

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ISAIAS ORTIZ,	§	
	§	No. 294, 2012
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. 0210012072
Appellee.	§	

Submitted: June 27, 2012
Decided: September 25, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

O R D E R

This 25th day of September 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Isaias Ortiz, filed this appeal from the Superior Court’s May 8, 2012 denial of his second motion for postconviction relief as procedurally barred pursuant to Superior Court Criminal Rule 61(i) (“Rule 61(i)”).¹ The appellee, State of Delaware, has moved to affirm the Superior

¹ See Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to postconviction relief).

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.² We agree and affirm.

(2) In 2003, Ortiz was convicted of seven drug-related offenses and was sentenced. On direct appeal, Ortiz argued that the Superior Court erred when denying his day-of-trial request for a continuance to obtain the services of an interpreter (hereinafter "the interpreter claim"). We rejected the interpreter claim as follows in our Order dated November 16, 2004 affirming Ortiz' convictions:

Upon Ortiz's motion for a continuance, the trial court conducted a hearing and questioned Ortiz, his attorney, and a Department of Corrections officer about Ortiz's ability to understand and speak English. The trial court concluded that Ortiz was able to understand and articulate both concrete and philosophical ideas in English. It is clear from the record that the trial court considered the motion carefully and made a reasonable decision based on the evidence at the hearing. Because the trial judge's decision to deny the motion for continuance was reasoned and deliberate, and did not evidence any resulting injustice to Ortiz, the denial of Ortiz's motion for a continuance was not an abuse of discretion.³

(3) Ortiz next raised the interpreter claim in his first motion for postconviction relief filed in 2006. The motion was denied, and on appeal

² Del. Supr. Ct. R. 25(a).

³ *Ortiz v. State*, 2004 WL 2741185, at *4 (Del. Supr.).

we affirmed.⁴ Ortiz also raised the interpreter claim in his unsuccessful federal habeas corpus petition.⁵

(4) Ortiz raised the interpreter claim for the fourth time in his second motion for postconviction relief filed on March 7, 2012. By order dated May 8, 2012, the Superior Court denied the motion as procedurally barred under Rule 61(i)(1) and (4). This appeal followed.

(5) It is well-settled that when reviewing an appeal from the denial of postconviction relief, this Court will address any applicable procedural bars before considering the merit of any claim for relief.⁶ Having considered the Rule 61(i) procedural bars, the Court has determined that Ortiz' second postconviction motion, filed more than seven years after his convictions became final, is untimely under Rule 61(i)(1).⁷ On appeal, Ortiz has made no showing that the untimely motion warrants further consideration because of "a miscarriage of justice."⁸ We further conclude that Ortiz' second

⁴ See *Ortiz v. State*, 2007 WL 188173 (Del. Supr.) (affirming denial of postconviction relief).

⁵ See *Ortiz v. Phelps*, 2008 WL 5110965 (D. Del.) (dismissing petition for a writ of habeas corpus).

⁶ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁷ See Del. Super. Ct. Crim. R. 61(i)(1) (barring a postconviction motion filed more than three years after the judgment of conviction is final) (amended 2005 to reduce filing period to one year).

⁸ See Del. Super. Ct. Crim. R. 61(i)(5) (providing that the procedural bar of 61(i)(1) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

postconviction motion is repetitive under Rule 61(i)(2),⁹ and the interpreter claim, which was previously considered both by this Court and the Federal District Court, is formerly adjudicated under Rule 61(i)(4).¹⁰ On appeal, Ortiz has made no showing that consideration of the repetitive motion or that reconsideration of the formerly adjudicated claim is warranted “in the interest of justice.”¹¹

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/ Myron T. Steele
Chief Justice

⁹ See Del. Super. Ct. Crim. R. 61(i)(2) (barring any ground for relief not asserted in a prior postconviction proceeding).

¹⁰ See Del. Super. Ct. Crim. R. 61(i)(4) (barring formerly adjudicated claim).

¹¹ See Del. Super. Ct. Crim. R. 61(i)(2), (4) (barring claim unless consideration is warranted in the interest of justice).