

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL T. HYSON,	§
	§
Defendant Below-	§ No. 162, 1999
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN91-06-0593
Plaintiff Below-	§
Appellee.	§

Submitted: February 15, 2000
Decided: March 3, 2000

Before **VEASEY**, Chief Justice, **HARTNETT**, and **BERGER**, Justices.

ORDER

This 3rd day of March 2000, upon consideration of the briefs filed by the parties, it appears to the Court that:

(1) The defendant-appellant, Michael Hyson, filed this appeal from a decision of the Superior Court denying Hyson's motion to vacate his sentence and/or his conviction. The State of Delaware filed its answering brief on appeal on December 2, 1999. Hyson requested and received an extension until February 14, 2000 to file his reply brief. Rather than filing a reply brief, Hyson filed a motion on February 2, 2000 requesting this Court to remand the appeal to the Superior Court. On February 14, Hyson filed a

letter requesting to withdraw his appeal. The State filed responses in opposition to both requests. Both the motion to remand and the request to voluntarily dismiss this appeal are DENIED.

(2) In August 1991, a grand jury indicted Hyson on five separate charges, including three counts of first degree unlawful sexual intercourse. Hyson pled guilty to one count of first degree unlawful sexual intercourse in January 1992, and the State nolle prossed the remaining charges. Prior to sentencing, Hyson moved to withdraw his guilty plea. The Superior Court appointed new counsel for Hyson, and held an evidentiary hearing on February 3, 1993 to determine if there was a basis for withdrawal of Hyson's plea. At the hearing, Hyson indicated that he had decided not to withdraw his plea. He was sentenced the same day to twenty years imprisonment, to be suspended after fifteen years for five years of probation. He did not appeal his conviction or sentence.

(3) In February 1996, Hyson filed a petition for postconviction relief under Superior Court Criminal Rule 61, which the Superior Court denied. This Court dismissed his appeal from that order because it was untimely. Hyson subsequently filed two motions to vacate his conviction and/or

sentence, under Superior Court Criminal Rules 35 and 61. The Superior Court denied those motions. This appeal ensued.

(4) When reviewing the Superior Court's denial of postconviction relief under Rule 61,¹ this Court first must consider the procedural requirements of the rule, even though the Superior Court did not, before addressing any substantive issues.² Rule 61(i) provides, in part, that no motion for postconviction relief can be filed more than three years after a conviction has become final, *unless* there is a claim that the lower court lacked jurisdiction or there is a colorable claim that there was a miscarriage of justice because of a constitutional violation.³

(5) In this case, Hyson's conviction became final in 1993, after the thirty day appeal period expired.⁴ Consequently, Hyson's present motion, which was filed nearly five years after his conviction became final, clearly was untimely under Rule 61(i)(1). Hyson has not established an exception to

¹Although Hyson claimed his motions to vacate his sentence were filed pursuant to both Rule 35 and Rule 61, it is apparent from his claims that he is seeking to set aside his guilty plea on various grounds. A guilty plea can only be set aside by a motion under Rule 61. *See Patterson v. State*, Del. Supr., 684 A.2d 1234, 1237 (1996). Accordingly, we review Hyson's claims pursuant to Rule 61.

²*Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990).

³Super. Ct. Crim. R. 61(i)(1), (5).

⁴*Jackson v. State*, Del. Supr., 654 A.2d 829, 832-33 (1995).

the time limitation under Rule 61(i)(5). Accordingly, Hyson's claim is procedurally barred by the time limitation of Rule 61(i)(1).

(6) It is manifest on the face of Hyson'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, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice