

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARLON THOMAS,	§	
	§	
Defendant Below-	§	No. 384, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	Cr. ID No. 9505002948
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: February 18, 2005

Decided: March 22, 2005

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

ORDER

This 22nd day of March 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Marlon Thomas, filed an appeal from the Superior Court's August 9, 2004 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In August 1995, Thomas was found guilty by a Superior Court jury of Assault in the First Degree, two counts of Unlawful Sexual Intercourse in the Second Degree, Kidnapping in the First Degree, two counts of Possession of a Deadly Weapon During the Commission of a Felony, and Unauthorized Use of a

Motor Vehicle. In addition to his direct appeal, Thomas filed two previous motions for postconviction relief.

(3) In this appeal, Thomas claims that: a) because he showed that evidence of prior bad acts was improperly admitted at his trial,¹ the untimeliness of his postconviction motion² should have been excused based on a “colorable claim that there was miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”³

(4) Thomas’ argument regarding prior bad acts evidence is not a claim of constitutional dimension. As such, there was no basis for the Superior Court to consider whether his untimely postconviction motion should be excused pursuant to Rule 61(i) (5).

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

BY THE COURT:

/s/ Carolyn Berger
Justice

¹ Del. Evid. R. 404(b).

² Super. Ct. Crim. R. 61(i) (1).

³ Super. Ct. Crim. R. 61(i) (5).