

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SYLVESTER MILLER,	§
	§
Defendant Below,	§ No. 360, 2019
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID No. 0408012099 (N)
	§
Plaintiff Below,	§
Appellee.	§

Submitted: December 20, 2019

Decided: February 5, 2020

Before **SEITZ**, Chief Justice; **VAUGHN**, and **TRAYNOR**, Justices.

ORDER

After careful consideration of the appellant’s opening brief, the State’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’s order, dated July 19, 2019, summarily dismissing the appellant’s fifth motion for postconviction relief. The appellant has not pleaded with particularity new evidence of actual innocence or that a new, retroactive rule of constitutional law renders his conviction invalid.¹ Moreover, the appellant’s claims that the Superior Court lacked

¹ DEL. SUPER. CT. CRIM. R. 61(d)(2).

jurisdiction² because of deficiencies in the indictment have been previously rejected³ and otherwise fail on the merits.⁴

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/ Collins J. Seitz, Jr.
Chief Justice

² *Id.* R. 61(i)(5).

³ *State v. Miller*, 2018 WL 2085226 (Del. Super. Ct. Apr. 24, 2018) (Commissioner's Report and Recommendation on Defendant's Fourth Motion for Postconviction Relief); *State v. Miller*, Cr. I.D. No. 0408012099, Docket Entry No. 103 (Del. Super. Ct. May 29, 2018) (adopting Commissioner's report).

⁴ *See, e.g., Fountain v. State*, 288 A.2d 277, 278-79 (Del. 1972) (holding that failure to allege an essential fact in an information did not constitute a jurisdictional defect).