

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LUTHER L. JONES,	§
	§ No. 49, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 7307000002
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 7, 2013  
Decided: July 18, 2013

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 18<sup>th</sup> day of July 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Luther L. Jones, filed an appeal from the Superior Court’s January 7, 2013 order adopting the December 5, 2012 report of the Superior Court Commissioner, which recommended that the Superior Court deny his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61.<sup>1</sup> We find no merit to the appeal. Accordingly, we affirm.

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<sup>1</sup> Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

(2) The record reflects that, in June 1970, Jones was indicted for Murder in the First Degree. On July 29, 1971, he entered a plea of guilty to Murder in the Second Degree. He later was sentenced to imprisonment for his natural life. Jones did not file a direct appeal. In September 2008, Jones filed his first motion for postconviction relief pursuant to Rule 61 claiming that his sentence was for 45 years rather than for life and that his life sentence was not authorized by statute. In January 2009, the Superior Court denied the motion, ruling that Jones' contention that he was sentenced to a term of 45 years was incorrect as a matter of fact and law and that his life sentence was authorized by statute. Jones did not file an appeal from the Superior Court's judgment.

(3) In his appeal from the Superior Court's denial of his second motion for postconviction relief, Jones claims that a) his counsel provided ineffective assistance during the plea bargaining process, rendering his plea involuntary; b) his sentence of life in prison was not authorized by statute; and c) the Superior Court should have appointed counsel to represent him on his first postconviction motion. To the extent that Jones has failed to raise claims that were presented to the Superior Court below, any such claims are deemed to be waived and will not be considered by this Court.<sup>2</sup>

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<sup>2</sup> *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

(4) When considering a motion for postconviction relief pursuant to Rule 61, the Superior Court must first determine whether the defendant has met the procedural requirements of the rule before considering the merits of the motion.<sup>3</sup> In this case, Jones' claims are barred as untimely pursuant to Rule 61(i) (1). Moreover, his first two claims are procedurally barred as formerly adjudicated pursuant to Rule 61(i) (4).

(5) While Jones characterizes his first claim as one of ineffective assistance of counsel, it is essentially the same claim he asserted in his first postconviction motion---i.e. that he was erroneously led to believe that his Level V prison sentence was for life rather than for 45 years. As such, the claim was previously adjudicated and is procedurally barred in this proceeding. Jones' second claim that his sentence was not authorized by statute also was previously raised in his first postconviction motion, rendering it, too, procedurally barred under Rule 61(i) (4). Jones' third claim that he should have been appointed counsel in connection with his first postconviction motion was not presented to the Superior Court in the first instance, barring consideration of the claim by this Court.<sup>4</sup>

(6) To the extent that Jones seeks to avoid the procedural bars by claiming a miscarriage of justice due to a constitutional violation under Rule

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<sup>3</sup> *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996).

<sup>4</sup> Supr. Ct. R. 8.

61(i) (5), any such attempt is unavailing. The transcript of Jones' plea colloquy reflects clearly that he understood that he would be sentenced to life in prison, as required by the sentencing statute for second degree murder in effect at that time.<sup>5</sup> As such, there is no basis for Jones' claim of ineffective assistance on the ground that his counsel misrepresented the term of his sentence, resulting in an involuntary guilty plea.<sup>6</sup> In the absence of any error or abuse of discretion on the part of the Superior Court in denying Jones' second motion for postconviction relief, the judgment of the Superior Court must be affirmed.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>5</sup> *State v. Rashad Serfuddin El a/k/a Luther Jones*, Del. Super., Cr. A. No. N70061343R1, Slights, J. (Del. Super. Jan. 7, 2009) (holding that Jones' conviction under Del. Code Ann. tit. 11, §572 (1953) rendered him guilty of a Class A felony, which, at the time of Jones' sentencing, mandated a life sentence under §4205 (1988), as was clearly explained to him at his plea hearing)).

<sup>6</sup> *McDonald v. State*, 778 A.2d 1064, 1075 (Del. 2001) (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985) (a claim of an involuntary guilty plea requires the defendant to demonstrate that, but for counsel's errors, he would not have pleaded guilty, but would have insisted on proceeding to trial)).