

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT GARVEY,	§	
	§	No. 27, 2014
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 0107010230
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: April 28, 2014

Decided: June 11, 2014

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 11<sup>th</sup> day of June 2014, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Robert Garvey, appeals from the Superior Court’s denial of his fourth motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”).<sup>1</sup> The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court.

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<sup>1</sup> *State v. Garvey*, 2013 WL 6913365 (Del. Super. Dec. 20, 2013).

(2) In 2003, a Superior Court jury convicted Garvey of Murder in the First Degree, Robbery in the First Degree, Attempted Robbery in the First Degree, four related weapon offenses, and Conspiracy in the Second Degree. On December 17, 2003, the Superior Court sentenced Garvey to life in prison without the possibility of probation or parole. Thereafter, on direct appeal, this Court affirmed Garvey's convictions and sentence.<sup>2</sup> The Court later affirmed the Superior Court's denials of Garvey's three previous motions for postconviction relief.<sup>3</sup>

(3) In his fourth motion for postconviction relief, filed on March 18, 2013, Garvey claimed that the Superior Court was required, first, to appoint counsel to assist him in the proceedings, and second, to reevaluate his formerly unsuccessful claims for postconviction relief. By order dated May 30, 2013, the Superior Court denied Garvey's request for the appointment of counsel. The court also directed Garvey's trial counsel to file an affidavit responding to claims of ineffective assistance of counsel and the State to submit a legal memorandum responding to the postconviction motion and trial counsel's affidavit. By order dated December 20, 2013, after

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<sup>2</sup> *Garvey v. State*, 873 A.2d 291 (Del. 2005).

<sup>3</sup> *See Garvey v. State*, 2009 WL 2882873 (Del. Sept. 10, 2009) (affirming denial of third motion for postconviction relief); *Garvey v. State*, 2008 WL 4809435 (Del. Nov. 5, 2008) (affirming denial of second motion for postconviction relief); *Garvey v. State*, 2007 WL 1221136 (Del. Apr. 26, 2007) (affirming denial of first motion for postconviction relief).

consideration of those submissions and Garvey's reply, the Superior Court denied both the postconviction motion and Garvey's motions for reconsideration of his request for the appointment of counsel and for an evidentiary hearing. This appeal followed.

(4) Having carefully considered the parties' positions on appeal, the Court has determined that the Superior Court's denial of Garvey's fourth motion for postconviction relief should be affirmed. When reviewing a denial of postconviction relief, this Court will address the Rule 61(i) procedural bars before considering the merits of any claim for relief.<sup>4</sup> The Court has determined, as did the Superior Court, that Garvey's fourth postconviction motion is procedurally barred as untimely,<sup>5</sup> repetitive,<sup>6</sup> defaulted,<sup>7</sup> and formerly adjudicated.<sup>8</sup> Garvey has not established that his

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<sup>4</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>5</sup> *See* DEL. SUPER. CT. CRIM. R. 61(i)(1) (barring claim filed more than three years after judgment is final) (amended 2005 to reduce filing period to one year).

<sup>6</sup> *See id.* 61(i)(2) (barring any ground for relief not asserted in a prior postconviction proceeding).

<sup>7</sup> *See id.* 61(i)(3) (barring a claim not raised in the proceedings leading to the judgment of conviction absent cause for relief from the procedural default and prejudice).

<sup>8</sup> *See id.* 61(i)(4) (barring formerly adjudicated claim).

fourth postconviction motion implicates any constitutional violations<sup>9</sup> or a newly recognized retroactively applicable right.<sup>10</sup> Nor has he shown that consideration of his claims is warranted in the interest of justice.<sup>11</sup> We therefore conclude that the Superior Court did not err by denying Garvey's fourth motion for postconviction relief.

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>9</sup> *See id.* 61(i)(5) (providing in pertinent part that the procedural bars of (i)(1), (2), and (3) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

<sup>10</sup> *See id.* 61(i)(1) (providing that an untimely motion may be considered when the movant asserts a retroactively applicable right that has been newly recognized).

<sup>11</sup> *See id.* 61(i)(2), (4) (barring claim unless consideration is warranted in the interest of justice).