

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY R. TAYLOR, JR.,	§
	§
Defendant Below-	§ No. 406, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN89-06-0083
Plaintiff Below-	§
Appellee.	§

Submitted: March 15, 2002

Decided: April 17, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 17th day of April 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Henry R. Taylor, Jr., filed this appeal from the August 7, 2001 order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we **AFFIRM**.

(2) In his appeal, Taylor claims that: a) the Superior Court abused its discretion by failing to rule appropriately on all of the claims in his Rule 61 motion and by denying his motion for postconviction relief without an

evidentiary hearing;¹ and b) his trial counsel provided ineffective assistance by failing to reveal to the jury that the State had relied on perjured testimony and by failing to provide to the jury the evidence that was promised in the opening statement.

(3) In 1989, Taylor was convicted by a Superior Court jury of Burglary in the Second Degree. He was sentenced to life imprisonment as an habitual offender.² On direct appeal, this Court affirmed Taylor's conviction and sentence.³ This Court also affirmed the Superior Court's denial of Taylor's two subsequent motions for postconviction relief.⁴

(4) Taylor's claims of abuse of discretion on the part of the Superior Court are unavailing. While it is true that the Superior Court did not rule on

¹On March 27, 2002, after briefing was completed, Taylor filed a motion for remand requesting an evidentiary hearing on the Superior Court's jurisdiction to sentence him as an habitual offender, his claim of ineffective assistance of counsel, and the Superior Court's failure to address his postconviction motion in its entirety. The motion is hereby stricken as a non-conforming document. SUPR. CT. R. 34.

²DEL. CODE ANN. tit. 11, § 4214(b) (2001). Taylor had two prior convictions for second degree burglary.

³*Taylor v. State*, Del. Supr., No. 500, 1989, Christie, C.J. (Mar. 18, 1991).

⁴*Taylor v. State*, Del. Supr., No. 265, 1994, Berger, J. (Dec. 7, 1994); *Taylor v. State*, Del. Supr., No. 359, 1998, Walsh, J. (Feb. 23, 1999).

two claims Taylor sought to add to his complaint,⁵ those claims had already been adjudicated⁶ and, to the extent the Superior Court erroneously failed to address them, such error was harmless. The record further reflects that Taylor's remaining claims were addressed appropriately by the Superior Court and, moreover, that the Superior Court was within its discretion to rule on Taylor's postconviction motion without an evidentiary hearing.⁷

(5) The Superior Court was also clearly correct in determining that Taylor's claims of ineffective assistance of counsel are procedurally barred. Not only are the claims barred because they were asserted beyond the 3-year period permitted under Rule 61,⁸ they are also barred because they either were not raised in Taylor's previous postconviction motions⁹ or were formerly

⁵Taylor claimed that he was denied an evidentiary hearing on his habitual offender status and his plea colloquy was defective.

⁶*Taylor v. State*, Del. Supr., No. 359, 1998, Walsh, J. (Feb. 23, 1999); SUPER. CT. CRIM. R. 61(i) (4).

⁷SUPER. CT. CRIM. R. 61(h) (1) and (3).

⁸SUPER. CT. CRIM. R. 61(i) (1). The mandate was issued in May 1991 and Taylor's motion for postconviction relief was not filed until June 2001.

⁹SUPER. CT. CRIM. R. 61(i) (2).

adjudicated¹⁰ and there is no basis upon which to excuse the procedural default.¹¹

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

BY THE COURT:

s/Joseph T. Walsh
Justice

¹⁰SUPER. CT. CRIM. R. 61(i) (4).

¹¹SUPER. CT. CRIM. R. 61(i) (2), (4) and (5).