

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSHUA D. BENSON,	§
	§
Defendant Below,	§ No. 180, 2021
Appellant,	§
	§
v.	§ Court Below–Superior Court
	§ of the State of Delaware
STATE OF DELAWARE,	§
	§ Cr. ID No. 1611007969 (K)
Plaintiff Below,	§
Appellee.	§

Submitted: September 8, 2021

Decided: October 15, 2021

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

**ORDER**

After careful consideration of the appellant’s opening brief, the State’s motion to affirm, and the Superior Court record, we conclude that the Superior Court’s denial of the appellant’s second motion for postconviction relief should be affirmed. The appellant, Joshua Benson, could not invoke Superior Court Criminal Rule 61(d)(2) because he opted to plead guilty instead of proceeding to a jury trial.<sup>1</sup> Moreover, Benson has not pleaded with particularity new evidence of actual innocence<sup>2</sup> or that a new, retroactively applicable rule of constitutional law renders

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<sup>1</sup> Del. Super. Crim. R. 61(d)(2) (providing that a second or subsequent motion for postconviction relief must be summarily dismissed unless the movant was convicted after a trial and satisfies additional pleading requirements).

<sup>2</sup> Del. Super. Crim. R. 61(d)(2)(i).

his conviction invalid.<sup>3</sup> Nor has Benson claimed that the Superior Court lacked jurisdiction to enter a judgment of conviction and sentence him.<sup>4</sup>

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

BY THE COURT:

/s/ Gary F. Traynor  
Justice

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<sup>3</sup> Del. Super. Ct. Crim. R. 61(d)(2)(ii).

<sup>4</sup> Del. Super. Ct. Crim. R. 61(i)(5).