

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEITH WARREN,	§
	§
Defendant Below-	§ No. 167, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK91-06-0816
Plaintiff Below-	§ and -0817
Appellee.	§

Submitted: October 3, 2000  
Decided: October 24, 2000

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

**ORDER**

This 24<sup>th</sup> day of October 2000, upon consideration of the parties' respective briefs, it appears to the Court that:

(1) The defendant-appellant, Keith Warren, filed this appeal from an order of the Superior Court, which adopted a Commissioner's Report and Recommendations and denied Warren's first petition for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). We find no merit to Warren's appeal. Accordingly, we affirm.

(2) Warren was convicted in 1992 of first degree murder and possession of a deadly weapon during the commission of a felony. The Superior Court sentenced him to life in prison. This Court affirmed Warren's convictions on

direct appeal.<sup>1</sup> Thereafter, in 1994, Warren filed a motion for a new trial, which the Superior Court denied. Warren did not appeal from that ruling. In September 1998, Warren filed his first motion for postconviction relief. The matter was assigned to a Superior Court Commissioner who filed a report recommending that Warren's petition be denied as procedurally barred. A Superior Court judge reviewed the matter de novo, adopted the Commissioner's findings and recommendations, and denied Warren's petition. This appeal ensued.

(3) When reviewing the Superior Court's denial of a postconviction motion pursuant to Rule 61, this Court first must consider the procedural requirements of the rule before addressing any substantive issues.<sup>2</sup> Rule 61(i) provides, in part, that no motion for postconviction relief can be filed more than three years after a conviction has become final, *unless* there is a claim that the lower court lacked jurisdiction or there is a colorable claim that there was a miscarriage of justice because of a constitutional violation.<sup>3</sup>

(4) In this case, Warren's convictions became final in 1993 when this Court issued the mandate following his direct appeal.<sup>4</sup> Warren filed his first

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<sup>1</sup>*Warren v. State*, Del. Supr., No. 218, 1992, Horsey, J. (Apr. 8, 1993) (ORDER).

<sup>2</sup>*Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990).

<sup>3</sup>Super. Ct. Crim. R. 61(i)(1), (5).

<sup>4</sup>*Jackson v. State*, Del. Supr., 654 A.2d 829, 832 (1995).

postconviction motion in 1998, nearly five years after his convictions became final.

Warren's claims, therefore, are time-barred under Rule 61(i)(1). Our review of the record reflects that Warren has not satisfied any of the conditions for an exception to the time limitation under Rule 61(i)(5).

(5) We also agree with the Commissioner's alternative conclusions, which were adopted by the Superior Court, that Warren's claims also are procedurally barred by Rule 61(i)(3) and Rule 61(i)(4). Thus, we conclude that the judgment of the Superior Court should be affirmed based on the well-reasoned decision, dated March 17, 2000, which adopted the Commissioner's Report and Recommendations.

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

BY THE COURT:

Randy J. Holland  
Justice