

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JACKIE JACKSON,	§	
	§	Nos. 90 and 124, 2007
Defendant Below,	§	
Appellant,	§	C O N S O L I D A T E D
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware in and
STATE OF DELAWARE,	§	for Sussex County
	§	
Plaintiff Below,	§	Def. ID No. 0107021899
Appellee.	§	

Submitted: April 30, 2007
Decided: August 2, 2007

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

ORDER

This 2nd day of August 2007, upon consideration of the appellant’s opening briefs and the appellee’s motions to affirm, it appears to the Court that:

(1) On February 20, 2007, the appellant, Jackie Jackson, filed an appeal from the Superior Court’s order of January 18, 2007 that denied his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a) (“Rule 35(a”). On March 8, 2007, Jackson filed an appeal from the Superior Court’s order of February 13, 2007 that denied his motion for relief from judgment pursuant to Superior Court Civil Rule 60(b) (“Rule 60(b”). Jackson’s Rule 60(b) motion sought relief from the Superior Court’s January

18, 2007 denial of his motion for correction of sentence. In the interest of judicial economy, the Court has consolidated Jackson's appeals for decision.

(2) In 2002 Jackson was convicted and sentenced to thirteen years of incarceration followed by probation.¹ In his Rule 35(a) motion for correction of sentence, Jackson sought to set aside his conviction and sentence on the basis of alleged errors in the jury instructions. The Superior Court denied the motion on the basis that Jackson's claims could not be considered under Rule 35(a) and must be raised in a motion for postconviction relief under Superior Court Criminal Rule 61.

(3) Jackson's Rule 60(b) motion sought to set aside the Superior Court's denial of his Rule 35(a) motion for correction of sentence. The Superior Court summarily denied Jackson's motion on the basis that relief under civil Rule 60(b) was not applicable in a criminal proceeding.

(4) The Superior Court correctly determined that neither Rule 35(a) nor Rule 60(b) could be used to collaterally attack a criminal conviction.²

¹ In prior proceedings, this Court affirmed Jackson's conviction and the denials of Jackson's first and second motions for postconviction relief pursuant to Superior Court Criminal Rule 61. See *Jackson v. State*, 2003 WL 161250 (Del. Supr.) (affirming conviction on direct appeal); *Jackson v. State*, 2005 WL 528673 (Del. Supr.) (affirming denial of first postconviction motion); *Jackson v. State*, 2005 WL 3031601 (Del. Supr.) (affirming denial of second postconviction motion).

² See *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998) (providing that the function of Rule 35 is to permit correction of illegal sentence, not to reexamine errors occurring at trial); *Allen v. State*, 2004 WL 120527 (Del. Supr.) (holding, as a substantive matter, that

Superior Court Criminal Rule 61 provides the exclusive remedy for setting aside a final judgment of conviction.³

(5) It is manifest on the face of Jackson's opening briefs that these appeals are without merit. The issues presented in the appeals are controlled by settled Delaware law. To the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED, *sua sponte*, that appeal Nos. 90, 2007 and 124, 2007 are CONSOLIDATED for decision. IT IS FURTHER ORDERED that the State's motions to affirm are granted, and the judgments of the Superior Court dated January 18, 2007 and February 13, 2007 are AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

Superior Court's decision not to reopen judgment in criminal case pursuant to civil Rule 60(b) was proper).

³ Del. Super. Ct. Crim. R. 61(a)(2) (2007); *Heron v. State*, 2001 WL 58742 (Del. Supr.). *Cf. Boatswain v. State*, 2007 WL 2051617 (Del. Supr.) (providing that writ of habeas corpus is not a substitute for postconviction remedy under Rule 61).