

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID J. BUCHANAN,	§	
	§	No. 362, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0801031784
Appellee.	§	

Submitted: July 23, 2012
Decided: October 18, 2012

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

O R D E R

This 18th day of October 2012, 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 appellant, David J. Buchanan, filed this appeal from the Superior Court’s June 20, 2012 denial of his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (hereinafter “Rule 61”). The 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 Buchanan’s opening brief that the appeal is without merit.

(2) It appears from the record that Buchanan was indicted on two sets of charges on March 24, 2008. The first set of charges arose from an incident on January 26, 2008, when Buchanan allegedly violated a Family Court order that prohibited him from entering his former marital property. The second set of charges arose from an incident on March 13, 2008, when Buchanan violated a Family Court protection from abuse order that prohibited him from possessing firearms.

(3) After a Superior Court jury trial in September 2008, Buchanan was found guilty of two counts of Carrying a Concealed Deadly Weapon, three counts of Possession of a Firearm by a Person Prohibited, and one count each of Burglary in the Third Degree, Resisting Arrest, and Criminal Contempt. After a presentence investigation, Buchanan was sentenced, on December 12, 2008, to nine years at Level V followed by Level IV work release and Level III probation.

(4) On direct appeal, Buchanan argued that there was insufficient evidence to support the burglary and weapon convictions. By opinion issued September 8, 2009, we affirmed the weapon convictions and reversed the burglary conviction.¹

¹ *Buchanan v. State*, 981 A.2d 1098 (Del. 2009).

(5) In his first motion for postconviction relief filed on August 27, 2010, Buchanan alleged, among other claims of ineffective assistance of counsel, that his trial and appellate counsel were ineffective in their respective capacities when they failed to challenge his indictment on Possession of a Firearm by a Person Prohibited, challenge the search of his residence on January 26, 2008, and challenge the search of his vehicle on March 13, 2008. By memorandum opinion dated December 3, 2010, the Superior Court concluded that Buchanan's claims were without merit and denied the motion for postconviction relief.² On appeal, we affirmed the judgment of the Superior Court.³

(6) In his second motion for postconviction relief filed on May 12, 2012, Buchanan again alleged numerous instances of ineffective assistance of his trial and appellate counsel. Buchanan also alleged that the prosecutor committed fraud by withholding evidence. In its June 20, 2012 summary dismissal order, the Superior Court found that Buchanan's fraud claim was barred under Rule 61(i)(3) and that his "conclusory assertions and unfounded legal assumptions" failed to make a showing of either attorney error or actual prejudice. This appeal followed.

² *State v. Buchanan*, 2010 WL 6490064 (Del. Super. Ct.)

³ *Buchanan v. State*, 2011 WL 3452148 (Del. Supr.).

(7) On appeal, when reviewing the Superior Court’s denial of postconviction relief, this Court must consider the procedural requirements of Rule 61 before addressing any substantive issues.⁴ In this case, it appears that the Superior Court properly determined that Buchanan’s second postconviction motion was untimely under Rule 61(i)(1),⁵ that the fraud claim was procedurally defaulted under Rule 61(i)(3),⁶ and that the motion otherwise raised formerly adjudicated claims that were subject to the procedural bar of Rule 61(i)(4).⁷ It also appears that the motion is repetitive and is subject to the procedural bar of Rule 61(i)(2).⁸

(8) To gain relief from the applicable procedural bars under Rule 61(i), Buchanan must demonstrate that a barred claim warrants consideration “in the interest of justice” or because of “a miscarriage of justice.”⁹ In this case, Buchanan has not demonstrated that any of his claims warrants further consideration. After carefully considering the parties’ positions on appeal,

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁵ See Del. Super. Ct. Crim. R. 61(i)(1) (barring a postconviction motion filed more than one year after the judgment of conviction is final).

⁶ See Del. Super. Ct. Crim. R. 61(i)(3) (barring a claim not previously raised absent cause for relief from the procedural default and prejudice).

⁷ See Del. Super. Ct. Crim. R. 61(i)(4) (barring formerly adjudicated claim).

⁸ See Del. Super. Ct. Crim. R. 61(i)(2) (barring any ground for relief not asserted in a prior postconviction proceeding).

⁹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). See Del. Super. Ct. Crim. R. 61(i)(2), (4) (barring claims unless consideration is warranted in the interest of justice); Del. Super. Ct. Crim. R. 61(i)(5) (providing that the procedural bars of (i)(1) and (i)(2) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

the Court concludes that Buchanan's untimely and repetitive second postconviction motion raising formerly adjudicated and/or procedurally defaulted claims was properly dismissed without exception, and that Buchanan's allegations of ineffective assistance of counsel are based on unfounded legal assumptions that fail to demonstrate either attorney error or prejudice.¹⁰

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

¹⁰ See *Strickland v. Washington*, 466 U.S. 668, 692 (1984) (holding that a defendant claiming ineffective assistance of counsel must show that counsel's representation fell below an objective standard of reasonableness and was prejudicial).