

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SAMUEL GREEN,	§
	§ No. 486, 2012
Respondent Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ C.A. No. 94M-06-040
	§
Petitioner Below-	§
Appellee.	§

Submitted: November 13, 2012

Decided: December 13, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justice

**ORDER**

This 13<sup>th</sup> day of December 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The respondent-appellant, Samuel Green, filed an appeal from the Superior Court’s August 1, 2012 order denying his motion to set aside a June 1994 forfeiture of property. The petitioner-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground

that it is manifest on the face of the opening brief that this appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record before us reflects that, on February 1, 1994, Green was arrested by City of Wilmington Police on drug and weapon charges.<sup>2</sup> On June 15, 1994, the State of Delaware moved to forfeit a car, cash, two firearms and jewelry, which police had seized at the time of Green's February 1994 arrest. On June 17, 1994, the Superior Court granted the State's motion and the property was forfeited.

(3) On April 8, 1996, Green filed a motion in the Superior Court seeking to set aside the June 1994 forfeiture order. The Superior Court denied Green's motion on December 19, 1996. This Court affirmed the Superior Court's decision.<sup>3</sup> Following the Superior Court's denial of Green's most recent motion to set aside the June 1994 forfeiture, Green filed the instant appeal in this Court.

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> The charges were dismissed on February 9, 1994, because a federal grand jury had indicted Green on drug and weapon charges the previous day. On May 11, 1994, Green was found guilty by a federal jury on the drug and weapon charges. His sentence as a career offender to a total of 420 consecutive months of incarceration was affirmed by the Third Circuit. *United States v. Green*, 47 F.3d 1162 (3d Cir. 1995), cert. denied, *Green v. United States*, 514 U.S. 1122 (1995).

<sup>3</sup> *Green v. State*, 1997 WL 398926 (Del. June 24, 1997). Green also unsuccessfully sought relief in the United States District Court for the District of Delaware in 1995 and 2009.

(4) In this appeal, Green claims that the procedures utilized by the State in the forfeiture proceeding, including the lack of proper notification, were invalid, requiring the return of his property.

(5) This Court has held that the Superior Court is within its discretion in refusing to consider a motion for the return of property filed more than 45 days after notification to all known interested parties of the State's seizure of the property.<sup>4</sup> As such, we conclude that the Superior Court acted well within its discretion when it determined that Green's motion, filed approximately 18 years after the forfeiture of the property, was untimely. Moreover, because Green raised the same arguments in his most recent motion that had previously been raised unsuccessfully in the Superior Court, his claims were barred under the doctrine of *res judicata*.<sup>5</sup>

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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<sup>4</sup> Del. Code Ann. tit. 16, §4784(j); *McNair v. State*, 2000 WL 1780762 (Del. Nov. 29, 2000); *In re \$1,36.00 in U.S. Currency*, 1999 WL 86070 (Del. Jan. 20, 1999); *Frazier v. State*, 1997 WL 587345 (Del. Sept. 10, 1997).

<sup>5</sup> *Robinson v. State*, 2012 WL 1142462 (Del. Apr. 3, 2012) (citing *Bailey v. City of Wilmington*, 766 A.2d 477, 481 (Del. 2001)).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.<sup>6</sup>

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>6</sup> Green's motion, entitled "Appeal of Motion to Reconsider Request to Set Aside Forfeiture" and filed on November 20, 2012, is hereby denied as moot.