

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RUSSELL P. CARTER,	§
	§
Defendant Below,	§ No. 28, 2020
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID No. 1511003808 (S)
	§
Plaintiff Below,	§
Appellee.	§

Submitted: June 10, 2020

Decided: July 7, 2020

Before **VAUGHN, TRAYNOR**, and **MONTGOMERY-REEVES**, Justices.

ORDER

After careful consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the record on appeal, we conclude that the judgment below should be affirmed on the basis of and for the reasons assigned by the Superior Court in its December 18, 2019 order summarily dismissing the first motion for postconviction relief.¹ All of the appellant’s claims, including his ineffective assistance of counsel claims, were procedurally barred because he filed the postconviction motion more than a year after his 2016 conviction became final.² The

¹ *State v. Carter*, 2019 WL 6903996 (Del. Super. Ct. Dec. 18, 2019).

² Del. Super. Ct. Crim. R. 61(i)(1) (“A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme

appellant's resentencing in 2018, after he failed to report to the Sussex Correctional Institution as he was ordered to do in 2016, did not make his claims challenging the 2016 conviction timely.³ The appellant has not tried to overcome the procedural bars by claiming that the Superior Court lacked jurisdiction or that he met the requirements of Rule 61(d)(2)(i) or (ii).⁴

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

BY THE COURT:

/s/ Gary F. Traynor
Justice

Court.”); *Id.* 61(m)(1) (providing that when a defendant does not file a direct appeal, the judgment of conviction becomes final 30 days after the Superior Court imposes the sentence).

³ *State v. Jones*, 2016 WL 7338591, at *6 (Del. Super. Ct. Dec. 16, 2016) (finding that Rule 61 motion filed within one year of resentencing, but more than eight years after the convictions that the defendant challenged became final, was untimely), *aff'd*, 2017 WL 4535974 (Del. Oct. 10, 2017).

⁴ Super. Ct. Crim. R. 61(i)(5) (providing that the Rule 61(i)(1)-(i)(4) procedural bars do not apply to a claim that the Superior Court lacked jurisdiction or that satisfied Rule 61(d)(2)(i) or (ii)); *Id.* 61(d)(2)(i) (providing that motion must plead with particularity new evidence that creates a strong inference of actual innocence); *Id.* 61(d)(2)(ii) (providing that motion must plead with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review, applies and renders convictions invalid).