

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE WRIGHT,	§
	§ No. 600, 2012
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0704004298
Plaintiff Below-	§
Appellee.	§

Submitted: December 27, 2012

Decided: January 15, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

**ORDER**

This 15th day of January 2013, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Andre Wright, filed this appeal from the Superior Court's denial of his motion for postconviction relief. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Wright's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Wright in March 2008 of two counts of Burglary in the Second Degree, and one count each of Kidnapping in the First Degree, Robbery in the Second Degree, Resisting Arrest, Conspiracy in the Second Degree, Terroristic Threatening, Criminal

Impersonation, and Possession of a Firearm During the Commission of a Felony. This Court affirmed Wright's convictions on direct appeal.<sup>1</sup> The mandate following the direct appeal was issued on April 2, 2009.

(2) In March 2012, Wright filed a petition for postconviction relief, arguing that there was insufficient evidence to support his conviction for Kidnapping in the First Degree. Wright argued that the evidence did not prove that the victim was restrained beyond the restraint that was necessary to commit the robbery. Wright's motion was referred to a Superior Court Commissioner for a report and recommendation. The Commissioner recommended summary dismissal of the motion because it was procedurally barred. Wright filed objections to the Commissioner's report. On October 17, 2012, the Superior Court adopted the Commissioner's findings and denied Wright's motion on the ground that it was procedurally barred. This appeal followed.

(3) Wright acknowledges that his motion was not filed within one year after his judgment of conviction became final<sup>2</sup> and that the claim he now raises was not argued in his direct appeal.<sup>3</sup> Wright nonetheless asserts that he has overcome these procedural hurdles by raising a colorable claim that there was a miscarriage

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<sup>1</sup> *Michaels v. State*, 970 A.2d 223 (Del. 2009).

<sup>2</sup> See Del. Super. Ct. Crim. R. 61(1) (2013) (providing that a motion for postconviction relief may not be filed more than one year after the judgment of conviction is final).

<sup>3</sup> See *id.* 61(i)(3) (providing that any claim that was not raised in the proceedings leading to the judgment of conviction is thereafter barred unless the petitioner can establish cause for the procedural default and prejudice).

of justice pursuant to Delaware Superior Court Criminal Rule 61(i)(5).<sup>4</sup> We disagree.

(4) As this Court noted in its opinion on direct appeal, the evidence at trial established that Wright and his codefendants attacked and robbed the victim in the parking lot of the victim's apartment complex and then forced the victim into his apartment, where they again robbed him and the occupants of the apartment of additional items.<sup>5</sup> Under the circumstances, the evidence was more than sufficient to establish the element of restraint necessary to prove Wright guilty of Kidnapping in the First Degree.<sup>6</sup>

(5) After careful consideration of the parties' respective positions on appeal, we find it manifest that the judgment below should be affirmed on the basis of the Superior Court's well-reasoned decision dated October 17, 2012. The Superior Court did not err in concluding that Wright's motion for postconviction relief was untimely and otherwise procedurally barred and that Wright had failed to overcome these procedural hurdles by raising a colorable claim of a miscarriage of justice.

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<sup>4</sup> *Id.* 61(i)(5) (providing that the bars to relief in Rule 61(i)(1), (2), and (3) shall not apply to a claim that the trial court lacked jurisdiction or to a colorable claim of a miscarriage of justice).

<sup>5</sup> *Michaels v. State*, 970 A.2d at 226.

<sup>6</sup> *See Weber v. State*, 547 A.2d 948, 957 (Del. 1988) (interpreting the term "restrain" as it used in 11 Del. C. § 786(c) as having three elements: (1) substantial interference with another's liberty; (2) by movement or confinement; (3) without consent).

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

BY THE COURT:

/s/ Randy J. Holland  
Justice