

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRYANT GIBBS,	§
	§
Defendant Below,	§ No. 55, 2017
Appellant,	§
	§ Court Below: Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID. No. 30900498DI (N)
	§
Plaintiff Below,	§
Appellee.	§

Submitted: May 22, 2017

Decided: July 14, 2017

Before **STRINE**, Chief Justice; **VALIHURA** and **VAUGHN**, Justices.

ORDER

This 14th day of July 2017, after careful consideration of the appellant's opening brief and the appellee's motion to affirm, we find it evident that the judgment below should be affirmed on the basis of the Superior Court's well-reasoned order, dated January 12, 2017, denying the appellant's fifth motion for postconviction relief under Rule 61.¹ We decline to consider arguments the appellant raises for the first time on appeal.²

¹ *State v. Gibbs*, 2017 WL 129116 (Del. Super. Ct. Jan. 12, 2017).

² Supr. Ct. R. 8. The appellant argues for the first time on appeal that Rule 61 is unconstitutional. The Court has previously rejected similar arguments. *See, e.g., Boyer v. State*, 562 A.2d 1186, 1188 (Del. 1989) (holding adoption of time limitations in Rule 61 did not deprive the appellant of due process).

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

BY THE COURT:

/s/ Karen L. Valihura
Justice