

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER R. DESMOND,	§	
	§	
Defendant Below-	§	No. 692, 2002
Appellant,	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. Nos. IN91-10-0696-0709
Plaintiff Below-	§	IN91-10-1170,1174,
Appellee.	§	1176,1184,1197

Submitted: February 3, 2003
Decided: March 20, 2003

Before **WALSH, HOLLAND** and **BERGER**, Justices

ORDER

This 20th day of March 2003, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Christopher R. Desmond, filed an appeal from the Superior Court’s November 27, 2002 order denying his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face

of Desmond's opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In November 1992, Desmond was found guilty by a Superior Court jury of ten counts of Robbery in the First Degree, ten counts of Possession of a Deadly Weapon During the Commission of a Felony, two counts of Conspiracy in the Second Degree, three counts of Possession of a Deadly by a Person Prohibited, three counts of Theft, and one count of Escape in the Third Degree. He was sentenced to 70 years of incarceration at Level V. Desmond's convictions and sentences were affirmed by this Court on direct appeal.² This Court also affirmed the Superior Court's denial of Desmond's two prior postconviction motions³ and affirmed the Superior Court's denial of Desmond's petition for a writ of habeas corpus.⁴

(3) In this appeal, Desmond claims that the Superior Court judge abused his discretion at trial by failing to recuse himself, refusing to allow Desmond to represent himself, improperly influencing a juror to vote for a conviction, and making improper evidentiary rulings admitting tainted

¹SUPR. CT. R. 25(a).

²*Desmond v. State*, 654 A.2d 821 (Del. 1994) (*en Banc*).

³*Desmond v. State*, Del. Supr., No. 487, 1995, Berger, J. (Mar. 8, 1996); *Desmond v. State*, Del. Supr., No. 5, 2001, Berger, J. (Mar. 8, 2001).

⁴*Desmond v. Snyder*, Del. Supr., No. 341, 2002, Steele, J. (Oct. 16, 2001).

evidence and excluding exculpatory evidence. Desmond also claims that the Superior Court abused its discretion by denying his motion for postconviction relief as procedurally barred⁵ and instead should have considered the motion under Rule 61's "interest of justice" and "miscarriage of justice" exceptions.⁶

(4) Desmond's claims are without merit. Although the Superior Court did not address the issue, Desmond's latest postconviction motion is untimely. Desmond's convictions and sentences were affirmed by this Court on direct appeal in 1994. Desmond's motion, filed approximately eight years later, is, thus, time-barred.⁷ As the Superior Court correctly determined, Desmond's claims are also procedurally barred as formerly adjudicated because the first three were addressed by the Superior Court in his two previous postconviction motions and his first claim of bias on the part of the judge was addressed in his petition for a writ of habeas corpus.⁸ Moreover, as the Superior Court correctly determined, neither the "interest of justice" exception nor the "miscarriage of justice" exception of Rule 61 is

⁵SUPER. CT. CRIM. R. 61(i) (4).

⁶SUPER. CT. CRIM. R. 61(i) (4) and (5).

⁷SUPER. CT. CRIM. R. 61(i) (1).

⁸SUPER. CT. CRIM. R. 61(i) (4).

applicable. Desmond has not demonstrated any basis for reconsideration of his claims or any colorable constitutional violation.

(5) It is manifest on the face of Desmond's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice