

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BEN ROTEN,	§
	§ No. 266, 2014
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for Sussex County
	§ Cr. ID No. 0907011738
STATE OF DELAWARE	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: July 22, 2014  
Decided: August 15, 2014

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

***ORDER***

This 15th day of August 2014, having carefully considered the appellant's opening brief, the appellee's motion to affirm, and the record on appeal, the Court has determined that the judgment of the Superior Court should be affirmed on the basis of the reasons stated by the Superior Court in its letter decision dated May 8, 2014.

In addition, although not addressed by the Superior Court, the appellant's claim is also procedurally barred by Superior Court Criminal Rule 61(i)(3). That subsection precludes the appellant from making a claim not asserted in the proceedings leading to the judgment of conviction. The appellant failed to raise either on direct appeal or in subsequent post-trial

motions his argument that a plea of *nolo contendere* cannot qualify as a predicate offense. Because the appellant has failed to demonstrate cause for failing to raise his claims previously and has not shown that his failure to do so prejudiced his rights, his claim cannot overcome the procedural hurdle that Rule 61(i)(3) presents. For similar reasons, the appellant likewise cannot demonstrate a “colorable claim that there was a miscarriage of justice because of a constitutional violation” under Rule 61(i)(5).

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Randy J. Holland  
Justice