

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICARDO MORENO,	§
	§
Defendant Below-	§ No. 239, 2001
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 90007317DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 28, 2001  
Decided: October 31, 2001

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

**ORDER**

This 31<sup>st</sup> day of October 2001, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Ricardo Moreno, filed this appeal from an order of the Superior Court summarily dismissing his petition for postconviction relief on procedural grounds. We find no error in the Superior Court's decision. Accordingly, we affirm.

(2) The record reflects that in 1995 Moreno pled guilty but mentally ill to charges of second degree murder and possession of a deadly weapon during the commission of a felony. The Superior Court sentenced Moreno to a total period of twenty years imprisonment followed by six

months probation. Moreno did not file a direct appeal from his convictions or sentences. In March 2001, Moreno filed his second petition for postconviction relief pursuant to Superior Court Criminal Rule 61, which the Superior Court summarily dismissed as untimely. This appeal ensued.

(3) In his opening brief on appeal, Moreno asserts the following four grounds for relief: (1) he was denied access to the Mexican embassy after being taken into custody, which was in violation of his rights under the Vienna Convention; (2) he received ineffective assistance from his trial counsel; (3) he was denied his constitutional right to due process; and (4) he has raised a colorable claim of miscarriage of justice in order to overcome the procedural bars of Rule 61.

(4) Having carefully considered the parties' respective briefs, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated April 25, 2001. The Superior Court did not err in concluding that Moreno's petition was untimely under Rule 61(i)(1)<sup>1</sup> and that Moreno had failed to assert a colorable claim of a miscarriage of justice in order to overcome the time bar of Rule 61(i)(1).<sup>2</sup> Accordingly, we find no abuse of discretion in the

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<sup>1</sup> Under Rule 61(i)(1) a motion for postconviction relief must be filed within three years after the judgment of conviction is final. Super. Ct. Crim. R. 61(i)(1).

<sup>2</sup> See Super. Ct. Crim. R. 61(i)(5).

Superior Court's summary disposition of Moreno's claims without holding a hearing.<sup>3</sup>

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

BY THE COURT:

s/Joseph T. Walsh  
Justice

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<sup>3</sup> See *Maxion v. State*, Del. Supr., 686 A.2d 148, 11 (1996).