

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LOUIS BLAND,	§	
	§	No. 308, 2002
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in
	§	Cr. ID No. 9411016028.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 24, 2002

Decided: October 1, 2002

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

**ORDER**

This 1<sup>st</sup> day of October 2002, 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, Louis Bland, filed this appeal from the Superior Court's order dated May 13, 2002, that summarily dismissed his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("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 the opening brief that the appeal is without merit. We agree and **AFFIRM**.

(2) In 1995, Bland pleaded guilty, pursuant to a Superior Court Criminal Rule 11(e)(1)(C) plea agreement, to Robbery in the Second Degree. Bland was sentenced to five years at Level V, suspended after two years for four months at Level IV in the New Hope Program, followed by one year at Level III, followed by eighteen months at Level II.

(3) Bland did not appeal his conviction and sentence. In 1996, Bland filed his first motion for postconviction relief. After an evidentiary hearing, the Superior Court dismissed and denied Bland's motion.<sup>1</sup> Bland did not file an appeal.

(4) In May 2002, nearly seven years after his conviction, Bland again moved for postconviction relief. On May 13, 2002, the Superior Court ruled that Bland's motion was procedurally barred by Rule 61(i)(1) and summarily denied the motion. This appeal followed.

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<sup>1</sup>In its ten-page decision, the Superior Court denied Bland's postconviction motion on the basis that it was procedurally barred and substantively without merit. Alternatively, the Superior Court dismissed the motion as abandoned, after Bland sought to dismiss the motion at the evidentiary hearing. *State v. Bland*, 1996 WL 453439 (Del. Super. Ct.).

(5) In this appeal, Bland claims that he never accepted the plea agreement as it was modified by the Superior Court. In a similar vein, Bland contends that the Superior Court lacked the authority to convict him because he was never returned to the courtroom to accept the modified plea. Finally, Bland claims that his counsel was ineffective.

(6) When reviewing Bland's motion for postconviction relief, the Superior Court correctly considered whether the motion was procedurally barred.<sup>2</sup> Rule 61(i)(1) prohibits claims that are filed more than three years after the judgment of conviction<sup>3</sup> is final 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 violation.<sup>4</sup> In Bland's case, in the absence of any such showing, the Superior Court correctly determined that his motion for postconviction relief was time-barred.

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

<sup>3</sup>Super. Ct. Crim. R. 61(i)(1).

<sup>4</sup>Super. Ct. Crim. R. 61(i)(5).

(7) Moreover, because Bland's claims were previously adjudicated in his first motion for postconviction relief, as Bland readily acknowledges, the claims are procedurally barred as formerly adjudicated.<sup>5</sup> Bland has made no showing that reconsideration of the claims is warranted in the interest of justice.<sup>6</sup>

(8) It is manifest on the face of Bland's opening brief that this appeal is without merit. 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

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<sup>5</sup>Super. Ct. Crim. R. 61(i)(4).

<sup>6</sup>*Id.*