

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN H. HAMILTON	§	
	§	No. 495, 2003
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County in S01-06-
	§	0374I & 0375I.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0106017907

Submitted: March 26, 2004
Decided: May 12, 2004

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

ORDER

This 12th day of May 2004, upon consideration of the appellant’s opening brief and appendix, the appellee’s motion to affirm, the appellant’s motion to respond to the motion to affirm, and his “motion to modify requested relief,” it appears to the Court that:

(1) The appellant, John H. Hamilton, appeals from the Superior Court’s order of September 5, 2003, that denied his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The State

has moved to affirm the Superior Court's judgment on the basis that the appeal is without merit. We agree and affirm.

(2) In 2001, Hamilton was charged with Possession of Cocaine and Possession of Drug Paraphernalia. Hamilton entered into the Superior Court's Drug Court Diversion Program in July 2001 and was terminated from the program in July 2002. After a stipulated trial, Hamilton was found guilty of the drug charges. He was sentenced to a total of two years at Level V, suspended for one year at a Level IV residential substance abuse treatment program that was suspended, after successful completion of the program, for nine months of Level III aftercare.

(3) On January 3, 2003, after a hearing, the Superior Court adjudged Hamilton guilty of violation of probation (VOP). The Superior Court sentenced Hamilton, as corrected, to a total of two years at Level V imprisonment, suspended upon successful completion of the Level V Key Short Term Program, for a Level IV residential substance abuse treatment program, suspended, upon successful completion of that program, for twelve months at Level III aftercare.

(4) Beginning in January 2003 and continuing through May 2003, Hamilton filed several *pro se* motions for modification or review of sentence. Each of Hamilton's motions was denied by the Superior Court.¹

(5) In July 2003, Hamilton filed a motion for postconviction relief. By order dated August 6, 2003, the Superior Court denied the motion. Hamilton did not appeal. In August 2003, Hamilton filed a second postconviction motion. On September 5, 2003, the Superior Court denied Hamilton's second postconviction motion as procedurally barred. This appeal followed.

(6) In his opening brief on appeal, Hamilton argues, as he did in his first and second postconviction motions, that: (a) he was denied the assistance of appointed counsel to represent him at his entry into, and termination from, the drug diversion program; (b) he was denied the assistance of counsel at his VOP hearing; and (c) the Superior Court failed to credit him with ten days

¹*State v. Hamilton*, Del. Super., Def. ID No. 0106017907, Bradley, J. (Jan. 29, 2003); *State v. Hamilton*, Del. Super., Def. ID No. 0106017907, Bradley, J. (Mar. 6, 2003); *State v. Hamilton*, Del. Super., Def. ID No. 0106017907, Bradley, J. (April 3, 2003); *State v. Hamilton*, Del. Super., Def. ID No. 0106017907, Bradley, J. (April 29, 2003).; *State v. Hamilton*, Del. Super., Def. ID No. 0106017907, Bradley, J. (May 27, 2003).

served at Level IV in the Sussex County VOP unit and 142 days served at Level IV in the Sussex County Work Release Unit.

(7) In addition to the claims presented in his opening brief, Hamilton seeks leave to respond to the State’s motion to affirm. In his “motion to modify requested relief,” Hamilton asks this Court to consider documents and events leading to and stemming from his recent termination from the Key Short Term Program.

(8) The Court will deny Hamilton’s motion to respond to the motion to affirm. Supreme Court Rule 25(a) prohibits any “briefing, argument or response” to a motion to affirm, unless requested by the Court. The Court will also deny Hamilton’s “motion to modify requested relief.” When considering an appeal, the Court generally is confined to the record made before, and questions fairly presented to, the trial court.²

(9) Having considered Hamilton’s opening brief and the State’s motion to affirm, we conclude that the Superior Court did not abuse its discretion when it denied Hamilton’s second motion for postconviction relief

²Supr. Ct. R. 8; Supr. Ct. R. 9(a).

on procedural grounds.³ Hamilton alleged, as he did in his first postconviction motion, that he was entitled to 152 days of credit for time served at Level IV, and that he was denied the assistance of counsel at his termination hearing and at his VOP hearing. Because the Superior Court previously considered those claims, the claims are procedurally barred as repetitive⁴ and as formerly adjudicated.⁵ Hamilton has offered no reason why reconsideration of either claim is warranted in the interest of justice.⁶ Moreover, Hamilton has not demonstrated that the Superior Court lacked jurisdiction or that there was a miscarriage of justice due to a constitutional violation.⁷

(10) It is manifest on the face of Hamilton's opening brief that this appeal is without merit. The issues presented on appeal clearly are controlled by settled Delaware law. To the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

³*See Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991) (providing that the Superior Court must apply the procedural requirements of Rule 61 before reaching the merits of the claims).

⁴Super. Ct. Crim. R. 61(i)(2).

⁵Super. Ct. Crim. R. 61(i)(4).

⁶*Id.*

⁷Super. Ct. Crim. R. 61(i)(5).

NOW, THEREFORE, IT IS ORDERED that:

- A. Hamilton's motion to respond to the State's motion to affirm, and his "motion to modify requested relief" are DENIED.
- B. The State's motion to affirm is GRANTED.
- C. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele

Justice