911013039
Plaintiff Below-	§
Appellee.	§

Submitted: May 16, 2014
Decided: June 9, 2014

Before **STRINE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

ORDER

This 9th day of June 2014, upon consideration of the 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, Joshua A. Collins, filed this appeal from the Superior Court’s summary dismissal of his first motion for postconviction relief. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Collins’s opening brief that his appeal is without merit.¹ We agree and affirm.

¹ Supr. Ct. R. 25(a).

(2) The record reflects that Collins was indicted for nineteen drug and weapon offenses on January 4, 2010. Collins, with the assistance of counsel, pled guilty to delivery of heroin, maintaining a dwelling for keeping controlled substances, possession of ammunition by a person prohibited, and drug trafficking on March 30, 2010. The remaining fifteen charges in the indictment were dismissed. The Superior Court sentenced Collins to a total of forty-one years Level V imprisonment, suspended after eight years for decreasing levels of supervision. Collins did not file a direct appeal.

(3) On March 12, 2014, Collins filed his first motion for postconviction relief and requested appointment of counsel. Collins claimed he would not have pled guilty but for his counsel's ineffective assistance. The Superior Court summarily dismissed the motion for postconviction relief as procedurally barred by Superior Court Criminal Rule 61(i)(1) ("Rule 61") and denied the request for counsel as moot. On April 10, 2014, Collins filed a notice of appeal. Collins argues that the Superior Court abused its discretion by summarily dismissing his motion for postconviction relief and denying his request for counsel.

(4) This Court reviews the Superior Court's denial of postconviction relief for abuse of discretion and questions of law *de novo*.² The Court must

² *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

consider the procedural requirements of Rule 61 before addressing any substantive issues.³ Applying the procedural requirements of Rule 61(i), Collins’s motion for postconviction relief was time-barred because it was not filed within one year after his conviction became final.⁴ Collins did not file his motion for postconviction relief until almost four years after his conviction became final.

(5) To avoid application of Rule 61(i)(1), Collins relies upon Rule 61(i)(5). Rule 61(i)(5) provides that the Rule 61(i)(1) time bar does not apply to “a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.” The miscarriage of justice exception is narrow and only applied in limited circumstances.⁵ Collins argues that his counsel’s ineffective assistance resulted in a colorable claim of a miscarriage of justice. According to Collins, his counsel was ineffective because he: (i) dismissed Collins’s concerns regarding the legality of certain searches, the weight of heroin seized, and the chain of custody; (ii) encouraged Collins to accept a guilty plea and avoid the risk of being sentenced as a habitual criminal; and (iii) failed to discover issues at the office of the medical examiner.

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴ Super. Ct. Crim. R. 61(i)(1).

⁵ *Younger*, 580 A.2d at 555.

(6) The record in this case does not support a colorable claim of a miscarriage of justice. Collins acknowledges that his counsel encouraged him to plead guilty because he faced a risk of sentencing as a habitual criminal and a life sentence. By pleading guilty, Collins obtained the dismissal of fifteen charges and a sentence of less than life imprisonment (a total of forty-one years at Level V, suspended after eight years for decreasing levels of supervision). Collins received a clear benefit from the guilty plea recommended by his counsel.

(7) In addition, Collins is bound, absent clear and convincing evidence to the contrary, by his representations on the truth-in-sentencing guilty plea form.⁶ In his truth-in-sentencing guilty plea form, Collins represented that he freely and voluntarily decided to plead guilty, understood that he was giving up his constitutional right to hear and question the witnesses against him, and was satisfied with his counsel's representation. Under these circumstances, Collins's conclusory and speculative assertions of ineffective assistance of counsel do not fall within the Rule 61(i)(5) exception to the Rule 61(i)(1) time bar.

(8) To the extent that Collins claims "newly discovered evidence" of issues at the medical examiner's office serves as another basis for relief in addition

⁶ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

to his ineffective assistance of counsel claim, he did not raise that claim below and it will not be considered for the first time on appeal.

(9) Finally, Collins fails to show he was entitled to appointment of counsel. Contrary to Collins's assertions, *Martinez v. Ryan* did not establish a right to counsel in all first postconviction motions alleging ineffective assistance of counsel.⁷ Rather, *Martinez* held that where claims of ineffective assistance of trial counsel must be raised in an initial collateral proceeding pursuant to state law, a procedural default will not bar a federal court from hearing a substantial ineffective assistance of counsel claim, if there was no counsel in the initial state collateral proceeding or counsel in that proceeding was ineffective.⁸ As far as Rule 61(e)(1), the version in effect at the time Collins filed his first postconviction motion on March 12, 2014 provided:

[t]he court will appoint counsel for an indigent movant's first *timely* postconviction proceeding. For an indigent movant's *untimely* first postconviction proceeding . . . the court will appoint counsel only in the exercise of discretion for good cause shown, but not otherwise.⁹

⁷ 132 S. Ct. 1309 (2012).

⁸ *Id.* at 1320.

⁹ Super. Ct. Crim. R. 61(e)(1) (emphasis added). In his opening brief, Collins relies on a prior version of the rule that did not include the terms "timely" or "untimely." The version of Rule 61(e)(1) limiting appointment of counsel to a "first timely postconviction proceeding" became effective on February 1, 2014, approximately six weeks before Collins filed his motion.

Collins's first conviction motion was untimely and therefore he was not entitled to appointment of counsel pursuant to Rule 61(e)(1) absent good cause. Collins's speculative and conclusory allegations of ineffective assistance did not establish good cause for appointment of counsel.

(10) 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 judicial discretion is implicated, there was no abuse of discretion.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice