

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                              |
|--------------------|------------------------------|
| JOSEPH C. JACKSON, | §                            |
|                    | § No. 683, 2011              |
| Defendant Below-   | §                            |
| Appellant,         | §                            |
|                    | § Court Below—Superior Court |
| v.                 | § of the State of Delaware   |
|                    | § in and for Kent County     |
| STATE OF DELAWARE, | § Cr. ID No. 0708009517      |
|                    | §                            |
| Plaintiff Below-   | §                            |
| Appellee.          | §                            |

Submitted: May 10, 2012

Decided: June 1, 2012

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

**ORDER**

This 1<sup>st</sup> day of June 2012, 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 defendant-appellant, Joseph C. Jackson, filed an appeal from the Superior Court's November 10, 2011 order adopting the August 19, 2011 report of the Superior Court Commissioner, which recommended that Jackson's first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.<sup>1</sup> The plaintiff-appellee, the State of Delaware,

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<sup>1</sup> Because this was Jackson's first postconviction motion and the motion contained an allegation of ineffective assistance of counsel, Jackson's trial counsel was asked to

has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>2</sup>

We agree and affirm.

(2) The record before us reflects that, on December 16, 2008, Jackson pleaded guilty to two counts of Delivery of Cocaine. He was sentenced as a habitual offender to 12 years of Level V incarceration on the first conviction<sup>3</sup> and, on the second conviction, to 15 years at Level V, to be suspended for 1 year at Level III probation. Jackson did not file an appeal from his convictions. Jackson later filed a motion for correction of illegal sentence in the Superior Court, which was denied. This Court affirmed the Superior Court's judgment.<sup>4</sup>

(3) In this appeal from the Superior Court's denial of his first postconviction motion, Jackson claims that a) his counsel provided ineffective assistance by permitting him to plead guilty as a habitual offender under §4214(a); b) the Superior Court should have appointed counsel for him; and c) the procedural bars should not have been applied against him because the State did not argue that they should apply.

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submit an affidavit responding to the allegation. *Horne v. State*, 887 A.2d 973, 975 (Del. 2005); Supr. Ct. Crim. R. 61(g) (1) and (2).

<sup>2</sup> Supr. Ct. R. 25(a).

<sup>3</sup> Del. Code Ann. tit. 11, §4214(a).

<sup>4</sup> *Jackson v. State*, Del. Supr., No. 48, 2009, Holland, J. (Sept. 8, 2009).

(4) The record reflects that Jackson's first claim is essentially identical to the claim he unsuccessfully raised in his Rule 35(a) motion for correction of an illegal sentence. As such, the claim is procedurally barred as previously adjudicated.<sup>5</sup> Moreover, in the absence of any evidence that the claim should be reconsidered in the interest of justice,<sup>6</sup> we conclude that it is unavailing.

(5) With respect to Jackson's second claim, there is no right to appointed counsel in postconviction proceedings.<sup>7</sup> Whether or not to appoint counsel to represent a defendant such as Jackson lies within the sound discretion of the Superior Court.<sup>8</sup> In the absence of any evidence of an abuse of discretion in this case, we conclude that Jackson's second claim is likewise without merit.

(6) With respect to Jackson's third claim, the Superior Court is mandated to first apply the procedural requirements of Rule 61 before considering the merits of a postconviction motion.<sup>9</sup> In this case, the Superior Court properly applied the procedural requirements of Rule 61 to bar Jackson's previously-adjudicated claim. As such, we conclude that Jackson's third claim also is without merit.

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<sup>5</sup> Super. Ct. Crim. R. 61(i) (4).

<sup>6</sup> Id.

<sup>7</sup> *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987).

<sup>8</sup> Super. Ct. Crim. R. 61(e).

<sup>9</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

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

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

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice