

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS RICHARD MILLER,	§	
	§	No. 123, 2005
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County in Cr.A.
	§	Nos. S92-12-0044 & 0045.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 92S05488DI

Submitted: May 31, 2005  
Decided: August 24, 2005

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

**ORDER**

This 24<sup>th</sup> day of August 2005, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Thomas Richard Miller, filed an appeal from the Superior Court's order dated March 23, 2005, that denied his motion to compel. The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Miller's opening brief that the appeal is without merit. We agree and affirm.

(2) On June 14, 1993, Miller entered a *Robinson* plea in the Superior Court to charges of Unlawful Sexual Intercourse in the Second Degree and Burglary in the First Degree.<sup>1</sup> The Superior Court ordered a presentence investigation.

(3) Three days later, Miller filed a motion to withdraw the guilty plea. The following day, the Superior Court denied Miller's motion. The Superior Court sentenced Miller to thirty years at Level V suspended after twenty-two years for one year at Level IV followed by probation.

(4) On August 12, 1993, Miller filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). Miller claimed that his defense counsel had withheld exculpatory information from him, and that the Superior Court had erred when it did not allow him to withdraw the guilty plea.

(5) Upon consideration of Miller's postconviction motion, the Superior Court scheduled an evidentiary hearing. At the conclusion of the evidentiary hearing, the Superior Court allowed Miller to withdraw his guilty plea and scheduled the case for trial.

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<sup>1</sup>See *Robinson v. State*, 291 A.2d 279 (Del. 1972) (permitting the acceptance of a guilty plea in the absence of an admission of guilt).

(6) On May 25, 1994, a Superior Court jury found Miller guilty of Unlawful Sexual Intercourse in the First Degree and Burglary in the Second Degree. The Superior Court sentenced Miller to life imprisonment on the sexual offense and to eight years at Level V on the burglary offense. On direct appeal, this Court affirmed Miller’s conviction and sentence.<sup>2</sup>

(7) In 1995 and again in 2003, Miller filed motions for postconviction relief. Miller’s 1995 motion alleged sixteen grounds for relief, including malicious prosecution and insufficient evidence. After an evidentiary hearing, the Superior Court denied Miller’s motion.<sup>3</sup> Miller’s appeal from that order was dismissed.<sup>4</sup>

(8) In 1996, the Superior Court denied, as moot, Miller’s “Motion for State Mandamus.” In the same decision, the Superior Court denied Miller’s “Memorandum of Law in support of the Rule 61 Postconviction Relief” as procedurally barred or as an untimely attempt to reargue the denial of the 1995 postconviction motion.<sup>5</sup> In 2001, the District Court denied Miller’s petition for

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<sup>2</sup>*Miller v. State*, 1995 WL 301379 (Del. Supr.).

<sup>3</sup>*In re Motion for Postconviction Relief, Def. ID # 92S05488DI*, 1995 WL 656783 (Del. Super. Ct.).

<sup>4</sup>*Miller v. State*, 1996 WL 526164 (Del. Supr.).

<sup>5</sup>*In re Miller*, 1996 WL 111233 (Del. Super. Ct.).

a writ of habeas corpus that had sought relief on the bases of nine grounds, including insufficient evidence and exculpatory evidence.<sup>6</sup>

(9) Miller’s 2003 postconviction motion raised seven claims of relief, including exculpatory evidence, insufficient evidence, vindictive prosecution, and perjured testimony. The Superior Court denied Miller’s motion on the bases that the claims were procedurally barred as untimely, repetitive and formerly adjudicated.<sup>7</sup> On appeal, this Court affirmed the Superior Court’s judgment.<sup>8</sup> In 2004, this Court also affirmed the Superior Court’s denial of Miller’s motion for correction of an illegal sentence.<sup>9</sup>

(10) Turning to the present appeal, it appears that Miller’s motion to compel sought to “compel” his release from prison on the bases of exculpatory evidence, missing evidence and perjured testimony. The Superior Court denied Miller’s motion on the basis that “the issues raised had been previously ruled upon by the Superior Court and the appellate courts.”

(11) The Superior Court did not abuse its discretion when it denied Miller’s motion to compel. In Delaware, Rule 61 is the exclusive remedy for

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<sup>6</sup>*Miller v. Snyder*, 2001 WL 173796 (D. Del.).

<sup>7</sup>*In re Miller*, 2003 WL 136243 (Del. Super. Ct.).

<sup>8</sup>*Miller v. State*, 2003 WL 1404365 (Del. Supr.).

<sup>9</sup>*Miller v. State*, 2004 WL 65331 (Del. Supr.).

seeking to set aside a final judgment of conviction.<sup>10</sup> Considering Miller's motion to compel under the procedural requirements of Rule 61, it is clear that Miller's claims are barred as untimely,<sup>11</sup> repetitive<sup>12</sup> and formerly adjudicated.<sup>13</sup>

(12) It is manifest on the face of Miller's opening brief that this appeal is without merit. The issues presented on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>10</sup>Super. Ct. Crim. R. 61(a)(2).

<sup>11</sup>Super. Ct. Crim. R. 61(i)(1).

<sup>12</sup>Super. Ct. Crim. R. 61(i)(2).

<sup>13</sup>Super. Ct. Crim. R. 61(i)(4).