

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH TEEL,	§	
	§	No. 252, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0608016078
Appellee.	§	

Submitted: September 13, 2013
Decided: November 15, 2013

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 15th day of November 2013, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) In October 2007, the appellant, Kenneth Teel, pled guilty to Rape in the First Degree and Sexual Solicitation of a Child. On January 4, 2008, Teel was sentenced to a lengthy prison term. On direct appeal, we affirmed Teel's convictions.¹

¹ *Teel v. State*, 2008 WL 4483731 (Del. Oct. 7, 2008).

(2) This appeal is from the Superior Court’s denial of Teel’s fourth motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). It is well-settled that when reviewing a denial of postconviction relief, this Court will address any procedural bars before considering the merits of any claim for relief.²

(3) Having considered the Rule 61(i) procedural bars in this case, the Court has determined, as did the Superior Court, that Teel’s fourth postconviction motion is procedurally barred as repetitive³ and formerly adjudicated.⁴ Also, Teel’s motion is untimely.⁵

(4) In the absence of a constitutional violation,⁶ a newly recognized retroactively applicable right,⁷ or any indication that reconsideration of Teel’s claims is warranted in the interest of justice,⁸ we conclude that the

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

³ *See* Del. Super. Ct. Crim. R. 61(i)(2) (barring any ground for relief not asserted in a prior postconviction proceeding).

⁴ *See* Del. Super. Ct. Crim. R. 61(i)(4) (barring formerly adjudicated claim).

⁵ *See* Del. Super. Ct. Crim. R. 61(i)(1) (barring claim filed more than one year after judgment is final).

⁶ *See* Del. Super. Ct. Crim. R. 61(i)(5) (providing in pertinent part that the procedural bar of (i)(1) and (2) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

⁷ *See* Del. Super. Ct. Crim. R. 61(i)(1) (providing that an untimely motion may be considered when the movant asserts a retroactively applicable right that has been newly recognized).

⁸ *See* Del. Super. Ct. Crim. R. 61(i)(2), (4) (barring claim unless consideration is warranted in the interest of justice).

Superior Court did not err when denying Teel's fourth motion for postconviction relief. We further conclude that the Superior Court properly denied, as without merit, Teel's claim that, under the 2012 United States Supreme Court decision in *Martinez v. Ryan*, he had a right to counsel in the postconviction proceedings.⁹

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁹ See *Martinez v. Ryan*, ___ U.S. ___, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012) (holding that a procedural default will not bar a federal court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective).