

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICKY A. WHITFIELD,	§
	§ No. 371, 2013
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 86001906DI
Plaintiff Below-	§
Appellee.	§

Submitted: May 2, 2014
Decided: May 15, 2014

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

ORDER

This 15th day of May 2014, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The appellant, Ricky A. Whitfield, filed this appeal from the Superior Court’s denial of his third motion for postconviction relief. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that a Superior Court jury convicted Whitfield on October 29, 1986 of attempted murder in the first degree, kidnapping in the first degree, two counts of possession of a deadly weapon during commission of a

felony, and reckless endangerment in the first degree. On September 8, 1988, this Court affirmed Whitfield's convictions on direct appeal.¹

(3) On August 24, 1990, Whitfield filed his first motion for postconviction relief, along with a motion for appointment of counsel, claiming ineffective assistance of counsel and failure of the prosecution to disclose exculpatory evidence. The Superior Court denied the motions on November 1, 1990 and this Court affirmed that decision on April 23, 1991.² The United States District Court for the District of Delaware subsequently dismissed without prejudice Whitfield's petition for federal habeas corpus relief.³

(4) On March 10, 1994, Whitfield sent a detailed letter to the Superior Court explaining a prior request for appointment of counsel to prepare a second motion for postconviction relief based upon ineffective assistance of counsel and the victim's desire that the case not be prosecuted. The Superior Court treated the letter as a second motion for postconviction relief and denied it. This Court affirmed the Superior Court's decision on November 7, 1994.⁴

¹ *Whitfield v. State*, 1988 WL 101223 (Del. Sept. 8, 1988).

² *State v. Whitfield*, 1990 WL 177589 (Del. Super. Ct. Nov. 1, 1990), *aff'd*, 1991 WL 78485 (Del. Apr. 23, 1991).

³ *Whitfield v. Snyder*, C.A. No. 92-280-JJF (D. Del. June 24, 1993).

⁴ *Whitfield v. State*, 1994 WL 632536 (Del. Nov. 7, 1994).

(5) On March 20, 2013, Whitfield filed his third motion for postconviction relief. Whitfield claimed that the Superior Court lacked jurisdiction because he was indicted on different charges (attempted murder in the first degree and kidnapping in the first degree) than were brought at his preliminary hearing (assault in the second degree and kidnapping in the second degree). Whitfield also argued that the difference in charges deprived him of due process and equal protection and that he received ineffective assistance of counsel. On June 20, 2013, the Superior Court issued its decision denying Whitfield's third motion for post-conviction relief.⁵ The Superior Court concluded that Whitfield's jurisdictional argument lacked merit and that his motion was barred by the procedural requirements of Superior Court Criminal Rule 61(i) ("Rule 61").⁶ This appeal followed.

(6) On appeal, Whitfield claims that the difference in charges between the preliminary hearing and the grand jury indictment meant that the Superior Court lacked jurisdiction and deprived him of due process and equal protection. Whitfield did not brief the ineffective assistance of counsel claim he made below and has therefore waived that claim.⁷

⁵ *State v. Whitfield*, 2013 WL 3356127 (Del. Super. Ct. June 20, 2013).

⁶ *Id.* at *1-3.

⁷ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

(7) After careful consideration of the parties' briefs, we conclude that the denial of Whitfield's third motion for postconviction relief should be affirmed on the basis of the Superior Court's well-reasoned decision of June 20, 2013. The Superior Court did not err in concluding that Whitfield's jurisdictional argument lacked merit, his motion was procedurally barred, and that he failed to demonstrate any exceptions to the procedural requirements of Rule 61(i).

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice