

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER R. DESMOND,	§
	§
Defendant Below-	§ No. 5, 2001
Appellant,	§
	§
v.	§ Court Below–Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN91-10-0696
Plaintiff Below-	§ through 0709; IN91-10-1170,
Appellee.	§ 1174, 1176, 1184 and 1197

Submitted: February 7, 2001

Decided: March 8, 2001

Before **HOLLAND, BERGER** and **STEELE**, Justices

**ORDER**

This 8<sup>th</sup> day of March 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, Christopher R. Desmond, filed this appeal from an order of the Superior Court denying his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The State of Delaware has moved to affirm the judgment of the Superior Court on the ground

that it is manifest on the face of Desmond's opening brief that the appeal is without merit.<sup>1</sup> We agree and AFFIRM.<sup>2</sup>

(2) In this appeal, Desmond claims that he was denied his right to self-representation at his Superior Court criminal trial. He further claims that the Superior Court erred in denying his second motion for postconviction relief on procedural grounds.

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<sup>1</sup>Supr. Ct. R. 25(a).

<sup>2</sup>The appellant's Reply Brief responding to the motion to affirm, which was not requested by the Court, is hereby stricken. Supr. Ct. R. 25(a).

(3) In 1992, Desmond was convicted by a Superior Court jury of ten counts of first degree robbery, ten counts of possession of a deadly weapon during the commission of a felony, two counts of second degree conspiracy, three counts of possession of a deadly weapon by a person prohibited, three counts of felony theft and one count of third degree escape. Desmond was sentenced to a total of 70 years of Level V incarceration. This Court affirmed Desmond's convictions and sentences on direct appeal.<sup>3</sup> This Court also affirmed the Superior Court's denial of Desmond's first motion for postconviction relief.<sup>4</sup>

(4) When reviewing a motion under Rule 61, this Court must first determine that the motion satisfies the procedural requirements of the rule before addressing any substantive issues.<sup>5</sup> Rule 61 prohibits claims that are filed more than three years after the judgment of conviction is final<sup>6</sup> unless the defendant demonstrates that the Superior Court lacked jurisdiction or presents a colorable claim that there was a miscarriage of justice because of a constitutional

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<sup>3</sup>*Desmond v. State*, Del. Supr., 654 A.2d 821 (1994) (en banc).

<sup>4</sup>*Desmond v. State*, Del. Supr., No. 487, 1995, Berger, J., 1996 WL 145818 (Mar. 8, 1996) (ORDER).

<sup>5</sup>*Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991).

<sup>6</sup>Super. Ct. Crim. R. 61(i) (1).

violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.<sup>7</sup> In the absence of any such showing, the Superior Court correctly determined that Desmond's claim is time-barred.

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<sup>7</sup>Super. Ct. Crim. R. 61(i) (5).

(5) The Superior Court also correctly determined that Desmond's claim is procedurally barred, first, because it was not raised in the proceedings leading to the judgment of conviction and Desmond has not shown cause for relief or prejudice from a violation of his rights<sup>8</sup> and, second, because the claim was previously adjudicated in Desmond's first motion for postconviction relief, as Desmond himself readily acknowledges, and there has been no showing that reconsideration of the claim is warranted in the interest of justice.<sup>9</sup>

(6) It is manifest on the face of Desmond's 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/ Carolyn Berger  
Justice

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<sup>8</sup>Super. Ct. Crim. R. 61(i) (3).

<sup>9</sup>Super. Ct. Crim. R. 61(i) (4).