

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL D. JOHNSON,	§
	§
Defendant Below-	§ No. 158, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN90-06-0869
Plaintiff Below-	§ IN90-06-0870
Appellee.	§

Submitted: August 23, 2000
Decided: October 16, 2000

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

ORDER

This 16th day of October 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Michael D. Johnson, filed an appeal from an order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM. In addition, because Johnson has abused the appellate process through the repeated filing of frivolous petitions and appeals, we order that no further filings by Johnson seeking

relief from his convictions and sentences in this case will be docketed without leave of a Justice of this Court.

(2) In this appeal, Johnson claims that the Superior Court violated his constitutional rights by denying his request for new counsel following his criminal trial in 1991. According to Johnson, his court-appointed counsel refused to raise claims of an illegal search warrant and an inconsistent verdict either at trial or on appeal. Johnson also contends that his counsel was ineffective in not advising him to elect sentencing under the truth in sentencing law rather than the previous law.

(3) In February 1991, Johnson was convicted by a Superior Court jury of trafficking in cocaine, possession of cocaine and possession with intent to deliver cocaine.¹ On the charge of possession with intent to deliver, Johnson was sentenced to 10 years incarceration at Level V and, on the trafficking charge, he was sentenced to 5 years incarceration at Level V, to be suspended after 2 years for 3 years probation at Level II.

¹The Superior Court subsequently granted a defense motion for judgment of acquittal on the possession charge.

Johnson's convictions and sentences were affirmed by this Court on direct appeal.²

(4) When reviewing a Rule 61 motion, this Court must first consider the procedural requirements of the Rule before addressing any substantive claims.³ Johnson's motion was filed more than 3 years after the judgment of conviction became final and, therefore, is untimely.⁴ Moreover, there is no suggestion that the Superior Court lacked jurisdiction or that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.⁵ Johnson's claim is also barred as formerly adjudicated and there is nothing in the record to suggest that reconsideration of the claim is warranted in the interest of justice.⁶

(5) Johnson has filed a number of postconviction motions, petitions for extraordinary relief and appeals from denials of postconviction

²*Johnson v. State*, Del. Supr., No. 286, 1991, Holland, J., 1992 WL 151362 (June 5, 1992) (ORDER).

³*Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990).

⁴Super. Ct. Crim. R. 61(i) (1).

⁵Super. Ct. Crim. R. 61(i) (5).

motions since 1992. In an Order dated July 20, 1993, this Court dismissed Johnson's appeal from an order of the Superior Court denying his fifth motion to reduce his sentence, stating that Johnson had abused the appellate process through the repeated filing of frivolous appeals. The Clerk was ordered not to docket any further appeals by Johnson seeking postconviction relief from his convictions and sentences without leave of a Justice of this Court.⁷

(6) Johnson has presented the issues in his instant appeal to this Court on several previous occasions. As such, the appeal is both repetitive and frivolous. It is again necessary to order that any attempted filings by Johnson be screened by the Clerk and given to a Justice of this Court for review before being docketed.

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

⁶Super. Ct. Crim. R. 61(i) (4).

⁷*Johnson v. State*, Del. Supr., No. 148, 1993, Horsey, J., 1993 WL 278297 (July 20, 1993) (ORDER). In spite of this Order, Johnson filed yet another appeal in 1999 from the Superior Court's denial of another postconviction motion, which was affirmed by this Court in *Johnson v. State*, Del. Supr., No. 146, 1999, Hartnett, J., 1999 WL 652049 (August 16, 1999) (ORDER).

IT IS FURTHER ORDERED that no further filings by Michael D. Johnson regarding his convictions or sentences in this case will be docketed without a Justice of this Court determining that they are neither repetitive nor frivolous.

BY THE COURT:

Randy J. Holland
Justice