

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VERNON ABNER,	§
	§
Defendant Below-	§ No. 451, 2003
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID 9701021889
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 30, 2004

Decided: March 10, 2004

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

ORDER

This 10th day of March 2004, upon consideration of the opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) A Superior Court jury convicted the defendant-appellant, Vernon Abner, of burglary and related offenses in 1999. His convictions and sentences were affirmed on appeal.¹ Abner filed a motion for postconviction relief in 2003 asserting two claims: (a) the Superior Court erred by failing, sua sponte, to give an accomplice liability instruction to the jury; and (b) newly-discovered evidence, consisting of another inmate's affidavit, proved that Abner had permission to be in

¹ *Abner v. State*, 2000 WL 990973 (Del. June 29, 2000).

the victim's apartment and to move her property. The Superior Court denied Abner's postconviction petition. This appeal followed.

(2) Having carefully considered the parties' respective positions, 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 August 12, 2003. The Superior Court did not err in concluding that Abner's claims were procedurally barred by Superior Court Criminal Rule 61(i)(3), because Abner failed to raise either claim in the proceedings leading to the judgment of conviction. In rejecting Abner's claim of "newly discovered evidence," the Superior Court noted that Abner's defense at trial was that he was never in the victim's apartment, not that he had permission to be there. Under the circumstances, we find no abuse of discretion in the Superior Court's conclusion that Abner failed to establish either cause or prejudice in order to overcome the procedural bar of Rule 61(i)(3).

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

BY THE COURT:

/s/ Myron T. Steele
Justice