

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS L. MOORE,	§
	§
Defendant Below-	§ No. 459, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 9902006667
Plaintiff Below-	§
Appellee.	§

Submitted: May 7, 2002
Decided: May 28, 2002

Before **WALSH, HOLLAND**, and **STEELE**, Justices.

ORDER

This 28th day of May 2002, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Thomas L. Moore, filed this appeal from the Superior Court's order dated August 27, 2001 denying Moore's petition for postconviction relief. The State has filed a motion to affirm on the ground that it is manifest on the face of Moore's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects Moore pleaded guilty in 1999 to his fifth offense for driving under the influence. The Superior Court sentenced Moore, effective January 7, 2000, to three years at Level V imprisonment, suspended after serving

six months for two and a half years at Level IV residential drug treatment, suspended after successful completion of drug treatment for probation. In September 2000, the Superior Court found Moore in violation of probation and sentenced him to two and a half years at Level V imprisonment suspended entirely for two and a half years at Level IV Recovery Center of Delaware (RCD), suspended upon successful completion of the RCD program for probation. The Superior Court ordered that Moore be held at Level V pending space availability at Level IV.

(3) On January 6, 2001, the day he was released from Level V custody, Moore was arrested for violating probation by committing new charges, including second degree assault. On June 7, 2001, the Superior Court found Moore in violation of probation and sentenced him, effective January 6, 2001, to two years at Level V incarceration, to be suspended upon successful completion of the Key West Program for one year at Level III probation. We affirmed the Superior Court's judgment on appeal.¹

(4) On July 31, 2001, Moore filed a motion for postconviction relief challenging his September 2000 sentence. On August 27, 2001, the Superior Court denied Moore's motion on the ground that it was moot because the September

¹ *Moore v. State*, Del. Supr., No. 285, 2001, Walsh, J. (Jan. 9, 2002).

2000 sentencing order had been revoked by the June 2001 sentencing order, and thus Moore was no longer in custody as a result of the September 2000 sentence. In his opening brief on appeal, Moore continues to challenge the September 2000 VOP proceedings and sentence, but he does not address the issue of mootness.

(5) We have reviewed the parties' contentions carefully. It is clear that the Superior Court's June 2001 sentencing order revoked the September 2000 sentencing order and reimposed sentence. Moore therefore is no longer in custody pursuant to the September 2000 sentencing order. Accordingly, the Superior Court was correct in holding that Moore's challenges to the September 2000 proceedings and sentence are moot.

(6) Furthermore, the Superior Court's denial of postconviction relief can be affirmed for the independent and alternative reason that the claims raised in Moore's postconviction motion were procedurally barred by Superior Court Criminal Rule 61(i)(3). Rule 61(i)(3) generally bars consideration of claims that were not raised in the proceedings leading to the judgment of conviction. Moore never appealed from the Superior Court's September 2000 VOP adjudication and sentence. Moore has not established any cause for his failure to raise his claims

earlier.² Accordingly, the Superior Court was correct to deny Moore's petition for postconviction relief.

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:

Myron T. Steele

Justice

² See *Jones v. State*, 1989 WL 90735 (Del. Supr.) (holding that defendant's claims about his revocation of probation were procedurally barred by Rule 61(i)(3) due to his failure to file an appeal from the revocation proceedings).