

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| THOMAS J. HILL, | § | |
| | § | No. 267, 2000 |
| Defendant Below, | § | |
| Appellant, | § | Court Below—Superior Court |
| | § | of the State of Delaware, in |
| v. | § | and for New Castle County |
| | § | Cr.A.Nos. IN97-08-0952-R2, |
| STATE OF DELAWARE, | § | 0953-R2. |
| | § | |
| Plaintiff Below, | § | |
| Appellee. | § | Def. ID No. 9707009603 |

Submitted: June 23, 2000
Decided: August 11, 2000

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

ORDER

This 11th day of August 2000, upon consideration of the appellant's opening brief and the State of Delaware's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Thomas J. Hill, has appealed from the Superior Court's denial of Hill's second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The State of Delaware has moved to affirm the judgment of the Superior Court on the face of Hill's opening brief that the appeal is without merit.

(2) In March 1998, Hill entered into a plea agreement with the State pursuant to Superior Court Criminal Rule 11(e)(1)(c). The agreement provided that Hill would plead guilty to Assault in the First Degree (a lesser-included offense of Attempted Murder in the First Degree) and Possession of a Firearm during the Commission of a Felony. In return for Hill's plea, the State agreed to *nolle prosequere* four other charges and to recommend that Hill serve nine years at Level V followed by probation.

(3) On May 1, 1998, after a presentence investigation, the Superior Court sentenced Hill in accordance with the plea agreement, i.e., to three years at Level V for the weapons offense. For Assault in the First Degree, the Superior Court sentenced Hill, in accordance with the plea agreement, to 10 years at Level V, suspended after six years, for four years at Level IV, suspended after 6 months, for three years and six months at Level III. Hill did not appeal his sentence.

(4) On August 5, 1998, Hill filed a motion for reduction of sentence. Hill contended that the plea agreement provided that he should serve only three years in prison. By order dated August 26, 1998, the Superior Court denied Hill's motion. Hill did not appeal.

(5) On September 24, 1998, Hill filed a motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). Hill contended that the plea agreement provided that he was to serve only two and one-half years in prison. By order dated November 23, 1998, the Superior Court denied Hill's motion. Hill did not appeal.

(6) On January 26, 1999, Hill filed his first motion for postconviction relief. Hill alleged (i) ineffective assistance of counsel, (ii) unfulfilled plea agreement, and (iii) illegal sentence. Hill argued that his defense counsel did not advise him of the terms of his plea agreement, and that the Superior Court breached the agreement by sentencing Hill to a longer period of incarceration than the plea agreement had specified. By order dated April 9, 1999, the Superior Court summarily dismissed Hill's motion for postconviction relief on the basis that Hill understood the consequences of his guilty plea. Hill did not appeal.

(7) On May 3, 2000, Hill filed a motion for reduction or modification of sentence. By order dated May 9, 2000, the Superior Court denied Hill's motion as untimely and repetitive. Hill did not appeal.

(8) On April 17, 2000, Hill filed a second motion for postconviction relief. Hill again alleged (i) ineffective assistance of

counsel, (ii) unfulfilled plea agreement, and (iii) illegal sentence. Hill alleged that his defense counsel changed the written plea agreement without Hill's knowledge,¹ and that the Superior Court did not explain the terms of the plea agreement and sentenced Hill to a longer period than the plea agreement had specified. By order dated May 11, 2000, the Superior Court denied Hill's motion, concluding that the motion was barred pursuant to Rule 61. This appeal followed.

(9) 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.² Under Rule 61, any claim that was formerly adjudicated is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.³ The Court is not required to consider a previously adjudicated claim "simply because the claim may have been refined or restated."⁴

¹ Hill contends that his counsel changed the number "6" to the number "9" on the plea agreement form under the "Sentence Recommendation/Agreement" section. A handwritten change (initialed by both defense counsel and the prosecutor) appears on the form under the "Sentence Recommendation/Agreement" section. It appears to the Court that the number "11" was changed to the number "9."

² See *Stone v. State*, Del. Supr., 690 A.2d 924, 925 (1996).

³ Super. Ct. Crim. R. 61(i)(4).

⁴ *Riley v. State*, Del. Supr., 585 A.2d 719, 721 (1990).

(10) On appeal, as in his first and second postconviction motions, Hill alleges (i) ineffective assistance of counsel, (ii) unfulfilled plea agreement, and (iii) illegal sentence. The Court finds that the claims are procedurally barred under Rule 61(i)(4). The Superior Court considered Hill's claims in connection with his first motion for postconviction relief and found them to be without merit. Hill has presented no reason why reconsideration of the claims is warranted in the interest of justice.

(11) It is manifest on the face of Hill's opening brief that the appeal is without merit. The issues raised on appeal are clearly controlled by settled Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, there was no abuse of discretion.

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:

/s/ Joseph T. Walsh
Justice