IN THE SUPREME COURT OF THE STATE OF DELAWARE

SYLVESTER C. SHOCKLEY,	§	
	§	No. 566, 2012
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. 81003194DI
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: November 29, 2012
Decided: January 15, 2013

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

O R D E R

This 15th day of January 2013, 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 defendant-appellant, Sylvester C. Shockley, filed an appeal from the Superior Court's September 20, 2012 order denying his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-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.[1] We agree and affirm.

(2) The record before us reflects that, in December 1981, Shockley pleaded guilty to Rape in the First Degree. He was sentenced to life in prison. Shockley did not file a direct appeal. As such, his conviction became final on April 26, 1982---30 days after the Superior Court imposed sentence on March 26, 1982.[2] Shockley's conviction also became final prior to the adoption of Rule 61. Because the effective date of the Rule was January 1, 1989, Shockley had until that date to file a timely motion for postconviction relief.[3] However, Shockley's first motion for postconviction relief was not filed until July of 2011.

(3) In 2005, Shockley petitioned the Superior Court for a writ of mandamus to compel the Department of Correction to set a conditional release date. This Court affirmed the Superior Court's denial of that petition.[4] In 2008, Shockley again petitioned the Superior Court for a writ of mandamus, this time to compel the Department of Correction to grant him

[1] Supr. Ct. R. 25(a).
[2] Super. Ct. Crim. R. 61(m) (1).
[3] *Boyer v. State*, 562 A.2d 1186, 1187-88 (Del. 1989).
[4] *Shockley v. Taylor*, Del. Supr., No. 216, 2005, Berger, J. (Aug. 24, 2005).

good time credits. Again, this Court affirmed the Superior Court's denial of the petition.[5]

(4) In his postconviction motion filed in the Superior Court, Shockley claimed that a) his guilty plea was involuntary; b) his counsel provided ineffective assistance in connection with the guilty plea; and c) the plea agreement was breached. All of Shockley's claims were grounded in his contention that, at the time his guilty plea was entered, he believed that his sentence was for 45 years, not for life. The Superior Court, determining that Rule 61(i) (5)'s "miscarriage of justice" exception did not apply, denied Shockley's motion as time-barred under Rule 61(i) (1).[6]

(5) In this appeal from the Superior Court's denial of his first postconviction motion, Shockley claims that the Superior Court abused its discretion when it a) denied his postconviction motion as time-barred, failing to consider the merits of his claims under *Lafler v. Cooper*, 132 S. Ct. 1376 (2012) and *Missouri v. Frye*, 132 S. Ct. 1399 (2012), which enunciated a new rule of law that exempts him from Rule 61's time bar; b) failed to request trial counsel to submit an affidavit responding to his claims of

[5] *Shockley v. Danberg*, Del. Supr., No. 88, 2009, Holland, J. (Sept. 10, 2009).

[6] The record reflects that, prior to ruling on Shockley's postconviction motion, the Superior Court obtained a response from the State, a reply from Shockley and a supplemental response from the State. The Superior Court did not request Shockley's trial counsel to file an affidavit responding to Shockley's ineffective assistance of counsel claims.

ineffective assistance of counsel; c) failed to hold an evidentiary hearing to address his claims; and d) failed to obtain a transcript of his 1981 plea colloquy.

(6) Delaware law requires the Superior Court to first determine whether a defendant has met the procedural requirements of Rule 61 before addressing the merits of his postconviction claims.[7] The record reflects that Shockley's conviction became final in April 1982. As such, his postconviction motion, which was not filed until July of 2011, clearly was time-barred. However, Shockley claims that Rule 61's time bar is inapplicable because, once *Lafler* and *Frye* were decided in 2012, he was able to demonstrate a retroactive "miscarriage of justice" based upon his counsel's erroneous advice in 1981 that he would serve a fixed prison term of only 45 years.

(7) Shockley's analysis is incorrect for several reasons. First, as this Court has made clear, a pre-TIS sentence for first degree rape such as Shockley's has never been for a fixed term of 45 years, but, rather, has always been for the defendant's natural life, with the possibility of parole.[8] Moreover, Shockley's characterization of the *Lafler* and *Frye* cases as

[7] *Ayers v. State*, 802 A.2d 278, 281 (Del. 2002).
[8] *Evans v. State*, 872 A.2d 539, 557 (Del. 2005).

providing a "new rule of law" is erroneous. This Court has long recognized claims of ineffective assistance in connection with guilty pleas.[9]

(8) Moreover, the *Lafler* and *Frye* cases are factually distinguishable from the circumstances presented here. The *Lafler* case involved a criminal defendant who rejected a favorable plea offer from the State in accordance with advice from his counsel that was based upon counsel's misunderstanding of State criminal law. The *Frye* case involved a criminal defendant whose counsel failed to communicate a plea offer to his client before it expired, resulting in the client's acceptance of a plea offer on much less favorable terms. Shockley, however, accepted the State's offer of a plea of guilty to Rape in the First Degree, which properly resulted in a sentence of life in prison, in accordance with this Court's holding in *Evans*. Because the *Lafler* and *Frye* cases are factually distinguishable from Shockley's case, they do not assist Shockley in his attempt to avoid Rule 61's time bar.

(9) Finally, we find no abuse of discretion on the part of the Superior Court in not requesting defense counsel's affidavit in connection with a guilty plea hearing that took place in December 1981,[10] not holding

[9] *Albury v. State*, 551 A.2d 53, 58-60 (Del. 1988).
[10] This Court has stated that it is preferable for the Superior Court to obtain defense counsel's affidavit in response to ineffectiveness claims in a first postconviction motion.

an evidentiary hearing regarding events that occurred decades ago[11] and not providing Shockley with a transcript of the guilty plea colloquy when it could not be located in the Superior Court records.[12] For all of the above reasons, we conclude that the Superior Court acted well within its discretion when it denied Shockley's postconviction motion as time-barred under Rule 61(i) (1).

10) 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.

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/ Myron T. Steele
Chief Justice

Horne v. State, 887 A.2d 973, 975 (Del. 2005). However, *Horne* does not mandate that the Superior Court obtain an affidavit in all instances.

[11] Super. Ct. Crim. R. 61(h) (1) and (3).

[12] The Superior Court notes in its decision below that its attempts to locate the 1981 guilty plea transcript were unsuccessful.