

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DERIOUS J. JOHNSON,	§
	§
Defendant Below,	§ No. 423, 2014
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID No. 0304007340
Plaintiff Below,	§
Appellee.	§

Submitted: October 2, 2014
Decided: October 27, 2014

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

ORDER

This 27th day of October 2014, after careful consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the record below, we find it manifest that the Superior Court’s July 23, 2014 order, which denied Derious Johnson’s third motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”), should be affirmed. The motion was untimely, repetitive, procedurally defaulted, and formerly adjudicated under Rule 61(i)(1)-(4) and Johnson failed to demonstrate any cause for relief from the procedural default,¹

¹ Super. Ct. Crim. R. 61(i)(3) (barring claim not asserted in proceedings leading to conviction unless movant shows cause for relief from procedural default and prejudice).

that consideration of his claims was warranted in the interest of justice,² or a colorable claim of a miscarriage of justice.³

We also note that this is Johnson's third postconviction motion. In the future, if Johnson files additional petitions, we do not intend to invest scarce judicial resources addressing repetitive claims. We encourage Johnson to be mindful of Rule 61(j).⁴

NOW, THEREFORE, IT IS ORDERED that motion to affirm is GRANTED and the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Karen L. Valihura
Justice

² Super. Ct. Crim. R. 61(i)(2), (i)(4) (barring untimely and formerly adjudicated claims unless consideration is warranted in interest of justice).

³ Super. Ct. Crim. R. 61(i)(5) (providing that procedural bars of Rule 61(i)(1), (i)(2), and (i)(3) are not applicable to colorable claim of miscarriage of justice because of constitutional violation).

⁴ Super. Ct. Crim. R. 61(j) ("If a motion is denied, the state may move for an order requiring the movant to reimburse the state for costs and expenses paid for the movant from public funds.").