IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID M. WILLIAMS,	§	
	§	No. 173, 2006
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 9803018202B
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: September 22, 2006
Decided: October 31, 2006

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

O R D E R

This 31st day of October 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, David M. Williams, filed an appeal from the Superior Court's March 27, 2006 order summarily dismissing his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) In August 1999, Williams was found guilty by a Superior Court jury of two counts of Attempted Burglary in the Second Degree and one count each of Possession of Burglar's Tools and Criminal Mischief. He was

sentenced as a habitual offender[1] to a total of twenty-seven years of Level V incarceration, to be suspended after twenty-six years for probation.[2] Williams' convictions and sentences were affirmed by this Court on direct appeal.[3] The record reflects that, between June 2000 and November 2005, Williams filed approximately ten motions for postconviction relief and/or sentence modification, all of which were unsuccessful.

(3) In this appeal, Williams claims that: a) the Superior Court improperly relied on a one-year time limitation to deny his Rule 61 claims; b) he never had a preliminary hearing on the charges against him; c) the State's failure to call Detective Ellwein at trial violated his constitutional rights; and d) the statements of Detective Ellwein constitute "newly discovered evidence" warranting a new trial.[4]

(4) Williams' first claim is that the Superior Court improperly relied upon the recently enacted one-year time limitation[5] when it denied his Rule 61 claims. However, even if the prior three-year time limitation had been applied, that would not have changed the outcome of Williams'

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[1] Del. Code Ann. tit. 11, § 4214(a).
[2] Williams was sentenced at the same time for Possession of a Deadly Weapon by a Person Prohibited, Forgery in the Second Degree and Attempted Escape in the Third Degree, charges to which he had pleaded guilty.
[3] *Williams v. State*, Del. Supr., No. 507, 1999, Walsh, J. (May 30, 2000).
[4] The record reflects that Detective Ellwein interviewed Williams in connection with her investigation of an unrelated rape.
[5] Super. Ct. Crim. R. 61(i) (1) (2005).

postconviction motion. All of his claims are time-barred under either limitation period.[6] Because the Superior Court's application of the one-year time limitation did not result in any prejudice to Williams, we conclude that his first claim is without merit.

(5) Williams next appears to argue that his remaining three claims should be considered under the "interest of justice" exception to the time bar of Rule 61.[7] Under that exception, a defendant must demonstrate that there is a colorable claim of a constitutional violation resulting in a miscarriage of justice. Williams has not carried that burden with respect to any of the claims. His claim that he was entitled to a preliminary hearing is incorrect as a matter of law.[8] He has not met either the procedural or substantive requirements warranting a new trial.[9] Finally, Williams has provided no authority to support his claim that the State was required to call Detective Ellwein as a witness at trial solely on the ground that she had interviewed

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[6] Because the mandate issued from this Court in June 2000, the 3-year period within which Williams could file a postconviction motion ended in June 2003. *Jackson v. State*, 654 A.2d 829, 833 (Del. 1995).

[7] Super. Ct. Crim. R. 61(i) (5).

[8] *Smith v. State*, 344 A.2d 251, 253 (Del. 1975) (holding that an indictment eliminates both the need for, and the right to, a preliminary hearing).

[9] Super. Ct. Crim. R. 33 (providing that a motion for a new trial on the ground of newly discovered evidence must be made within 2 years of final judgment); *Downes v. State*, 771 A.2d 289, 291 (Del. 2001) (holding that such evidence must be such as will probably change the outcome if a new trial is granted, must have been discovered subsequent to the trial, and must not be merely cumulative or impeaching).

him in connection with a police investigation that was unrelated to any of the criminal offenses with which Williams had been charged.

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

BY THE COURT:

/s/ Randy J. Holland
Justice