

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARTIN K. BURKETT,	§	
	§	No. 25, 2007
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE	§	ID # 91001610DI
	§	
Plaintiff Below-	§	
Appellee.	§	
	§	

Submitted: May 29, 2007

Decided: July 25, 2007

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

***ORDER***

This 25<sup>th</sup> day of July 2007, it appears to the Court that:

(1) Appellant Martin K. Burkett appeals the Superior Court's summary dismissal of his motion for post-conviction relief as untimely pursuant to Superior Court Criminal Rule 61(i)(1).<sup>1</sup> Burkett contends that the time limitation set forth in

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<sup>1</sup> Super. Ct. Crim. R. 61(i)(1) provides:

A motion for postconviction relief may not be filed more than one year 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 one year after that right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

Rule 61(i)(1) is inapplicable to his claim because it would result in a miscarriage of justice. We find no merit to his appeal and affirm.

(2) In February 1991, Burkett was charged with five counts of Burglary Second Degree and other related offenses. On the morning of the second day of trial, Burkett pled guilty to one count of Burglary Second Degree and, as a result, the State dismissed the remaining charges. The Superior Court granted the State's motion to declare Burkett a Habitual Offender on May 1, 1992. Burkett was subsequently sentenced to natural life in prison pursuant to 11 *Del. C.* § 4214(b). Burkett filed no direct appeal of his sentence.

(3) In November 2006, approximately fourteen years later, Burkett filed a motion for post-conviction relief claiming a due process right to appeal his conviction fourteen years after sentencing as well as ineffective assistance of counsel. The Superior Court summarily dismissed his motion as untimely on December 21, 2006.

(4) Burkett contends that the Superior Court's dismissal of his motion violates his due process right to appellate review of his life sentence. In addition, he contends that his counsel's failure to file either a direct appeal or timely motion for post-conviction relief constitutes ineffective assistance of counsel. "This Court

reviews for abuse of discretion the Superior Court's decision on an application for post-conviction relief. Nonetheless, questions of law are reviewed *de novo*.”<sup>2</sup>

(5) At the time of Burkett’s conviction, Superior Court Criminal Rule 61(i)(1) barred motions for post-conviction relief filed “more than three years after the judgment of conviction is final.”<sup>3</sup> This time limitation does not apply, however, if “the court lacked jurisdiction or . . . 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.”<sup>4</sup>

(6) Burkett’s motion was unquestionably filed more than three years after his conviction became final. Burkett claims, however, that his motion is not time barred because he satisfies an exception to the rule. Specifically, he contends that his counsel’s failure to fully inform him of the consequences of his guilty plea and timely file an appeal or post-conviction relief motion results in a violation of his due process rights.

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<sup>2</sup> *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

<sup>3</sup> On July 1, 2005, Rule 61(i)(1) was amended to bar claims filed more than one year after conviction. The amendment, however, applies only to cases where the judgment of conviction became final after July 1, 2005. Because Burkett was convicted in 1992, the amendment is inapplicable to this case.

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

(7) Burkett's arguments are not supported by the record. First, the plea colloquy clearly shows that Burkett was aware of the consequences of his guilty plea, specifically a mandatory life sentence. The trial court conducted the following colloquy before accepting Burkett's plea:

THE COURT: You understand, Mr. Burkett, that I have not looked at your record, so I don't know. Counsel's representation is that you, by entering this plea, are making yourself eligible for habitual offender's status and I believe a mandatory life sentence. Do you understand that?

BURKETT: Yes.

THE COURT: And you discussed that with [your attorney]?

BURKETT: Yes.

THE COURT: And knowing the consequences of that action or what this plea will lead you to, you still want to enter this plea?

BURKETT: Yes.

(8) Burkett's claim that his counsel's failure to timely file an appeal results in a denial of his due process rights is also without merit. To succeed on a claim of ineffective assistance of counsel, "a defendant must establish that his attorney's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, the result of the proceedings would have been different."<sup>5</sup> With regard to the filing of an appeal, counsel is constitutionally required to "consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for

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<sup>5</sup> *Lewis v. State*, 750 A.2d 530 (Del. 2000) (TABLE).

example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.”<sup>6</sup> The United States Supreme Court has noted the difficulty of succeeding on such a claim if the defendant pled guilty to the charges, as “a guilty plea reduces the scope of potentially appealable issues and . . . a [guilty] plea may indicate that the defendant seeks an end to judicial proceedings.”<sup>7</sup>

(9) There is no indication in the record that Burkett ever requested that his counsel appeal his sentence. In fact, the record suggests the opposite. Burkett pled guilty after being informed of the consequence of a resulting life sentence. Burkett also failed to file any motion, either through counsel or *pro se*, challenging his sentence for fourteen years. Because Burkett cannot show a miscarriage of justice, his claim is time barred.

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

BY THE COURT:

/s/Henry duPont Ridgely  
Justice

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<sup>6</sup> *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000).

<sup>7</sup> *Id.*