

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL M. MUNDY,	§ Nos. 240, 2001, and 253, 2001
	§ (Consolidated)
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Cr.A. Nos. IN96-12-0587 and -0588
STATE OF DELAWARE,	§ Cr. ID No. 9611005019
	§
Plaintiff Below,	§
Appellee.	§

Submitted: October 26, 2001

Decided: December 10, 2001

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

ORDER

This 10th day of December 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Michael Mundy, filed these consolidated appeals from the Superior Court's orders denying his first and second motions for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). We find no merit to Mundy's contentions. Accordingly, we AFFIRM.

(2) In 1999 Mundy was convicted by a Superior Court jury of first degree assault and possession of a deadly weapon during the commission of a felony. The Superior Court sentenced Mundy on both charges to a total of

five years at Level V incarceration suspended after three years for decreasing levels of supervision. This Court affirmed his convictions on direct appeal.¹

In July 2000, Mundy filed his first petition² for postconviction relief, which the Superior Court denied in an eighteen page decision dated April 12, 2001.

On April 26, 2001, Mundy filed a second petition for postconviction relief and a motion to vacate his sentence, which the Superior Court summarily denied on May 4, 2001.

(3) Mundy filed two separate notices of appeal on May 23, 2001 and May 29, 2001, respectively. Mundy's notices purported to appeal from both decisions of the Superior Court dated April 12, 2001 and May 4, 2001. In order to be considered timely filed, Mundy's notice of appeal from the Superior Court's April 12, 2001 decision denying his first motion for postconviction relief was required to be filed with the Clerk of this Court on or before May 16, 2001. Mundy's failure to file his notice of appeal in a timely manner deprives this Court of jurisdiction to review the Superior

¹*Mundy v. State*, Del. Supr., No. 320, 1999, Hartnett, J. (July 15, 1998) (ORDER).

² The Rule 61 petition filed in July 2000 was actually Mundy's second petition for postconviction relief. Mundy had filed his first petition in October 1999, while his direct appeal was still pending before this Court. Because Mundy had filed his Rule 61 petition improvidently before his judgment of conviction was final, the Superior Court denied his motion without addressing the merits of any of his contentions.

Court's April 12, 2001 decision.³ Accordingly, we do not address any of the claims that Mundy raises with respect to the April 12th decision.

(4) With respect to the Superior Court's May 4, 2001 decision denying his second petition for postconviction relief, we review the Superior Court's denial of a postconviction motion under Rule 61 for abuse of discretion.⁴ The Court first must consider the procedural requirements of Rule 61 before addressing any substantive issues.⁵ Rule 61(i), among other things, bars a defendant from raising issues that were not raised in prior postconviction proceedings and from raising issues that were previously adjudicated in other proceedings unless consideration of the claims is warranted in the interest of justice.⁶

(5) In his opening brief on appeal, Mundy contends that the issues raised in his April 26, 2001 petition have never been addressed by the Superior Court, although he raised them in his July 2000 petition. Therefore, Mundy asserts, his claims are not procedurally barred as previously

³ *Carr v. State*, Del. Supr., 554 A.2d 778, 779, *cert. Denied*, 493 U.S. 829 (1989).

⁴ *Outten v. State*, Del. Supr., 720 A.2d 547, 551 (1998).

⁵ *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990).

⁶ Super. Ct. Crim. R. 61(i)(2), (4).

adjudicated under Rule 61(i), and the Superior Court erred in summarily rejecting his claims without holding a hearing and in directing the Prothonotary not to accept any future filings from him.

(6) The issues that Mundy contends were never addressed by the Superior Court on the merits relate to claims of ineffective assistance of trial and appellate counsel for failing to challenge prior uncharged misconduct evidence (relating to Mundy's drug use) that Mundy contends was admitted in error at trial. The record below reflects that Mundy filed his first Rule 61 petition on July 27, 2000. The petition raised numerous claims but did not raise any contentions relating to prior uncharged misconduct evidence. On August 4, 2000, the Superior Court set a schedule for the Public Defender's and the State's response as well as Mundy's reply thereto, which was due by October 6, 2000. On September 15, 2000, Mundy filed a motion to amend his Rule 61 petition to add an additional claim. Mundy's motion to amend did not raise any issue about prior uncharged misconduct evidence. On December 15, 2000, well after the Superior Court's deadline for submissions on Mundy's Rule 61 petition, Mundy filed an untitled document that, for the first time, raised Mundy's claims relating to uncharged misconduct evidence.

(7) Given Mundy's numerous filings in this matter and the untimely manner in which his December 15, 2000 claims were made, we find no abuse of discretion in the Superior Court's omission of any substantive discussion of those claims in its denial of Mundy's first Rule 61 petition. Furthermore, we find no abuse of the Superior Court's discretion in its summary disposition of Mundy's second postconviction petition. The issues raised in Mundy's second petition clearly could have been raised in a timely manner in his first petition but were not. Accordingly, those claims were barred as repetitive under Rule 61(i)(2), and the Superior Court did not abuse its discretion in deciding that an evidentiary hearing was unnecessary.⁷ Moreover, given Mundy's numerous filings in this case, we find no abuse of the Superior Court's discretion in restricting Mundy's ability to file repetitive documents in the future.

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

BY THE COURT:

/s/ E. Norman Veasey

⁷*Maxion v. State*, Del.Supr., 686 A.2d 148, 151 (1996).

Chief Justice