

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN E. MILLER,	§	
	§	No. 9, 2005
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County in
	§	IN97-12-0663.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9712003463

Submitted: April 29, 2005

Decided: July 21, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 21st day of July 2005, upon consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) The appellant, John E. Miller, has appealed from the Superior Court's denial of his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61("Rule 61"). We find no merit to the appeal. Accordingly, we affirm.

(2) In April 1998, Miller pleaded guilty to Robbery in the First Degree. At sentencing in August 1998, the Superior Court declared Miller a habitual offender and sentenced him to thirty years at Level V followed by six

months at Level IV.¹ On appeal, Miller's conviction and sentence were affirmed.²

(3) In July 2002, Miller filed his first motion for postconviction relief.³ Miller raised numerous claims, including that his guilty plea was involuntary due, in part, to the Superior Court's alleged failure during the plea colloquy to clarify the maximum sentence that Miller could receive.

(4) By order dated December 2, 2002, the Superior Court denied Miller's first postconviction motion. The Superior Court concluded, in relevant part, that Miller's claim of defective plea colloquy was without merit and was procedurally barred pursuant to Rule 61(i)(3).⁴ On appeal, the Superior Court's decision was affirmed.⁵

¹Del. Code Ann. tit. 11, § 4214(a).

²*Miller v. State*, 1999 WL 636623 (Del. Supr.).

³Miller filed an initial motion raising numerous claims and thereafter filed several amendments making additional arguments and requests.

⁴Rule 61(i)(3) provides that any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is procedurally barred, unless the movant demonstrates "cause for relief from the procedural default" and "prejudice" stemming from the alleged grievance.

⁵*Miller v. State*, 840 A.2d 1229 (Del. 2003).

(5) In August 2004, Miller filed his third postconviction motion.⁶ Miller contended that his guilty plea was involuntary because neither the indictment nor the presentence report recited facts necessary to conclude that he committed the crime to which he pleaded guilty, *i.e.*, Robbery in the First Degree.

(6) Miller also contended that his guilty plea was involuntary because he entered the plea agreement relying on an executed truth-in-sentencing guilty plea form that stated that he was subject to a maximum penalty of only twenty years. Miller asserts that, in view of the twenty-year maximum penalty stated in the truth-in-sentencing guilty plea form, the subsequent plea colloquy was inadequate because the Superior Court did not clearly explain that the life sentence that Miller could receive, if he was later sentenced as a habitual offender, would expose him to a penalty in excess of twenty years.

(7) By order dated December 27, 2004, the Superior Court summarily denied Miller's postconviction motion as time-barred and as formerly adjudicated. This appeal followed.

(8) On appeal, Miller advances only the claim that his guilty plea is involuntary because the plea colloquy was defective. Miller has not briefed the

⁶Miller filed his second motion for postconviction relief in April 2004 but withdrew that motion in early August 2004.

claim that his guilty plea is involuntary because he did not commit Robbery in the First Degree. As a result, the latter claim is waived and will not be addressed by the Court.⁷

(9) The Superior Court determined, and this Court agrees, that Miller's postconviction motion is time-barred because it was filed more than three years after his conviction became final.⁸ On appeal, Miller has not overcome the time bar by asserting a retroactively applicable right.⁹ Moreover, Miller has not claimed that the Superior Court lacked jurisdiction, nor has he made a colorable claim that there was a miscarriage of justice because of a constitutional violation.¹⁰

⁷*Somerville v. State*, 703 A.2d 629, 631 (Del. 1997) (citing *Murphy v. State*, 632 A.2d 1100, 1152-1153 (Del. 1993)).

⁸Miller filed his third motion for postconviction relief in August 2004, more than five years after his conviction became final. *See* Super. Ct. Crim. R. 61(i)(1) (providing that "[a] motion for postconviction relief may not be filed more than three years after the judgment of conviction is final"). *See* Super. Ct. Crim. R. 61(m)(2) (providing that a conviction is final under the rule when the Supreme Court issues the mandate on direct appeal).

⁹*See* Super. Ct. Crim. R. 61(i)(1) (providing that a motion for postconviction relief asserting a newly-recognized retroactively applicable right must be filed within three years after the right is duly recognized). Miller unsuccessfully asserted an alleged newly-recognized retroactively applicable right in connection with the claim that he has waived on appeal.

¹⁰*See* Super. Ct. Crim. R. 61(i)(5) (providing, in relevant part, that the bar to relief in 61(i)(1) "shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a 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").

(10) We agree also with the Superior Court that Miller’s defective plea colloquy claim is barred as formerly adjudicated.¹¹ Miller challenged the adequacy of the plea colloquy in his first postconviction motion, the denial of which was affirmed on appeal.¹² Miller has offered no reason why reconsideration of that formerly adjudicated claim is warranted in the interest of justice.¹³

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

BY THE COURT:

/s/ Henry duPont Ridgely

Justice

¹¹See Super. Ct. Crim. R. 61(i)(4) (providing that “[a]ny ground for relief that was formerly adjudicated . . . is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.”).

¹²*Miller v. State*, 840 A.2d 1229, 1230-31 (Del. 2003) (concluding that the plea colloquy placed Miller on notice that a life sentence would include a minimum of twenty years).

¹³*Id.*