

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MERI-YA M. BAKER,	§
	§ No. 318, 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. 90011925DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 13, 2006
Decided: December 1, 2006

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

ORDER

This 1st day of December 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Meri-ya M. Baker, filed an appeal from the Superior Court’s May 31, 2006 order denying his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In June 1992, Baker was found guilty by a Superior Court jury of Murder in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony, and Conspiracy in the First Degree. He was sentenced to life in prison without the possibility of probation or parole, plus

an additional 25 years of Level V incarceration. This Court affirmed Baker's convictions and sentences on direct appeal.¹ This Court also affirmed the Superior Court's denial of Baker's first postconviction motion.²

(3) In this appeal, Baker claims: a) the Superior Court improperly applied the time bar of Rule 61(i) (1) to his postconviction claims; b) the Superior Court improperly failed to instruct the jury on lesser-included charges; c) there was insufficient evidence to support his convictions; d) his indictment contained erroneous information that was confusing to the jury; and e) the Superior Court improperly permitted the State to violate its rules.

(4) Baker's first claim is that, under *Williams v. State*, 818 A.2d 906 (Del. 2003), the Superior Court should not have barred his claims as untimely.³ Baker argues that, because *Williams* conferred a "retroactively applicable right that [was] newly recognized after [his] judgment of conviction [was] final," his postconviction claims were timely.⁴ Because Baker was convicted of intentional murder pursuant to Del. Code Ann. tit. 11, § 636(a) (1), and not felony murder, the holding of *Williams* is

¹ *Baker v. State*, Del. Supr., No. 360, 1992, Holland, J. (Dec. 30, 1993).

² *Baker v. State*, Del. Supr., No. 371, 2003, Veasey, C.J. (Nov. 19, 2003).

³ In *Williams*, this Court reversed prior law and held that a defendant may not be convicted of felony murder pursuant to Del. Code Ann. tit. 11, § 636(a) (2) unless the prosecution proves that the murder "facilitate[d] commission of the felony." *Williams v. State*, 818 A.2d at 913.

⁴ Under Super. Ct. Crim. R. 61(i) (1), the statute of limitations on a postconviction claim is tolled until a retroactively applicable right is recognized by the Delaware Supreme Court.

inapplicable to him. We, therefore, find Baker's first claim to be without merit.

(5) Baker's second claim is that the Superior Court improperly failed to instruct the jury on the lesser-included offenses of first degree murder. Not only is this claim time-barred, but also it was previously raised in Baker's first postconviction motion and, as such, is also barred as formerly adjudicated.⁵ Moreover, Baker has failed to demonstrate that reconsideration of the claim is warranted in the interest of justice.⁶ We, therefore, conclude that Baker's second claim is without merit.

(6) Baker's third claim is that the prosecution presented insufficient evidence to the jury to support his conspiracy conviction. Not only is this claim time-barred, but also Baker failed to raise this claim either in his direct appeal or in his first postconviction motion. As such, he is barred from presenting it for the first time in his second postconviction motion unless he can demonstrate that justice warrants consideration of the claim,⁷ that there is cause for relief from the procedural default and prejudice from a violation of his rights⁸ or that there is a colorable claim of a miscarriage of justice due

⁵ Super. Ct. Crim. R. 61(i) (4).

⁶ Id.

⁷ Super. Ct. Crim. R. 61(i) (2).

⁸ Super. Ct. Crim. R. 61(i) (3).

to a constitutional violation.⁹ There being no such evidence, we conclude that Baker's third claim is without merit.

(7) Baker's fourth claim is that his indictment contained erroneous information that was confusing to the jury. Specifically, he argues that the indictment erroneously charged him with intentional murder under Del. Code Ann. tit. 11, § 636(a) (2) rather than §636(a) (1). Not only is this claim time-barred, but also Baker failed to present it either in his direct appeal or in his first postconviction motion.¹⁰ Moreover, Delaware law provides that, when a defendant seeks to quash an indictment on the ground of a defect therein, he must make his motion before trial or waive his right to do so.¹¹ For all of the foregoing reasons, we conclude that Baker's fourth claim is also without merit.

(8) Baker's fifth, and final, claim is that the Superior Court improperly permitted the State to violate its rules. Specifically, he argues that the Superior Court should not have granted the State an extension of time to submit its response to his postconviction motion and should not have considered a supplemental out-of-time response by the State. In the absence

⁹ Super. Ct. Crim. R. 61(i) (5).

¹⁰ Super. Ct. Crim. R. 61(i) (2) and (3).

¹¹ Super. Ct. Crim. R. 12(b) (2) and (f); *Corbin v. State*, Del. Supr., No. 54, 1998, Hartnett, J. (Apr. 3, 1998).

of any evidence of an abuse of discretion on the part of the Superior Court or any prejudice to Baker, we find this claim, too, to be without merit.

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

BY THE COURT:

/s/ Carolyn Berger
Justice