

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WARD T. EVANS,	§
	§
Defendant Below-	§ No. 614, 1999
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County,
	§ C.A. No. IK82-03-0029
Plaintiff Below-	§
Appellee.	§

Submitted: February 7, 2000

Decided: March 8, 2000

Before **VEASEY**, Chief Justice, **WALSH, HOLLAND**, Justices

ORDER

This 8th day of March 2000, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Ward T. Evans, filed this appeal from a Superior Court order denying Evans's ninth motion for postconviction relief. The State has moved to affirm the Superior Court's judgment on the grounds that the appeal is without legal merit, and it was not an abuse of the Superior Court's discretion to deny Evans's motion as procedurally barred. *See* Super. Ct. Crim. R. 61(i)(1), (2), (3).

(2) The record reflects that Evans was convicted by a Superior Court jury of first degree rape in September 1982. This Court affirmed that conviction on

direct appeal on June 21, 1984. Since then, Evans has filed eight motions for postconviction relief, as well as *habeas corpus* applications in the State and Federal courts. All of these applications have been denied by the trial courts and affirmed on appeal.

(3) In this appeal, Evans claims that the Superior Court lacked subject matter jurisdiction at the time of his trial and subsequent conviction. The Superior Court's order dismissed Evans's motion for postconviction relief as procedurally barred by Rule 61 and did not discuss the legal merits of Evans's claim.

(4) When reviewing the Superior Court's denial of a postconviction motion pursuant to this Rule, this Court first must consider the procedural requirements before addressing any substantive issues. *See Stone v. State*, Del. Supr., 690 A.2d 924, 925 (1996). In addition, the Superior Court's denial of a defendant's motion for postconviction relief is reviewed under an abuse of discretion standard. *See Harris v. State*, Del. Supr., 410 A.2d 500, 501-02 (1979).

(5) This Court's examination of the record in this case reflects the following: (i) Evans's latest motion was filed well beyond the three year time limit since this Court denied his direct appeal in 1984; (ii) the motion is barred as repetitive because the claim asserted was previously raised and adjudicated in

Evans's first postconviction relief motion; and (iii) Evans failed to raise the present claim in his direct appeal and is now unable to show either cause or prejudice to excuse this procedural default. *See* Super. Ct. Crim. R. 61(i). It appears to this Court that Evans continues to abuse the postconviction process by submitting piecemeal, repetitious and frivolous petitions concerning his conviction for first degree rape. Accordingly, the Superior Court's denial of Evans's motion as procedurally barred did not constitute an abuse of discretion by that court.

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

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is hereby AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice