

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RYEKI STEWART,	§	
	§	No. 435, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0612022950
Appellee.	§	

Submitted: February 14, 2014  
Decided: April 15, 2014

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

**ORDER**

This 15<sup>th</sup> day of April 2014, after careful consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) In January 2007, the appellant, Ryeki Stewart, was charged in a four count indictment with Trafficking in Cocaine, Possession with Intent to Deliver Cocaine, Maintaining a Vehicle, and Resisting Arrest. In April 2007, Stewart filed a motion to suppress the evidence. After the Superior Court held a hearing and denied the suppression motion, the parties agreed to a stipulated bench trial to preserve Stewart's right to appeal the denial of the motion (hereinafter "the agreement"). The agreement provided that, in exchange for Stewart's stipulation to an agreed-upon set of facts and his

waiver of his right to a trial by jury, to question and cross-examine witnesses, and to testify or not, the State agreed to limit its sentencing recommendation, for all charges, to a mandatory term of eight years at Level V.

(2) At the stipulated bench trial on June 19, 2007, the Superior Court found Stewart guilty as charged and sentenced him to eight years mandatory at Level V imprisonment followed by four years of probation. On direct appeal, this Court affirmed the Superior Court's judgment.<sup>1</sup>

(3) On April 16, 2008, Stewart, with the assistance of new counsel, filed his first motion for postconviction relief under Superior Court Criminal Rule 61 ("Rule 61"). Stewart alleged that his trial counsel was ineffective when he did not move to dismiss the drug charges and did not argue at the suppression hearing that the police had failed to corroborate an informant's tip. After considering the merit of the claims, the Superior Court denied the motion on September 24, 2008.<sup>2</sup> On appeal this Court affirmed.<sup>3</sup>

(4) On June 22, 2010, Stewart, appearing *pro se*, filed his second motion for postconviction relief. In his second motion, Stewart alleged "denial of counsel" on the grounds that his trial counsel failed to inform him

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<sup>1</sup> *Stewart v. State*, 2008 WL 482310 (Del. Mar. 7, 2008).

<sup>2</sup> *State v. Stewart*, 2008 WL 4455641 (Del. Super. Ct. Sept. 24, 2008).

<sup>3</sup> *Stewart v. State*, 2009 WL 304735 (Del. Feb. 9, 2009)

of a plea offer to four years (hereinafter “plea offer claim”) and failed to challenge the medical examiner’s report. Stewart further alleged that he did not understand the rights he was waiving when he signed the agreement to a stipulated bench trial, and that the Superior Court should have conducted a colloquy prior to trial to ensure that he understood the agreement (hereinafter “waiver claim”). After applying the Rule 61 procedural bars to Stewart’s second postconviction motion,<sup>4</sup> the Superior Court, in a decision dated July 27, 2010, denied the motion as untimely, repetitive, and formerly adjudicated.<sup>5</sup> Stewart did not file an appeal.

(5) On March 19, 2013, Stewart filed his third motion for postconviction relief. In that motion as amended, Stewart raised expanded versions of his plea offer claim and waiver claim. By order dated July 25, 2013, the Superior Court denied the motion after determining that the claims were procedurally barred and had no merit.<sup>6</sup> This appeal followed.

(6) In his opening and reply briefs on appeal, Stewart continues to argue the expanded versions of his plea offer claim and waiver claim, and he alleges in a new claim that his trial counsel altered the agreement after

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<sup>4</sup> See Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to postconviction relief and exceptions to those bars).

<sup>5</sup> *State v. Stewart*, 2010 WL 2991583 (Del. Super. Ct. July 27, 2010).

<sup>6</sup> *State v. Stewart*, 2013 WL 4139575 (Del. Super. Ct. July 25, 2013).

Stewart signed it. The Court has not considered Stewart's new claim because it was not presented in the Superior Court in the first instance.<sup>7</sup>

(7) When reviewing a denial of postconviction relief, this Court will address any procedural bars before considering the merits of any claim for relief.<sup>8</sup> In this case, having considered the parties' briefs, the Superior Court record, and the Rule 61(i) procedural bars, the Court has determined that Stewart's third postconviction motion is procedurally barred as untimely,<sup>9</sup> repetitive,<sup>10</sup> and formerly adjudicated.<sup>11</sup> It is clear from the record that Stewart raised the plea offer claim and the waiver claim in his second postconviction motion, but did not file an appeal from the denial of that motion. Under these circumstances, and in the absence of a constitutional violation,<sup>12</sup> a newly recognized retroactively applicable

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<sup>7</sup> Del. Supr. Ct. R. 8.

<sup>8</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>9</sup> See Del. Super. Ct. Crim. R. 61(i)(1) (barring claim filed more than one year after judgment is final).

<sup>10</sup> See Del. Super. Ct. Crim. R. 61(i)(2) (barring any ground for relief not asserted in a prior postconviction proceeding).

<sup>11</sup> See Del. Super. Ct. Crim. R. 61(i)(4) (barring formerly adjudicated claim).

<sup>12</sup> See Del. Super. Ct. Crim. R. 61(i)(5) (providing in pertinent part that the procedural bar of (i)(1) and (2) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

right,<sup>13</sup> or any indication that reconsideration of either of Stewart's claims is warranted in the interest of justice,<sup>14</sup> we conclude that Stewart cannot avoid the procedural bars, and that the Superior Court did not err when denying his third motion for postconviction relief.

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

BY THE COURT:

/s/ Randy J. Holland

Justice

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<sup>13</sup> See Del. Super. Ct. Crim. R. 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>14</sup> See Del. Super. Ct. Crim. R. 61(i)(2), (4) (barring claim unless consideration is warranted in the interest of justice).