

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES EAVES,	§
	§
Defendant Below-	§ No. 22, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0104009314
Plaintiff Below-	§
Appellee.	§

Submitted: May 26, 2006

Decided: July 10, 2006

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

**ORDER**

This 10<sup>th</sup> day of July 2006, upon consideration of the parties' respective briefs and the record below, it appears to the Court that:

(1) The appellant, James Eaves, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. Because we find that Eaves' postconviction motion was untimely, we do not reach the merits of his claims on appeal. Accordingly, we affirm the Superior Court's judgment, albeit on the alternative ground that his motion is procedurally barred by the provisions of Superior Court Criminal Rule 61(i)(1).

(2) The record reflects that Eaves pled guilty in March 2002 to one count of murder by abuse or neglect in the first degree. The Superior Court

sentenced him in June 2002 to forty years at Level V imprisonment to be suspended after thirty years for decreasing levels of supervision. Eaves did not file a direct appeal. Instead, he filed his first motion for postconviction relief in July 2005. The gist of Eaves' claims were that his plea agreement contained an agreed-to sentence recommendation of twenty years and that the Superior Court erred by sentencing him in excess of his plea agreement. Eaves also asserted error by both his trial counsel and the prosecutor with respect to his sentence. The Superior Court denied Eaves' petition on its merits, holding that the sentencing judge was not bound by the prosecutor's sentencing recommendation and the record of the guilty plea colloquy reflected Eaves' understanding that the maximum sentence for his crime was life imprisonment.

(3) Notwithstanding the Superior Court's ruling on the merits of Eaves' postconviction petition, this Court first will apply the rules governing the procedural requirements of Rule 61 before giving consideration to the merits of any underlying claims for postconviction relief.<sup>1</sup> Rule 61(i)(1) requires that a petition for postconviction relief be filed within three years

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<sup>1</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1980) (citing *Harris v. Reed*, 489 U.S. 255 (1989)).

after a conviction becomes final.<sup>2</sup> In this case, Eaves' postconviction motion should have been filed before July 8, 2005. It was not filed until July 27, 2005. Accordingly, consideration of Eaves' untimely motion is barred unless it asserts a newly recognized, retroactively applicable right<sup>3</sup> or unless it asserts either a claim that the trial court lacked jurisdiction or a colorable claim of a miscarriage of justice due to a constitutional violation.<sup>4</sup> Because Eaves' postconviction claims were based on the erroneous assertion that the Superior Court was bound by the prosecutor's sentencing recommendation, he clearly did not overcome the procedural hurdle of Rule 61(i)(1).

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

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>2</sup> DEL. SUPER. CT. CRIM. R. 61(i)(1) (2004) (Rule 61(i)(1) was amended effective July 1, 2005 to reduce the limitations period on postconviction claims to one year for all cases in which the judgment of conviction became final after the effective date).

<sup>3</sup> The applicable version of Rule 61(i)(1) provides: "A motion for postconviction relief may not be filed more than three years after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than three years after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court."

<sup>4</sup> Rule 61(i)(5) provides: "The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction."