

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES A. BIGGINS,	§	
	§	No. 153, 2003
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware, in and
v.	§	for Sussex County, in Cr.A.
	§	Nos. S97-01-0376, 0377,
STATE OF DELAWARE,	§	0378, 0381, 0382-R3.
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9609015504

Submitted: September 29, 2003  
Decided: December 18, 2003

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

**ORDER**

This 18<sup>th</sup> day of December 2003, 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, James A. Biggins, filed an appeal from the Superior Court's order denying his third motion for postconviction relief pursuant to Superior Court Criminal 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 Biggins' opening brief that the appeal is without merit. We agree and AFFIRM.

(2) Biggins’ postconviction motion raised three grounds for relief: (a) the Superior Court lacked jurisdiction due to violations of the Interstate Agreement on Detainers; (b) the Superior Court lacked jurisdiction because of a defect in the waiver of indictment; and (c) Biggins’ appellate counsel was ineffective. The Superior Court denied Biggins’ motion, finding it “procedurally barred under Rule 61 for being previously adjudicated, repetitive, and time-barred.” Moreover, in a separate order that is also on appeal, the Superior Court denied, as untimely and unnecessary, Biggins’ motion for a transcript of a 1997 suppression hearing.

(3) In his opening brief on appeal, Biggins argues, generally, that the Superior Court abused its discretion when denying his postconviction motion and motion for transcript. Specifically, Biggins contends that the Superior Court lacked jurisdiction to try or convict him due to violations of the Interstate Agreement on Detainers, and that his appellate counsel was ineffective.<sup>1</sup> Biggins also claims on appeal that the prosecutor withheld exculpatory evidence, and that his trial counsel was ineffective. The latter two claims,

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<sup>1</sup>Biggins expressly abandoned his claim of a defective indictment, and the claim will not be reviewed on appeal. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

which Biggins did not raise in his third postconviction motion, will be reviewed on appeal for plain error.<sup>2</sup>

(4) In this case, we conclude that the Superior Court did not abuse its discretion when it denied Biggins' motion for postconviction relief on procedural grounds.<sup>3</sup> Biggins' convictions became final in December 1999, more than three years before Biggins filed his third motion for postconviction relief. The motion, therefore, is time-barred under Rule 61(i)(1) and is barred as repetitive under Rule 61(i)(2), unless Biggins can show the applicability of one of the exceptions in Rule 61(i)(5). Moreover, to the extent Biggins' motion raised claims that were previously adjudicated, the claims are barred under Rule 61(i)(4), unless he can demonstrate that reconsideration is required in the interest of justice.

(5) Biggins' claims have been litigated numerous times in this Court, the Superior Court and/or in the United States District Court of Delaware.<sup>4</sup>

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<sup>2</sup>Del. Supr. Ct. R. 8.

<sup>3</sup>See *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991) (providing that the Superior Court must apply the procedural requirements of Rule 61 before reaching the merits of the claims).

<sup>4</sup>See *Biggins v. State*, 1999 WL 1192332 (Del. Supr.) (affirming convictions and sentences on direct appeal); *Biggins v. State*, 2000 WL 1504868 (Del. Supr.) (affirming denial of first motion for postconviction relief); *Biggins v. State*, 2001 WL 760859 (Del. Supr.) (affirming denial of second motion for postconviction relief); *Biggins v. Carroll*, 2002 WL 31094810 (D. Del) (denying federal habeas corpus relief); *In re Biggins*, 2003 WL

None of the claims as presented in this appeal state “a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the . . . conviction.”<sup>5</sup> Moreover, Biggins has not demonstrated that the Court should reconsider his formerly adjudicated claims in the interest of justice.<sup>6</sup> Accordingly, the procedural bars of Rule 61(i)(1), (2) and (4) apply, no plain error occurred in the denial of Biggins’ third postconviction motion, and the Superior Court properly denied Biggins’ motion for transcript.

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:

Randy J. Holland

Justice

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1857525 (dismissing writ of prohibition that raised adjudicated claims).

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

<sup>6</sup>Del. Super. Ct. Crim. R. 61(i)(4).