

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KOREY E. TWYMAN,	§	
	§	No. 747, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9707012195
Appellee.	§	

Submitted: April 22, 2011
Decided: July 25, 2011

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

ORDER

This 25th day of July 2011, upon consideration of the briefs on appeal, it appears to the Court that:

(1) The appellant, Korey E. Twyman, filed this appeal from the Superior Court’s November 18, 2010 denial of postconviction relief. After careful consideration of the parties’ positions on appeal, we affirm the judgment of the Superior Court.

(2) Following a Superior Court jury trial in 1999, Twyman was convicted of Murder in the First Degree, Attempted Murder in the First Degree, Conspiracy in the First Degree, Murder in the Second Degree and

related firearm offenses. The record reflects that Twyman was only fifteen-years-old when he committed the crimes.

(3) On July 9, 1999, Twyman was sentenced to two mandatory life sentences for Murder in the First Degree and Attempted Murder in the First Degree. Twyman was also sentenced to five years at Level V for Conspiracy in the First Degree, to twenty years at Level V for Murder in the Second Degree and to terms of years for the firearm offenses. On direct appeal, this Court affirmed the judgment of the Superior Court.¹

(4) In his motion for postconviction relief filed on September 28, 2010, Twyman challenged the mandatory life sentence that was imposed for his Attempted Murder in the First Degree conviction. Twyman argued that the mandatory life sentence for attempted murder violates his constitutional rights under the United States Supreme Court's recent decision in *Graham v. Florida*.²

(5) By report dated October 19, 2010, a Superior Court Commissioner recommended that Twyman's postconviction motion should be denied as procedurally barred.³ Thereafter, upon *de novo* review of the matter, the Superior Court, by order dated November 18, 2010, adopted the

¹ *Twyman v. State*, 2001 WL 474632 (Del. Supr.).

² *Graham v. Florida*, 130 S.Ct. 2011 (2010).

³ See Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to relief). *State v. Twyman*, 2010 WL 4261921 (Del. Super.).

Commissioner's report and denied Twyman's postconviction motion for the reasons stated by the Commissioner. This appeal followed.

(6) On appeal, Twyman argues that, notwithstanding the procedural bar, his claim under *Graham* warrants review because it asserts "a miscarriage of justice"⁴ and/or a newly recognized "retroactively applicable right."⁵ Nonetheless, having carefully considered the parties' positions on appeal, the Court agrees with the Superior Court that Twyman's reliance on *Graham* is misplaced and provides no basis for relief in this case.

(7) First, the Court agrees that, under *Graham*, Attempted Murder in the First Degree appears to fall within the category of crimes for which a life sentence without parole may be imposed upon a juvenile.⁶ Second, in *Graham*, the United States Supreme Court held that the Eighth Amendment prohibits imposing a life sentence without parole on a juvenile who is sentenced "solely for a nonhomicide offense," which is not the case here.⁷ In this case, Twyman was sentenced for homicide and nonhomicide

⁴ See Del. Super. Ct. Crim. R. 61(i)(5) (providing exception to procedural bar).

⁵ See Del. Super. Ct. Crim. R. 61(i)(1) (providing exception to procedural bar).

⁶ See *Graham v. Florida*, 130 S.Ct. at 2027 (recognizing that "defendants who do not kill, *intend to kill*, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers") (emphasis added).

⁷ In *Graham*, the sixteen-year-old defendant was convicted of armed burglary with assault or battery, a felony that carried a maximum penalty of life imprisonment, and attempted armed robbery. The trial court imposed the maximum sentence for both crimes. Because Florida does not have a parole system, the defendant's life sentence was without the possibility of parole. *Graham v. Florida*, 130 S.Ct. at 2019-20.

offenses, namely for his convictions on Murder in the First Degree, Attempted Murder in the First Degree, Conspiracy in the First Degree, Murder in the Second Degree and firearm offenses.

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

BY THE COURT:

/s/ Randy J. Holland
Justice