

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HECTOR BARROW,	§
	§
Defendant Below-	§ No. 74, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 9506017661
Plaintiff Below-	§
Appellee.	§

Submitted: October 13, 2006  
Decided: December 11, 2006

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

**ORDER**

This 11<sup>th</sup> day of December 2006, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Hector Barrow, filed this appeal from the Superior Court's denial of his motion for postconviction relief. The sole issue Barrow raises on appeal is a claim of ineffective assistance of counsel due to his counsel's alleged failure to timely seek suppression of a codefendant's statement.<sup>1</sup> We find no merit to Barrow's appeal. Accordingly, we affirm the Superior Court's judgment.

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<sup>1</sup> To the extent Barrow raised additional issues below, he did not brief, and thus waived, those claims on appeal. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

(2) The record reflects that Barrow and two codefendants, Jermaine Barnett and Lawrence Johnson, were charged in the robbery and murder of a gun shop owner. Barrow and Barnett were tried together in 1997. Both were convicted of intentional murder, two counts of felony murder, robbery and numerous other crimes. Both were sentenced to death. On direct appeal, this Court reversed each defendant's intentional murder conviction and remanded for a new penalty hearing.<sup>2</sup> Following the second penalty hearing, the Superior Court sentenced each man to life imprisonment. Barrow did not appeal from that sentence. Instead, on January 27, 2005, he filed a motion for postconviction relief asserting five claims. The Superior Court denied Barrow's petition.<sup>3</sup> This appeal followed.

(3) Barrow raises one claim in his opening brief on appeal. He asserts that his trial counsel was ineffective for failing to timely move for the suppression of Lawrence Johnson's statement to police at trial. Although framed as a claim of ineffective assistance of counsel, Barrow's sole issue really is an attempt to reargue this Court's ruling in his direct appeal, which held that the admission of Johnson's statement was erroneous but that "the

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<sup>2</sup> *Barrow v. State*, 749 A.2d 1230 (Del. 2000).

<sup>3</sup> Jermaine Barnett filed a postconviction petition similar to Barrow's on January 31, 2005. The Superior Court consolidated the petitions for consideration. Barnett's appeal from the Superior Court's denial of his petition was dismissed as untimely filed. *Barnett v. State*, 2006 WL 2371338 (Del. Aug. 14, 2006).

damaging effect of that error was limited to the guilt phase of the trial in light of the strength of the State’s evidence of the general participation of Barnett and Barrow in the criminal enterprise leading to [the victim’s] death.”<sup>4</sup>

(4) As the Superior Court noted in its denial of Barrow’s postconviction petition, Superior Court Criminal Rule 61(i)(4) prohibits reconsideration of any claim that was formerly adjudicated, unless reconsideration of the claim is warranted in the interest of justice.<sup>5</sup> The Court is not required to reconsider an issue simply because the defendant has “refined or restated”<sup>6</sup> his claim. We find no basis for reconsidering Barrow’s claim in “the interest of justice.”<sup>7</sup>

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>4</sup> *Barrow v. State*, 749 A.2d at 1245.

<sup>5</sup> Del. Super. Ct. Crim. R. 61(i)(4).

<sup>6</sup> *Skinner v. State*, 607 A.2d 1170, 1172 (Del. 1992) (quoting *Riley v. State*, 585 A.2d 719, 721 (Del. 1990)).

<sup>7</sup> *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990) (holding that relitigation of a claim requires a showing that “subsequent legal developments have revealed that the trial court lacked the authority to convict or punish him”).