

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JACKIE JACKSON,	§	
	§	No. 239, 2005
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in IS01-
	§	08-0268; IS01-08-0275 to 0277
STATE OF DELAWARE,	§	IS01-09-0481; IS01-08-0599
	§	to 0602.
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0107021899

Submitted: August 16, 2005,  
Decided: November 10, 2005

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 10<sup>th</sup> day of November 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, Jackie Jackson, has appealed from the Superior Court’s denial of his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). The State of Delaware has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Jackson’s opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

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<sup>1</sup>Supr. Ct. R. 25(a).

(2) Following a jury trial in the Superior Court, Jackson was convicted of two counts of Burglary in the Second Degree, two counts of Conspiracy in the Second Degree, and one count each of Misdemeanor Theft, Receiving Stolen Property, Unlawful Use of a Credit Card and Criminal Impersonation. On February 22, 2002, the Superior Court sentenced Jackson to a total of twenty-four years at Level V, suspended after thirteen years, for seven years at Level III and four years at Level II.

(3) On direct appeal, Jackson argued in part that he was prejudiced as a result of a witness' trial testimony that was offered in support of an attempted burglary charge that was later vacated. According to Jackson, the testimony was impermissible hearsay that violated his right of confrontation. Moreover, Jackson argued that the testimony was admitted without a proper limiting instruction and thus compromised the jury's ability to be impartial when considering the other burglary charges.<sup>2</sup> On those two claims as well as Jackson's other claims on direct appeal, this Court disagreed and affirmed his conviction and sentence.<sup>3</sup>

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<sup>2</sup>See *Getz v. State*, 538 A.2d 726, 734 (Del. 1988) (establishing guidelines governing the admissibility of evidence of other crimes, wrongs or acts).

<sup>3</sup>*Jackson v. State*, 2003 WL 161250 (Del. Supr.).

(4) In May 2003, Jackson filed a motion for postconviction relief. The motion, as later amended, raised numerous claims of error, including Jackson's previous claim that the admission of certain impermissible hearsay evidence violated his right of confrontation. Jackson also argued in part that the prosecutor engaged in misconduct during closing argument. Nonetheless, the Superior Court applied the procedural bars of Rule 61(i)(3)<sup>4</sup> and/or (i)(4)<sup>5</sup> to deny those claims.<sup>6</sup> On appeal, this Court affirmed.<sup>7</sup>

(5) On May 9, 2005, Jackson filed his second motion for postconviction relief. For the third time, Jackson raised the claim that the admission of certain hearsay evidence violated his right of confrontation. Moreover, Jackson returned to the claim, first raised and rejected on direct appeal, that the same hearsay evidence was admitted without a required limiting instruction and thus tainted the jury as to the other burglary charges. Jackson also claimed that the Superior Court erred when it did not require the State to

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<sup>4</sup>Rule 61(i)(3) provides that any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is barred, unless the movant can establish cause for the procedural default and prejudice from the violation of the movant's rights.

<sup>5</sup>Rule 61(i)(4) bars a claim that is formerly adjudicated unless reconsideration is warranted in the interest of justice.

<sup>6</sup>*State v. Jackson*, 2003 WL 22833992 (Del. Super.).

<sup>7</sup>*Jackson v. State*, 2005 WL 528673 (Del. Supr.).

respond to his claims of prosecutorial misconduct that he raised in his first postconviction motion.

(6) By order dated May 18, 2005, after denying Jackson's request for a thirty-day extension of time to submit a memorandum of law in support of his second postconviction motion, the Superior Court summarily denied the postconviction motion on the basis that the claims were barred by Rule 61(i)(3) and (i)(4). This appeal followed.

(7) On appeal, Jackson advances both of his claims arising from the hearsay evidence as well as his claim that the Superior Court erred when it did not require the State to respond to his prior claims of prosecutorial misconduct. Jackson also argues that the Superior Court abused its discretion when it denied his request to submit a memorandum of law in support of his postconviction motion.

(8) It is clear from the record that the Superior Court properly exercised its discretion when summarily disposing of Jackson's second postconviction motion without a supporting memorandum of law.<sup>8</sup> Jackson has presented no basis upon which to conclude that reconsideration of any of his

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<sup>8</sup>See Rule 61(d)(4) (providing that the judge may enter an order of summary dismissal "[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief).

claims, all of which were formerly adjudicated at one or more points in the proceedings, is warranted in the interest of justice.<sup>9</sup>

(9) We find it manifest on the face of the opening brief that the judgment of the Superior Court should be affirmed. The issues on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the appellee's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>9</sup>See *Younger v. State*, 580 A.2d 552, 556 (Del. 1990) (procedurally barring formerly adjudicated claims pursuant to Rule 61(i)(4)).