

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALAN T. BROOKS,	§
	§
Defendant Below-	§ No. 450, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN86-03-1329-1332
Plaintiff Below-	§ IN86-04-0490-0492,
Appellee.	§ 0494

Submitted: October 29, 2001

Decided: November 27, 2001

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

ORDER

This 27th day of November 2001, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Alan T. Brooks, filed this appeal from an order of the Superior Court denying his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. Plaintiff-appellee State of Delaware has moved to affirm the judgment of the Superior Court on the

ground that it is manifest on the face of Brooks' opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In March 1987, Brooks was convicted by a Superior Court jury of Murder in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony, Robbery in the First Degree, Attempted Robbery in the First Degree, two counts of Conspiracy in the Second Degree, and Kidnaping in the Second Degree. He was sentenced to life in prison plus 52 years.² Brooks' convictions and sentences were affirmed by this Court on direct appeal.³ The Superior Court's denial of Brooks' first motion for postconviction relief also was affirmed by this Court.⁴

(3) In this appeal, Brooks claims that the Superior Court incorrectly denied his motion for postconviction relief as time-barred.⁵ He contends that the written statement of a non-testifying co-defendant, Edward Skinner, was

¹Supr. Ct. R. 25(a).

²Brooks' co-defendants, Edward Skinner and Edward Sanders, were also convicted of various felonies and both were sentenced to life in prison, plus 62 years and 69 years, respectively.

³*Skinner et al. v. State*, Del. Supr., 575 A.2d 1108 (1990).

⁴*Brooks v. State*, Del. Supr., No. 383, 1993, Veasey, C.J., 1994 WL 10882 (Jan. 7, 1994) (ORDER).

⁵Super. Ct. Crim. R. 61(i) (1).

improperly redacted and admitted into evidence in violation of his constitutional rights, thereby bringing his motion within the “retroactively applicable right” exception of Rule 61(i) (1).⁶ Brooks also claims that, to the extent any of Rule 61's procedural bars applies to his motion, this constitutional violation excuses the procedural default.⁷

(4) There is no factual basis for Brooks’ claim. As Detective Richard T. Kilmon testified at trial, Skinner’s statement was oral, not written. Moreover, Detective Kilmon testified that Skinner refused to allow his statement to be recorded, so it would not have been possible to generate a transcript of the statement. Detective Kilmon stated that he prepared a report of his interview with Skinner approximately one month after it took place. He did not take notes at the time of the interview because Skinner stopped talking whenever he attempted to do so. The trial transcript reflects that Detective Kilmon’s testimony concerning Skinner’s statement did not include reference to either Brooks or Sanders. Moreover, the trial transcript does not indicate that any writing pertaining to Skinner’s statement was admitted into evidence. Because there is no factual basis for Brooks’ claim, there was no constitutional

⁶*Gray v. Maryland*, 523 U.S. 185 (1998); *Lilly v. Virginia*, 527 U.S. 116 (1999).

⁷Super. Ct. Crim. R. 61(i) (2), (3) and (5).

violation that would arguably excuse Brooks' failure to timely file his postconviction motion.

(5) It is manifest on the face of Brooks' opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice